FOREWORD


Second Regular Session, 2008

The Second Regular Session of the 78th Legislature convened on January 9, 2008. The constitutional sixty-day limit on the duration of the session was midnight, March 8, 2008. The Governor issued Proclamations on March 5, 2008 and March 11, 2008, extending the session for the purpose of considering the Budget bill, and the Legislature adjourned sine die on March 16, 2008.

Bills totaling 2,138 were introduced in the two houses during the session (1,350 House, of which 635 were carryover, and 788 Senate). The Legislature passed 246 bills, 129 House and 117 Senate.

The Governor vetoed seven House bills (Com. Sub. for H. B. 4010, Removing the limitation on terms for members on the board of library directors; H. B. 4016, Updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; H. B. 4017, Updating meaning of federal taxable income and certain other terms used in West Virginia Corporation Net Income Tax Act; Com. Sub. for H. B. 4307, Relating to bona fide residents wholly or solely owning greyhounds; Com. Sub. for H. B. 4407, Requiring automatic tire chains as standard equipment on all new school buses; Com. Sub. for H. B. 4420, Imposing corporate net income tax on certain regulated investment companies and real estate investment trusts used as tax sheltering vehicles; and Com. Sub. for H. B. 4554, Testing school bus operators every other year) and eight Senate bills (Com. Sub. for S. B. 207, Relating to Deputy Sheriff Retirement System Act; Com. Sub. for S. B. 227, Relating to State Teachers Retirement System; Com. Sub. for S. B. 242, Allowing point deduction for

There were 211 Concurrent Resolutions introduced during the session, 120 House and 91 Senate, of which 34 House and 30 Senate were adopted. There were 33 House Joint Resolutions (24 of which were carryover resolutions) and 17 Senate Joint Resolutions introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 41 House Resolutions, and the Senate introduced 41 Senate Resolutions, of which 36 House and 36 Senate were adopted.

The Senate failed to pass 45 House bills passed by the House, and 55 Senate bills failed passage by the House.

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

\textbf{First Extraordinary Session, 2008}

The Proclamation calling the Legislature into Extraordinary Session on March 16, 2008, contained seven items for consideration.

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

The Legislature adjourned the Extraordinary Session \textit{sine die} at 10:57 P.M. that same day.

\[IV\]
Second Extraordinary Session, 2008

The Proclamation calling the Legislature into Extraordinary Session on June 24, 2008, contained thirteen items for consideration.

The Legislature passed nineteen bills, 10 House bills and 9 Senate bills. One House Concurrent Resolution and one Senate Concurrent Resolution was adopted and the Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die on June 28, 2007.

Second Extraordinary Session, 2007

The Proclamation calling the Legislature into Extraordinary Session on August 17, 2007, contained seventeen items for consideration.

The Legislature passed fourteen bills, 7 House bills and 7 Senate bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die on August 21, 2007.

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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<td>Supplementing, Amending and Increasing Items of Existing Appropriations, State Road Fund</td>
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<td>Supplemental Appropriation, Department of Military Affairs and Public Safety, Fire Commission, and Board of Pharmacy</td>
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ELECTRONIC SURVEILLANCE

11. (HB204) Establishing Requirements for Intercepting Communications in the Home of a Non-Consenting Party

SCRAP METAL

12. (HB202) Relating to the Receipt and Transfer of Scrap Metal

TAXATION


TOURISM PROMOTION FUND

14. (SB2006) Relating to Tourism Promotion Fund

[XXXVIII]
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2008

OFFICERS

Speaker-- Richard Thompson, Wayne
Clerk--Gregory M. Gray, Charleston
Sergeant at Arms--Oce Smith, Fairmont
Doorkeeper--John Roberts, Hedgesville

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MEMBERS OF THE HOUSE OF DELEGATES, Continued

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1 Appointed to fill the vacancy created by the resignation of Ron Thompson.
2 Appointed to fill the vacancy created by the resignation of Jon Amores.

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

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

REGULAR SESSION, 2008

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

TOTAL ............................................. 34
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2008

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), Beach, Ellis, Guthrie, Hartman, Higgins, Hutchins, Iaquinta, Kessler, Mahan, Michael, Miley, Reynolds, Talbott, Williams, Andes, Ashley, Azinger, Border, Carmichael, Schoen and Walters.

CONSTITUTIONAL REVISION
Fleischauer (Chair), Hutchins (Vice Chair), Brown, Campbell, Caputo, Doyle, Guthrie, Hatfield, Higgins, 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, Fragale, Frederick, Gall, Moye, Perry, Pethtel, Rodigherio, Shaver, Stephens, Wells, Wysong, Duke, Ireland, J. Miller, Romine, Rowan, Sumner and Tansill.

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

[XLII]
HOUSE OF DELEGATES COMMITTEES

GOVERNMENT ORGANIZATION
Morgan (Chair), Martin (Vice Chair), Argento, Beach, Caputo, Cann, DeLong, Eldridge, Hartman, Hatfield, Higgins, Hutchins, Michael, Palumbo, D. Poling, Staggers, Swartzmiller, Talbott, 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, Rodighiero, 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, Gall, Kominar, Miley, Palumbo, Perry, D. Poling, Proudfoot, Reynolds, Swartzmiller, Tabb, Varner, Wysong, Cowles, Duke, Rowan, Schadler, Schoen, Sumner and Tansill.

[XLIII]
HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION
Hrutkay (Chair), Stephens (Vice Chair), Argento, Boggs, Burdiss, Crosier, Ennis, Klem, Manchin, Martin, Michael, Pethtel, 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, Pethtel, 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.

[XLIV]
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, 2008

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.

[XLVI]
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.

[XLVII]
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.

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JOINT COMMITTEES

ENROLLED BILLS
White (*Co-Chair*), Green, Love, Sprouse and Yoder.

GOVERNMENT AND FINANCE
Tomblin (*Co-Chair*), Chafin, Helmick, Kessler, Sharpe, Caruth and Deem.

LEGISLATIVE RULE-MAKING REVIEW
Minard (*Chair*), Fanning (*Vice Chair*), Prezioso, Unger, Boley and Facemyer.
AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-25, relating to prohibiting inclusion of specific dollar amounts or figures related to damages in complaints for personal injury or wrongful death actions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-25, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-25. Personal injury and wrongful death actions; complaint; specific amount of damages not to be stated.
In any action to recover damages for personal injury or wrongful death, no specific dollar amount or figure relating to damages being sought may be included in the complaint. However, the complaint may include a statement reciting that the amount in controversy satisfies the minimum jurisdictional amount established for filing the action. Further, and pursuant to the West Virginia Rules of Civil Procedure pertaining to discovery, any party defendant may at any time request a written statement setting forth the nature and amount of damages sought. The request shall be served upon the plaintiff who shall serve a responsive statement as to the nature and amount of damages sought within thirty days thereafter. If no response is served within thirty days after receipt of service by the plaintiff, the party defendant requesting the statement may petition the court in which the action is pending to order the plaintiff to serve a responsive statement upon the requesting party defendant. This section applies only to complaints filed on or after the first day of July, two thousand eight.

CHAPTER 2

(H.B. 4141 - By Delegates White and Webster)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §55-17-3 of the Code of West Virginia, 1931, as amended, relating to reducing the number of written status reports on a civil action against a state government agency required to be provided by the chief officer of the government agency.

Be it enacted by the Legislature of West Virginia:
That §55-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS AGAINST THE STATE.

§55-17-3. Preliminary procedures; service on Attorney General; notice to the Legislature.

(a)(1) Notwithstanding any provision of law to the contrary, at least thirty days prior to the institution of an action against a government agency, the complaining party or parties must provide the chief officer of the government agency and the Attorney General written notice, by certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt, the chief officer of the government agency shall forthwith forward a copy of the notice to the President of the Senate and the Speaker of the House of Delegates. The provisions of this subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable harm would have occurred if the institution of the action was delayed by the provisions of this subsection.

(2) The written notice to the chief officer of the government agency and the Attorney General required by subdivision (1) of this subsection is considered to be provided on the date of mailing of the notice by certified mail, return receipt requested. If the written notice is provided to the chief officer of the government agency as required by subdivision (1) of this subsection, any applicable statute of limitations is tolled for thirty days from the date the notice is provided and, if received by the government agency as evidenced by the return receipt of the certified mail, for thirty days from the date of the returned receipt.

(3) A copy of any complaint filed in an action as defined in section two of this article shall be served on the Attorney General.
(b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary, in an action instituted against a government agency that seeks a judgment, as defined in section two of this article, the chief officer of the government agency which is named a party to the action shall, upon receipt of service, forthwith give written notice thereof, together with a copy of the complaint filed, to the President of the Senate and the Speaker of the House of Delegates.

(2) Upon request, the chief officer of the government agency shall furnish the President and Speaker with copies of pleadings filed and discovery produced in the proceeding and other documents, information and periodic reports relating to the proceeding as may be requested.

(3) The chief officer of a government agency who fails without good cause to comply with the provisions of this subsection is guilty of misfeasance. This subsection does not require a notice or report to the President and the Speaker that no action has been instituted or is pending against a governmental agency during a specified period.

(c) The requirements for notice and delivery of pleadings and other documents to the President of the Senate or Speaker of the House of Delegates pursuant to the provisions of this section do not constitute a waiver of any Constitutional immunity or protection that proscribes or limits actions, suits or proceedings against the Legislature or the State of West Virginia.

(d) The exercise of authority granted by the provisions of this section does not subject the Legislature or any member of the Legislature to any terms of a judgment.
AN ACT to amend and reenact §56-1-1a of the Code of West Virginia, 1931, as amended, relating to venue in civil actions; codifying certain portions of the common law doctrine of forum non conveniens; and required judicial considerations.

Be it enacted by the Legislature of West Virginia:

That §56-1-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 1. VENUE.

§ 56-1-1a. Forum non conveniens.

1 (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 that occurred in this state. Factors relevant to the private interests of the parties include, but are not limited to, the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling witnesses; the cost of obtaining attendance of willing witnesses; possibility of a view of the premises, if a view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. Factors relevant to the public interest of the state include, but are not limited to, the administrative difficulties flowing from court congestion; the interest in having localized controversies decided within the state; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty;
43 (7) Whether not granting the stay or dismissal would
44 result in unreasonable duplication or proliferation of
45 litigation; and

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

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

54 (c) If the statute of limitations in the alternative forum
expires while the claim is pending in a court of this state, the
court shall grant a dismissal under this section only if each
defendant waives the right to assert a statute of limitation
defense in the alternative forum. The court may 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.

66 (d) 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).

69 (e) 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.
AN ACT to repeal §5A-3-27 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-3-1, §5A-3-11, §5A-3-11a, §5A-3-12 and §5A-3-45 of said code, all relating to the Purchasing Division of the Department of Administration; omitting antiquated language; revising specifications on which bids shall be based; removing requirement that director determine in writing that no funds above budgeted amount exist to award bid; requiring city and state of residence and business addresses for vendors; and allowing the state agency for surplus property to sell commodities to the public.

Be it enacted by the Legislature of West Virginia:

That §5A-3-27 of the Code of West Virginia, 1931, as amended, be repealed; and that §5A-3-1, §5A-3-11, §5A-3-11a, §5A-3-12 and §5A-3-45 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.
§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on written specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; and exception.
§5A-3-11a. Negotiation when all bids exceed budget in requisition.
§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false affidavits; penalties.
§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.
§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division of the Department of Administration is continued for the purpose of establishing centralized offices to provide purchasing, and travel services to the various state agencies. No person may be appointed director of the Purchasing Division unless that person is, at the time of appointment, a graduate of an accredited college or university and has spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise. The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(b) The provisions of this article do not apply to the legislative branch unless otherwise provided or the Legislature or either house requests the director to render specific services under the provisions of this chapter, nor to purchases of stock made by the Alcohol Beverage Control Commissioner, nor to purchases of textbooks for the State Board of Education.

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

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

(c) Bids shall be based on the written specifications in the advertised bid request and may not be altered or withdrawn after the appointed hour for the opening of the bids.

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

(e) All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder or bidders, taking into consideration the qualities of the commodities or services to be supplied, their conformity with specifications, their suitability to the requirements of the government, the delivery terms and, if the director determines there are nationally accepted industry standards, cost of maintenance and the expected life of the commodities: Provided, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board's "Minimum Standards for Design and Equipment of School Buses." County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected.
(f) If all bids received on a pending contract are for the same unit price or total amount, the director has the authority to reject all bids, and to purchase the required commodities, printing and services in the open market, if the price paid in the open market does not exceed the bid prices.

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

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

§5A-3-11a. Negotiation when all bids exceed budget in requisition.

(a) Spending units shall include the maximum budgeted amount available for each purchase in a requisition submitted to the Purchasing Division. No person may disclose this maximum budgeted amount to any vendor prior to the award of a contract. If all bids submitted pursuant to a solicitation exceed the funds available for the purchase, then a negotiated award may be made as set forth in this section.
(1) If the director determines in writing that there is only one responsive and responsible bidder, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

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

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

(b) After negotiations occur pursuant to subsection (a) of this section, if the director determines that more than fifteen percent of the value of the bid must be renegotiated by revising the specifications of the original solicitation, only a resolicitation may be initiated or the solicitation may be withdrawn.
(c) The director may not renegotiate with any bidder after closing negotiations with that bidder and entering into negotiations with the next bidder.

§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false affidavits; penalties.

(a) The director may not accept any bid received from any vendor unless the vendor has paid the annual fee specified in section four of this article and has filed with the director an affidavit of the vendor or the affidavit of a member of the vendor's firm, or, if the vendor is a corporation, the affidavit of an officer, director or managing agent, of the corporation, disclosing the following information:

1. If the vendor is an individual, his or her name and city and state of residence and business address, and, if he or she has associates or partners sharing in his business, their names and city and state of residence and business addresses;

2. If the vendor is a firm, the name and city and state of residence and business address of each member, partner or associate of the firm;

3. If the vendor is a corporation created under the laws of this state or authorized to do business in this state, the name and business address of the corporation; the names and city and state of residence and business addresses of the president, vice president, secretary, treasurer and general manager, if any, of the corporation; and the names and city and state of residence and business addresses of each stockholder of the corporation owning or holding at least ten percent of the capital stock thereof;

4. A statement of whether the vendor is acting as agent for some other individual, firm or corporation, and if so, a statement of the principal authorizing the representation shall be attached to the affidavit or whether the vendor is doing business as another entity;
(5) The vendor's latest Dun & Bradstreet rating, if there is any rating as to the vendor; and

(6) A list of one or more banking institutions to serve as references for the vendor.

(b) Whenever a change occurs in the information submitted as required, the change shall be reported immediately in the same manner as required in the original disclosure affidavit.

(c) The affidavit and information received by the director shall be kept in a register of vendors which shall be a public record and open to public inspection during regular business hours in the director's office and made readily available to the public.

(d) The director may waive the above requirements in the case of any corporation listed on any nationally recognized stock exchange and in the case of any vendor who or which is the sole source for the commodity in question.

(e) Any person who makes an affidavit falsely or who knowingly files or causes to be filed with the director, an affidavit containing a false statement of a material fact or omitting any material fact, is guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars, and, in the discretion of the court, confined in jail not more than one year. An individual convicted of a misdemeanor under this subsection may never hold an office of honor, trust or profit in this state, or serve as a juror.

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

(a) The state agency for surplus property has the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the state when the commodities are or become obsolete or unusable or are not being used or should be replaced.
(b) The agency shall determine what commodities or expendable commodities should be disposed of and make disposition in the manner which will be most advantageous to the state. The disposition may include:

1. Transferring the particular commodities or expendable commodities between departments;

2. Selling the commodities to county commissions, county boards of education, municipalities, public service districts, county building commissions, airport authorities, parks and recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in this state when the volunteer fire departments have been held exempt from taxation under Section 501(c) of the Internal Revenue Code;

3. Trading in the commodities as a part payment on the purchase of new commodities;

4. Cannibalizing the commodities pursuant to procedures established under subsection (g) of this section;

5. Properly disposing of the commodities as waste;

6. Selling the commodities to the general public at the posted price or to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms and place of the sale as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for the publication is the county in which the sale is to be conducted. The sale may also be advertised in other advertising media that the agency considers advisable. The agency may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids; or
(7) Selling the commodities to the highest bidder by means of an Internet auction site approved by the director, as set forth in an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code.

(c) Upon the sale to the general public or transfer of commodities or expendable commodities between departments, or upon the sale of commodities or expendable commodities to an eligible organization, the agency shall set the price to be paid by the receiving eligible organization, with due consideration given to current market prices.

(d) The agency may sell expendable, obsolete or unused motor vehicles owned by the state to an eligible organization, other than volunteer fire departments. In addition, the agency may sell expendable, obsolete or unused motor vehicles owned by the state with a gross weight in excess of four thousand pounds to an eligible volunteer fire department. The agency, with due consideration given to current market prices, shall set the price to be paid by the receiving eligible organization for motor vehicles sold pursuant to this provision: Provided, That the sale price of any motor vehicle sold to an eligible organization may not be less than the "average loan" value, as published in the most recent available eastern edition of the National Automobile Dealer's Association (N.A.D.A.) Official Used Car Guide, if the value is available, unless the fair market value of the vehicle is less than the N.A.D.A. "average loan" value, in which case the vehicle may be sold for less than the "average loan" value. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the agency who shall consider the mileage of the vehicle and the condition of the body, engine and tires as indicators of its fair market value. If no fair market value is available, the agency shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices. The duly authorized representative of the eligible organization, for whom the motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor vehicle to be
vested only in the official name of the authorized governing body for whom the purchase or transfer was made. The ownership or title, or both, shall remain in the possession of that governing body and be nontransferable for a period of not less than one year from the date of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

(e) The agency shall report to the Legislative Auditor, semiannually, all sales of commodities or expendable commodities made during the preceding six months to eligible organizations. The report shall include a description of the commodities sold, the price paid by the eligible organization which received the commodities and to whom each commodity was sold.

(f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or funds out of which the purchase of the particular commodities or expendable commodities was made: Provided, That the agency may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property disposed of or sold pursuant to the provisions of this section.

(g)(1) For purposes of this section, "cannibalization" means the removal of parts from one commodity to use in the creation or repair of another commodity.

(2) The director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that permit the cannibalization of a commodity when it is in the best interests of the state. The procedures shall require the approval of the director prior to the cannibalization of the commodity under such circumstances as the procedures may prescribe.

(3) (A) Under circumstances prescribed by the procedures, state agencies shall be required to submit a form, in writing or
electronically, that, at a minimum, elicits the following information for the commodity the agency is requesting to cannibalize:

(i) The commodity identification number; (ii) the commodity's acquisition date; (iii) the commodity's acquisition cost; (iv) a description of the commodity; (v) whether the commodity is operable and, if so, how well it operates; (vi) how the agency will dispose of the remaining parts of the commodity; and (vii) who will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.

If the agency has immediate plans to use the cannibalized parts, the form shall elicit the following information for the commodity or commodities that will receive the cannibalized part or parts: (i) The commodity identification number; (ii) the commodity's acquisition date; (iii) the commodity's acquisition cost; (iv) a description of the commodity; (v) whether the commodity is operable; (vi) whether the part restores the commodity to an operable condition; and (vii) the cost of the parts and labor to restore the commodity to an operable condition without cannibalization.

If the agency intends to retain the cannibalized parts for future use, it shall provide information justifying its request.

The procedures shall provide for the disposal of the residual components of cannibalized property.

The director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that allow state agencies to dispose of commodities in a landfill, or by other lawful means of waste disposal, if the value of the commodity is less than the benefit that may be realized by the state by disposing of the commodity using another method authorized in this section. The procedures shall specify circumstances where the state agency for surplus property shall inspect the condition of the commodity prior to
authorizing the disposal and those circumstances when the
inspection is not necessary prior to the authorization.

(2) Whenever a state agency requests permission to dispose
of a commodity in a landfill, or by other lawful means of waste
disposal, the state agency for surplus property has the right to
take possession of the commodity and to dispose of the
commodity using any other method authorized in this section.

(3) If the state agency for surplus property determines,
within fifteen days of receiving a commodity, that disposing of
the commodity in a landfill or by other lawful means of waste
disposal would be more beneficial to the state than disposing of
the commodity using any other method authorized in this
section, the cost of the disposal is the responsibility of the
agency from which it received the commodity.

CHAPTER 5

(Com. Sub. for S.B. 553 - By Senators McCabe, Caruth,
Bowman, Jenkins, Unger, Plymale and Foster)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §5A-6A-1, §5A-6A-
and §5A-6A-9, all relating to establishing the Permitting and Licensing Information Act; authorizing the Governor’s Office of Technology to establish a permitting and licensing information system; providing legislative findings; definitions; establishing authority and duties of the office; creating duty for agencies to provide permitting and licensing
information; reporting requirements; granting rule-making authority; and providing for limitations of the 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 §5A-6A-1, §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5, §5A-6A-6, §5A-6A-7, §5A-6A-8 and §5A-6A-9, all to read as follows:

ARTICLE 6A. PERMITTING AND LICENSING INFORMATION ACT.

§5A-6A-2. Legislative findings.
§5A-6A-4. Permit and license information authority.
§5A-6A-5. Duty of agencies to provide permitting and licensing information; development of permitting and licensing information repository.
§5A-6A-6. Requirements for adopted, revised or terminated permitting or licensing information.
§5A-6A-7. Reporting requirements.

§5A-6A-1. Short title. — This article may be known and cited as the Permitting and Licensing Information Act.

§5A-6A-2. Legislative findings.

(a) The Legislature finds that:

(1) Persons conducting business activities in this state are required to obtain permits and licenses from various agencies that regulate those activities;

(2) The efficiency of the permitting and licensing process is an integral component of effective government, business development and public participation; and
(3) It is in the public interest that the permitting and licensing process for business activities should be efficient and streamlined.

(b) Therefore, the Legislature declares that the permitting and licensing process for business activities be facilitated and coordinated by the Governor’s Office of Technology.


For the purposes of this article, the following words have the meaning assigned unless the context indicates otherwise:

(1) "Agency" means any board, department, division, authority, commission or other public entity that requires a permit or license to be obtained from the entity to conduct a business activity in this state.

(2) "Office" means the Governor’s Office of Technology.

(3) "Permit" means any permit, license, authorization, certification, registration or other approval required to perform a business activity.

§5A-6A-4. Permit and license information authority.

(a) The Legislature hereby authorizes the Governor’s Office of Technology to facilitate and coordinate the permitting and licensing process for business activities in this state.

(b) The office has the following authority to:

(1) Establish a central permit and license information repository;

(2) Determine the type of information that each agency must submit in order to provide adequate information to the
public regarding the permits and licenses needed for a particular business activity;

(3) Require state agencies and local agencies to provide their permit and license information, including the type and purpose of all permits and licenses the agency issues;

(4) Create an online permitting and licensing program monitored through the state web page; and

(5) Make recommendations to the Governor and the Legislature concerning the functionality of the central permit and license information repository to ensure its accessibility and reliability for use by agencies and the public.

§5A-6A-5. Duty of agencies to provide permitting and licensing information; development of permitting and licensing information repository.

(a) On or before the first day of October, two thousand eight, the office shall provide notice to all agencies that beginning on the first day of February, two thousand nine, that the agency shall submit licensing and permitting information to the office.

(b) On or before the first day of December, two thousand eight, the office shall establish, and provide to agencies that issue permits and licenses, the procedures and methods for submission of required permitting and licensing information for the permitting and licensing information repository.

(c) On or before the first day of February, two thousand nine, an agency that issues permits and licenses shall submit the required permitting and licensing information to the office in accordance with the procedures and methods established in this article.
(d) On or before the first day of July, two thousand nine, the office will create an internet-based, publicly accessible permitting and licensing information repository, in coordination with the state's e-government initiatives, that contains the following:

(1) A comprehensive detailed listing of the types of permits and licenses required for specific business activities;

(2) The purposes of the permits and licenses; and

(3) The agencies responsible for issuance of the permits and licenses, including the agency contact information.

(e) The permitting and licensing information repository shall allow individuals to obtain a listing of the types of permits and licenses required for specific business activities.

§5A-6A-6. Requirements for adopted, revised or terminated permitting or licensing information.

No later than thirty days prior to the effective date of the implementation, revision or termination of any permitting or licensing requirement, an agency, subject to the provisions of this article, is required to provide to the office the current information relating to a permit or license.

§5A-6A-7. Reporting requirements.

Annually, by the thirtieth day of December, the office shall report to the Joint Committee on Government and Finance and the Governor the status of the permitting and licensing information repository and identify any agency that has failed to comply with the requirements of this article.

The office may propose rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code to effectuate the purpose and provisions of this article.


Although this article creates a central permitting and licensing information repository, each agency shall continue to administer its own permitting and licensing procedures and charge and collect the appropriate fees.

CHAPTER 6

(Com. Sub. for H.B. 4438 - By Delegates Morgan, Swartzmiller, Cann, Browning, Craig, Pethtel, Sobonya, C. Miller and Stalnaker)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §22-5-1, §22-5-11 and §22-5-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-5-11a, all relating to air pollution control; allowing for the expedited review of complete permit applications for sources other than major sources; allowing all facilities with complete applications for permission to commence construction and which have received written permission from the secretary to construct an altered or expanded source provided that operations of the altered or expanded source do not commence until its permit or permit modification is issued; setting timelines for permitting actions; making other clarifications of
the secretary's duties in minor source air permitting; requiring the promulgation of legislative rules; and requiring a legislative report.

Be it enacted by the Legislature of West Virginia:

That §22-5-1, §22-5-11 and §22-5-14 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 §22-5-11a, all to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-1. Declaration of policy and purpose.
§22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.
§22-5-11a. Activities authorized in advance of permit issuance.

§22-5-1. Declaration of policy and purpose.

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; to assure the economic competitiveness of the state by providing for the timely processing of permit applications and other authorizations under this article; and to provide a framework within which all values may be balanced in the public interest.
Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the "Federal Clean Air Act," as amended.

§22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.

(a) Unless otherwise specifically provided in this article, no person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as provided in this article.

(b) The secretary shall by rule specify the class or categories of stationary sources to which this section applies. Application for permits shall be made upon such form, in such manner, and within such time as the rule prescribes and shall include such information, as in the judgment of the secretary, will enable him or her to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules of the secretary.

(c) Unless otherwise specifically provided in this article, the secretary shall issue a permit for a major stationary source within a reasonable time not to exceed three hundred sixty-five calendar days, after the secretary determines that the application is complete.

(d) Unless otherwise specifically provided in this article, the secretary shall issue a permit for all other sources including modifications of existing major stationary sources which are not major modifications within a reasonable time not to exceed ninety calendar days, after the date the secretary determines the application is complete. The Secretary may extend this time by thirty calendar days to allow for public comment.

(e) A permit application will be denied if the secretary determines that the proposed construction, modification or
relocation will not be in accordance with this article or rules promulgated hereunder.

(f) For purposes of this section, a modification is any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by a source above the de minimis level set by the secretary.

(g) With respect to the construction of new nonmajor stationary sources, or modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, or relocations of nonmajor stationary sources, the following requirements apply:

(1) The secretary shall issue an administrative update to a permit issued under this section with respect to any of these sources, unless he or she determines that the proposed administrative update will not be in accordance with this article or rules promulgated hereunder, in which case the secretary shall issue an order denying the administrative update. Any administrative update shall be issued by the secretary within a reasonable time not to exceed sixty calendar days after receipt of a complete application. Administrative updates are minor revisions of existing permits as further described and authorized by rule.

(2) The secretary shall, within a reasonable time not to exceed forty-five calendar days after the date the secretary determines that an application is complete, issue a registration under a general permit applicable to any of these sources, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. General permits are permits authorizing the construction, modification or relocation of a category of sources by the
same owner or operator or involving the same or similar processes or pollutants upon the terms and conditions specified in the general permit for those types of sources.

(3) The secretary shall, within a reasonable time not to exceed forty-five calendar days after receipt of a complete application, issue a temporary permit or a relocation permit, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. Temporary permits are permits authorizing the owner or operator to make limited changes for limited periods of time as further described and authorized by rule.

(h) The secretary shall determine whether an application filed under this section is complete within thirty calendar days after receipt of that application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(i) The secretary, shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty nine-a of this code, to implement the provisions of this section by the first day of August, two thousand eight.

§22-5-11a. Activities authorized in advance of permit issuance.

(a) With respect to the modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, the following activities are authorized in advance of permit issuance. Any authorized activities undertaken by or on behalf of the permit applicant prior to the issuance of a final permitting action by the secretary are undertaken at the permit applicant's own risk and with the knowledge that the
application for a permit or permit modification may be denied:

(1) Receiving or storing on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure.

(2) A person who holds an active West Virginia air quality permit issued under this article at an existing source, and who has applied to the secretary for permission to alter, expand or modify that source or to allow a new emissions unit at that source, may begin the construction of any such alteration, expansion, modification or new emission unit in advance of permit issuance in accordance with this section. The person may not operate any altered, expanded, modified or new emission unit without first obtaining an air quality permit as required by rules promulgated by the secretary.

(3) The following sources are ineligible for submission of an application for permission to commence construction in advance of permit issuance:

(A) Sources subject to the "Federal Clean Air Act" subsections 112(g) or 112(j).

(B) Sources seeking federally enforceable permit conditions in order to avoid otherwise applicable standards;

(C) Sources requiring a specific case-by-case emission limitation or standard under 45CSR21 or 45CSR27.

(4) (A) To qualify for the authorization to construct in advance of permit issuance as provided in this section, the permittee shall submit to the secretary an application for permission to commence construction in advance of permit issuance.
(B) Such application for permission to commence construction shall include all of the following:

1. The name and location of the source and the name and address of the permittee;

2. The permit number of each active permit issued under this article for such source;

3. The nature of the sources and equipment associated with such alteration, expansion, modification or new emission unit;

4. An estimate of the maximum hourly and annual emissions of regulated air pollutants increased as a result of such alteration, expansion, modification or new emission unit;

5. The air pollution control devices or methods that are to be employed in connection with the alteration, expansion, modification or new emission unit;

6. A listing of the applicable state and federal air quality regulatory requirements for alteration, expansion, modification or new emission unit, and sufficient information which, in the judgement of the secretary, will demonstrate compliance with any applicable state and federal air quality regulatory requirements;

7. The anticipated construction or building schedule for alteration, expansion, modification or new emission unit;

8. A certification signed by the responsible official that the source, equipment and devices that are subject to a request for construction authorization will not be operated until the permittee has obtained a permit under rules promulgated by the secretary;
(9) A certification by the responsible official that any
construction undertaken prior to the issuance of a final permit
under rules of the secretary is undertaken at the permittee's
own risk and with the knowledge that the permittee may be
denied a permit or permit modification without regard to the
permittee's financial investment or addition to or
modification of the source;

(10) A certification signed by the responsible official that
all of the information contained in the application is complete
and accurate to the best of the responsible official's
knowledge and ability; and

(11) Upon submission of the application for permission to
construct, the applicant shall give notice by publishing a Class
I legal advertisement of the applicant's intent to alter or expand
the physical arrangement or operation of an existing stationary
source and the opportunity to provide written comment to the
secretary within thirty calendar days of the publication. The
applicant shall post a visible and accessible sign, at a minimum
2 feet square, at the entrance to the source or proposed site.
The sign must be clearly marked indicating that an air quality
permit has been applied for and include the West Virginia
Division of Air Quality permitting section telephone number
and web site for additional information. The applicant must
post the sign for the duration of the public notice period.
Public notice shall be in a newspaper having general
circulation in the county or counties where the facility is
located. The notice shall contain the information required by
rules promulgated by the secretary. Within fifteen days of
completion of the public comment period, the secretary shall
consider and respond to all written comments. If the secretary
finds that concerns raised by the public comment period give
rise to issues or concerns that would cause a construction or
operational permit not to be issued, the secretary may issue a
revocation or stay of the authorization to construct until those
issues or concerns are resolved.
(c) The secretary shall determine whether an application for permission to commence construction in advance of permit issuance is complete within fifteen calendar days after receipt of the application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(d) Within fifteen calendar days after the secretary has made a determination that an application for permission to commence construction in advance of permit issuance is complete, unless the secretary for good cause shown, extends the fifteen day time period for up to an additional fifteen calendar days, the secretary shall notify the applicant in writing of his or her determination as to whether each of the following conditions has or has not been satisfied:

(1) The applicant is and has been for a period of at least three years in substantial compliance with all other active permits and applicable state and federal air quality regulatory requirements under this article;

(2) The applicant has demonstrated that the alteration, expansion, modification or new emission unit will be in compliance with all applicable state and federal air quality regulatory requirements;

(3) The alteration, expansion, modification or new emission unit will not interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent and purpose of this article;

(4) The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted;
(5) The alteration or expansion will not result in a disproportionate increase in size of the facility already permitted; and

(6) The alteration or expansion will result in the same or substantially similar emissions as the facility already permitted.

If the secretary finds that all of the conditions have been satisfied, the notice issued by the secretary shall state that construction of the alteration, expansion, modification or new emission unit in advance of permit issuance may begin immediately. If the secretary finds that one or more of the conditions has not been met, the notice shall state that the requested construction, alteration, expansion, modification or new emission unit may not begin prior to issuance of a new or modified permit.

(e) If at any time during the construction of such alteration, expansion, modification or new emission unit, the secretary determines that the source is not likely to qualify for a permit or permit modification under applicable rules, the secretary may order that construction cease until the secretary makes a decision on the application for a permit or permit modification. If the secretary orders that construction cease, then construction of the alteration, expansion, modification or new emission unit may resume only if the secretary either makes a subsequent written determination that the circumstances that resulted in such order have been adequately addressed or if the secretary issues a permit or permit modification under the rules that authorize construction to resume.

(f) The secretary shall evaluate an application for a permit or permit modification under the rules and make a decision on the same basis as if the construction of the alteration, expansion, modification or new emission unit in advance of permit issuance had not been authorized pursuant
to this section. No evidence regarding any contract entered
into, financial investment made, construction undertaken, or
economic loss incurred by any person or permittee who
proceeds under this section without first obtaining a permit
under this article is admissible in any contested case or
judicial proceeding involving any permit required under the
rules. No evidence as to any determination or order by the
secretary pursuant to this section shall be admissible in any
contested case or judicial proceeding related to any permit
required under this article.

(g) Any permittee who proceeds under this section shall
be precluded from bringing any action, suit or proceeding
against the state, the officials, agents, and employees of the
state or the secretary for any loss resulting from any contract
entered into, financial investment made, construction
undertaken, or economic loss incurred by the permittee in
reliance upon the provisions of this section.

(h) This section does not relieve any person of the
obligation to comply with any other requirement of state law,
including any requirement to obtain any other permit or
approval prior to undertaking any activity associated with
preparation of the site or the alteration or expansion of the
physical arrangement or method of operation of a source at
a facility for which a permit is required under the rules.

(i) This section does not relieve any person from any
preconstruction or construction prohibition imposed by any
federal requirement, federal delegation, federally approved
requirement in any state implementation plan, or federally
approved requirement under the Title V permitting program,
as determined solely by the secretary. This section does not
apply to any construction, alteration, or expansion that is
subject to requirements for prevention of significant
deterioration or federal nonattainment new source review, as
determined solely by the secretary. This section does not
apply if it is inconsistent with any federal requirement,
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204 federal delegation, federally approved requirement in any
205 state implementation plan, or federally approved requirement
206 under the Title V permitting program, as determined solely
207 by the secretary.

208 (j) A permittee who submits an application to commence
209 construction in advance of permit issuance under this section
210 shall pay to the department a fee of two hundred dollars for
211 each application submitted to cover a portion of the
212 administrative costs of implementing this section.

213 (k) The secretary, in accordance with chapter
214 twenty-nine-a of this code, shall propose legislative rule that
215 may be necessary to implement the provisions of this section
216 by the first day of August, two thousand eight.

217 (l) The secretary is directed to report back to the Joint
218 Committee on Government and Finance by the first day of
219 January, two thousand ten on the impact of the
220 implementation of the expedited permits authorized pursuant
221 to this section. The report shall include, but not be limited to,
222 assessments regarding the number and types of facilities
223 utilizing this section, whether the agency has found this
224 expedited process has assisted these facilities to implement
225 construction and make revisions to their operations
226 efficiently, without adverse impacts on the agency, the
227 permitting process, or state-wide air quality.


1 Any person whose interest may be affected, including,
2 but not necessarily limited to, the applicant and any person
3 who participated in the public comment process, by a permit
4 issued, modified or denied by the secretary, or construction
5 authorization pursuant to section eleven-a of this article, may
6 appeal such action of the secretary to the air quality board
7 pursuant to article one, chapter twenty-two-b of this code.
CHAPTER 7

(Com. Sub. for S.B. 657 - By Senators Kessler, McKenzie and Plymale)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-1D-1, §21-1D-2, §21-1D-3, §21-1D-4, §21-1D-5, §21-1D-6, §21-1D-7, §21-1D-7a, §21-1D-8 and §21-1D-9, all relating to the West Virginia Alcohol and Drug-Free Workplace Act; providing definitions; providing a statement of policy; requiring public improvement contractors to have and implement a drug-free workplace program that requires drug and alcohol testing; providing standards and protocols for testing; providing for assistance for employees; requiring a drug-free workplace policy to be posted at a public improvement construction site; requiring drug-free workplace records and contents be open for inspection; providing penalties; providing for confidentiality; and providing that this article shall only apply to contracts awarded after this article takes effect.

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 §21-1D-1, §21-1D-2, §21-1D-3, §21-1D-4, §21-1D-5, §21-1D-6, §21-1D-7, §21-1D-7a, §21-1D-8 and §21-1D-9, all to read as follows:

ARTICLE 1D. WEST VIRGINIA ALCOHOL AND DRUG-FREE WORKPLACE ACT.
§21-ID-1. Short Title.

This article shall be called the West Virginia Alcohol and Drug-Free Workplace Act.


(a) The term "alcohol test" means a procedure conducted to determine if an individual is under the influence of alcohol.

(b) The term "construction", as used in this article, means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract. The term "construction" does not include temporary or emergency repairs.

(c) The term "contractor" means any employer working on a public improvement without regard to whether they are serving as the prime or subcontractor to another.

(d) The term "drug test" means a procedure using a nine-panel drug screen in urine specimens that are collected from individuals for the purpose of scientifically analyzing the specimens to determine if the individual ingested, was injected or otherwise exposed to a drug of abuse.

(e) The term "drug of abuse" means any substance listed under subsection (h) of this section.
(f) The term “employee” means a laborer, mechanic or other worker. For the purposes of this article, employee does not include such persons as are employed or hired directly by a public authority on a regular or temporary basis engaged exclusively in making temporary or emergency repairs. Furthermore, employee does not include such persons employed by a contractor who does not work in public improvement construction.

(g) The term “medical review officer” means a physician who holds a certificate authorizing them to practice medicine and surgery or osteopathic medicine and surgery, has knowledge of substance abuse disorders, has the appropriate medical training to interpret and evaluate positive drug and alcohol test results together with a person’s medical history and other relevant biomedical information, has successfully completed qualification training as outlined in the Code of Federal Regulations at 49 C. F. R. Part 40 §121 (c) and has passed an exam administered by a nationally recognized medical review officer certification board or subspecialty board for medical practitioners in the field of medical review of federally mandated drug testing.

(h) The term “nine-panel drug screen” means a drug-testing program that tests for marijuana, cocaine, opiates including hydromorphone, oxycodone, hydrocodone, phencyclidine, amphetamines, barbiturates, benzodiazepines, methadone and propoxyphene at the substance screening and confirmation limits where provided under federally mandated drug and alcohol testing programs or otherwise accepted as the industry standard.

(i) The term “public authority”, as used in this article, means any officer, board or commission or other agency of the State of West Virginia authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by
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53 public funds of the State of West Virginia and this article
54 applies to expenditures of these institutions made, in whole
55 or in part, from public funds.

56 (j) The term “public improvement”, as used in this article,
57 includes all buildings, roads, highways, bridges, streets,
58 alleys, sewers, ditches, sewage disposal plants, waterworks,
59 airports and all other structures upon which construction may
60 be let to contract by the State of West Virginia.

61 (k) The term “random drug testing” means a procedure in
62 which employees who perform safety-sensitive tasks are
63 selected to undergo a drug test by a statistically valid random
64 selection method without prearrangement or planning.

65 (l) The term “reasonable cause” means a belief based on
66 facts and inferences based primarily upon, but not limited to:
67 (1) Observable phenomena, such as direct observation of use,
68 possession or distribution of alcohol or a controlled
69 substance, or of the physical symptoms of being under the
70 influence of alcohol or a controlled substance, such as, but
71 not limited to, slurred speech, dilated pupils, odor of an
72 alcoholic beverage or a controlled substance, changes in
73 affect or dynamic mood swings; (2) a pattern of abnormal
74 conduct, erratic or aberrant behavior or deteriorating work
75 performance such as frequent absenteeism, excessive
76 tardiness or recurrent accidents, that appears to be related to
77 the use of alcohol or a controlled substance and does not
78 appear to be attributable to other factors; (3) the identification
79 of an employee as the focus of a criminal investigation into
80 unauthorized possession, use or trafficking of a controlled
81 substance; (4) a report of use of alcohol or a controlled
82 substance provided by a reliable and credible source; and (5)
83 repeated or flagrant violations of the safety or work rules of
84 the employee’s employer, that are determined by the
85 employee’s supervisor to pose a substantial risk of physical
86 injury or property damage and that appears to be related to
the use of alcohol or a controlled substance and that does not appear attributable to other factors.

(m) The term "safety-sensitive duty" means any task or duty fraught with such risks of injury to the employee or others that even a momentary lapse of attention or judgment, or both, can lead to serious bodily harm or death.

(n) The term "under the influence of alcohol" means a concentration of eight hundredths of one percent or more by weight of alcohol in an individual's blood or a concentration of eight hundredths of one gram or more by weight of alcohol per two hundred ten liters of an individual's breath.


It is hereby declared to be the policy of the State of West Virginia to require public improvement contractors to have and implement a drug-free workplace policy that requires drug and alcohol testing.

§21-1D-4. Drug-free workplace policy required for public improvement construction.

Except as provided in section eight of this article, no public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the contractor and its subcontractors to implement and maintain a written drug-free workplace policy in compliance with this article and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy in compliance with this article. The public improvement contract shall provide for the following:

(1) That the contractor implements its drug-free workplace policy;
(2) Cancellation of the contract by the awarding public authority if the contractor:

(A) Fails to implement its drug-free workplace policy;

(B) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or

(C) Provides to the public authority false information regarding the contractor's drug-free workplace policy.

§21-1D-5. Employee drug-free workplace policy required to bid for a public improvement contract.

After the first day of July, two thousand eight, any solicitation for a public improvement contract shall require each contractor that submits a bid for the work to submit at the same time an affidavit that the contractor has a written plan for a drug-free workplace policy. A public improvement contract may not be awarded to a contractor who does not have a written plan for a drug-free workplace policy and who has not submitted that plan to the appropriate contracting authority in timely fashion.

For subcontractors, compliance with this section may take place before their work on the public improvement is begun.

A drug-free workplace policy shall include the following:

(1) Establish drug testing and alcohol testing protocols that at a minimum require a contractor to:

(A) Conduct preemployment drug tests of all employees;

(B) Conduct random drug testing that annually tests at least ten percent of the contractor's employees who perform safety-sensitive duties;
(C) Conduct a drug test or alcohol test of any employee who may have caused or contributed to an accident while conducting job duties where reasonable cause exists to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician when, but not limited to, the employer has evidence that an employee is or was using alcohol or a controlled substance drawn from specific documented, objective facts and reasonable inferences drawn from these facts in light of experience and training.

The drug or alcohol test shall be conducted as soon as possible after the accident occurred and after any necessary medical attention has been administered to the employee.

(D) Conduct a drug test or alcohol test of any employee when a trained supervisor has reasonable cause to believe that the employee has reported to work or is working under the influence of a drug of abuse or alcohol. Written documentation as to the nature of a supervisor's reasonable cause shall be created.

In order to ascertain and justify implementation of a reasonable cause test, all supervisors will be trained to recognize drug- and alcohol-related signs and symptoms.

(2) Require that all drug tests performed pursuant to this section be conducted by a laboratory certified by the United States Department of Health and Human Services or its successor;

(3) Establish standards governing the performance of drug tests by such a laboratory that include, but are not limited to, the following:

(A) The collection of urine specimens of individuals in a scientifically or medically approved manner and under reasonable and sanitary conditions;
(B) The collection and testing of urine specimens with due regard for the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection and testing of specimens;

(C) The documentation of urine specimens through procedures that reasonably preclude the possibility of erroneous identification of test results and that provide the individual being tested a reasonable opportunity to furnish information identifying any prescription or nonprescription drugs used by the individual in connection with a medical condition to the medical review officer;

(D) The collection, maintenance, storage and transportation of urine specimens in a manner that reasonably precludes the possibility of contamination or adulteration of the specimens;

(E) The testing of a urine specimen of an individual to determine if the individual ingested, was injected or otherwise introduced with a drug of abuse in a manner that conforms to scientifically accepted analytical methods and procedures that include verification and confirmation of any positive test result by gas chromatography or mass spectrometry.

(4) Establish standards and procedures governing the performance of alcohol tests;

(5) Require that a medical review officer review all drug tests that yield a positive result;

(6) Establish procedures by which an individual who undergoes a drug test or alcohol test may contest a positive test result;

(7) Require that when an employee of a contractor tests positive for a drug of abuse or alcohol, or if an employee is
caught adulterating a drug or alcohol test, as defined in section four hundred twelve, article four, chapter sixty-a of this code, the employee shall be subject to appropriate disciplinary measures up to and including termination from employment, in accordance with the contractor's written drug-free workplace policy. If not terminated, the employee shall be subject to random drug or alcohol tests at any time for one year after the positive test;

(8) Require that when a supervisor has reasonable cause to believe an employee is under the influence of a drug of abuse or alcohol at work and requires the employee to take a drug or alcohol test, the employee shall immediately be suspended from performing safety-sensitive tasks by the contractor until such time as a drug or alcohol test is performed and results of that test are available;

(9) Require a contractor to provide to any employee testing positive for a drug of abuse or alcohol the list of community resources where employees may seek assistance for themselves or their families as identified in paragraph (D), subdivision (12) of this section;

(10) Require that a contractor assist an employee who voluntarily acknowledges that the employee may have a substance abuse problem by providing the list of community resources where employees may seek assistance for themselves or their families as identified in paragraph (D), subdivision (12) of this section;

(11) Require that a contractor establish a written drug-free workplace policy regarding substance abuse and provide a copy of the written policy to each of its employees and to each applicant for employment. The written policy shall contain, at a minimum, all of the following:

(A) A summary of all the elements of the drug-free workplace policy established in accordance with this article;
(B) A statement that it is the contractor’s intention to create a drug-free workplace environment;

(C) Identification of an employee who has been designated the contractor’s drug-free workplace representative;

(D) Shall list the types of tests an employee may be subject to, which may include, but are not limited to, the following:

(i) Preemployment;

(ii) Post-accident;

(iii) Random; and

(iv) Reasonable cause.

(12) Require that a contractor provide within six weeks of new employment at least two hours of drug-free workplace employee education for all employees unless that employee has already received such training anytime within a prior two-year period. The employee shall participate in drug-free workplace employee education at least biannually thereafter. The employee education shall include all of the following:

(A) Detailed information about the content of the contractor’s specific drug-free workplace policy and an opportunity for employees to ask questions regarding the policy;

(B) The distribution of a hard copy of the written drug-free workplace policy, including collecting an employee-signed acknowledgment receipt from each employee;

(C) Specific explanation of the basics of drugs and alcohol abuse, including, but not limited to, the disease
model, signs and symptoms associated with substance abuse, and the effects and dangers of drugs or alcohol in the workplace; and

(D) A list of community resources where employees may seek assistance for themselves or their families.

(13) Require that a contractor provide at least two hours of drug-free workplace supervisor training for all supervisory employees and annually thereafter. The supervisor training shall include all of the following:

(A) How to recognize a possible drug or alcohol problem;

(B) How to document behaviors that demonstrate a drug or alcohol problem;

(C) How to confront employees with the problem from observed behaviors;

(D) How to initiate reasonable suspicion and post-accident testing;

(E) How to handle the procedures associated with random testing;

(F) How to make an appropriate referral for assessment and assistance;

(G) How to follow up with employees returning to work after a positive test; and

(H) How to handle drug-free workplace responsibilities in a manner that is consistent with the applicable sections of any pertinent collective bargaining agreements.

§21-1D-6. Drug-free workplace written policy to be kept posted.
A clearly legible copy of the contractor’s written drug-free workplace policy shall be kept posted in a prominent and easily accessible place at the public improvement construction site thereof by each contractor subject to the provisions of this article.

§21-1D-7. Drug-free workplace records and contents open for inspection.

Every contractor shall keep an accurate record showing the names, occupation and safety-sensitive status of all employees, in connection with the construction on the public improvement, and showing any drug tests or alcohol tests performed and employee education and supervisor training received, which record shall be open at all reasonable hours for inspection by the public authority which let the contract and its officers and agents. It is not necessary to preserve the record for a period longer than three years after the termination of the contract.

§21-1D-7a. Confidentiality; test results not to be used in criminal and administrative proceedings.

All drug testing information specifically related to individual employees is confidential and should be treated as such by anyone authorized to review or compile program records. Drug test results may not be used in a criminal proceeding without the employee’s consent.

§21-1D-8. Penalties for violation of this article.

(a) Any contractor who violates any provision of this article is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars; for the third or any subsequent offense, the
person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars and the contractor shall be excluded from bidding any additional new public improvement projects for a period of one year.

(b) Any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred fifty dollars.

§21-1D-9. Existing contracts.

This article applies only to contracts for construction on public improvements awarded after the effective date of this article.

CHAPTER 8

(H.B. 4075 - By Delegates DeLong, Caputo, Fragale, Webster, White, Kominar and Shook)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §15-3A-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-3A-7, all relating to use of video image recording devices in an Amber Alert activation; providing for video image monitoring during Amber Alert activations; and, directing the Secretary of Military Affairs and Public Safety to develop a plan to implement a video monitoring system during Amber Alerts.
Be it enacted by the Legislature of West Virginia:

That §15-3A-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 §15-3A-7, all to read as follows:

ARTICLE 3A. AMBER ALERT PLAN.

§15-3A-2. Findings and determinations relative to "Amber's Plan".


§15-3A-2. Findings and determinations relative to "Amber's Plan".

1 (a) The Legislature finds and determines that:

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

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

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

14 (4) Alerted to an abduction, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering the child;
(5) The most effective method of immediately notifying the public of a child abduction is through the broadcast media; and

(6) That in addition to public alerts, other tools allowing rapid response and identification of the movements of persons suspected in a child abduction require the use of all forms of developing technologies to assist law enforcement in rapid response to these alerts and is an additional tool for assuring the well being and safety of our children. Thus, the use of traffic video recording and monitoring devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in the safe recovery of the child.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover abducted children, and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish these programs for West Virginia.


(a) The State Police and the Division of Highways shall coordinate a process to utilize all available video recording and monitoring devices for the purpose of monitoring Amber Alert suspect vehicles. This program shall be called the “Guardian Angel Video Monitoring” Program.

(b) The secretary of military affairs and public safety shall also develop a plan to provide for the State Police to monitor and utilize video recording and monitoring devices during an Amber Alert. This “Guardian Angel Video
Monitoring implementation plan shall include at a minimum, the following:

(1) Utilization of any state or local video recording and monitoring devices upon agreement with the department, agency or political subdivision in control of the video recording device; and

(2) Development of policies and initiatives relating to facilitating sharing of information with neighboring states wherein suspect vehicles in Amber Alerts may be crossing state lines.

(c) The secretary shall submit the plan to the Joint Committee on Government and Finance no later than December 1, 2008. The plan shall include an analysis of all related costs for equipping and using a statewide video recording and monitoring system during the duration of an Amber Alert and recommendations for any additional legislation or actions necessary to further facilitate the implementation of the “Guardian Angel Video Monitoring” program.

CHAPTER 9

(Com. Sub. for S.B. 305 - By Senators Kessler, Unger, Jenkins, White and Hunter)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-14; and to
amend and reenact §7-10-4 of said code, all relating generally to custody and care of animals abandoned, neglected or cruelly treated; authorizing county commissions to adopt ordinances, rules and regulations relating to such animals; providing for protection of such animals and the public’s health, safety and the environment; providing guidance on developing ordinances, rules and regulations relating to such animals; authorizing county commissions that adopt such ordinances, rules and regulations to also limit the number of animals owned or kept based on ability to care for the animals; authorizing county commissions to establish penalties in such ordinances, rules and regulations; and clarifying evidentiary standards in hearings before magistrates involving in the seizure of abandoned, neglected or cruelly treated animals.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-14; and that §7-10-4 of said code be amended and reenacted, all to read as follows:

Article
1. County Commissions Generally.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-14. Custody and care of animals abandoned, neglected or cruelly treated; animals causing public nuisance, health risk or safety hazard; authority of county commission.

(a) Notwithstanding any provision of this code to the contrary, any county commission may adopt ordinances, rules and regulations providing for the custody and care of animals that have been abandoned, neglected or cruelly treated for the protection of any such animal and to prevent it from becoming a public nuisance or risk to public health or safety or the environment.
(b) Any such ordinance, rule or regulation may require each owner to provide for each of his or her animals:

1. Adequate food which provides sufficient quantity and nutritive value to maintain each animal in good health;
2. Adequate water which provides easy access to clean, fresh, potable water of a drinkable temperature in sufficient volume and suitable intervals to maintain normal hydration for each animal;
3. Adequate shelter to protect the animal from the elements and other animals;
4. Adequate space in the primary enclosure for the particular animal depending upon its age, size, species and weight which is regularly cleaned to prevent an unsanitary accumulation of urine and feces;
5. Adequate exercise to assure that the animal maintains normal muscle tone and mass for the age, species, size and condition of the animal; and
6. Veterinary care when needed or to prevent suffering or disease transmission.

(c) Any such ordinance, rule or regulation may limit the number of animals owned, kept or maintained by an individual, group or organization, whether public or private based on the person's ability to provide for the animals as set forth in subsection (b) of this section.

(d) Any such ordinance, rule or regulation shall provide appropriate penalties for violations and shall authorize humane officers to take possession of any animal that is not properly cared for as required by such ordinance, rule or regulation.
ARTICLE 10. HUMANE OFFICERS.

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

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

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

(c)(1) If a hearing is requested and the magistrate finds by a preponderance of the evidence that the owner did abandon, neglect or cruelly treat the animal, or if no hearing is requested and the magistrate finds by a preponderance of
the evidence, based upon the affidavit of the humane officer, that the owner did abandon, neglect or cruelly treat the animal, the magistrate shall enter an order awarding custody of the animal to any humane officer for further disposition in accordance with reasonable practices for the humane treatment of animals. After hearing the evidence, if the magistrate is not convinced the animal was neglected or cruelly treated, he or she may dismiss the action and order the animal be returned to the owner. If the magistrate finds in favor of the humane officer, the owner of the animal shall post a bond with the court in an amount sufficient to provide for the reasonable costs of care, medical treatment and provisions for the animal for at least thirty days. The bond shall be filed with the court within five days following the court’s finding against the owner. At the end of the time for which expenses are covered by the original bond if the animal remains in the care of the humane officer and the owner desires to prevent disposition of the animal by the humane officer, the owner shall post an additional bond with the court within five days of the expiration of the original bond. During this period the humane officer is authorized to place the animal in a safe private home or other safe private setting in lieu of retaining the animal in an animal shelter. The person whose animal is seized is liable for all costs of the care of the seized animal.

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

(d) Any person whose animal is seized and against whom the magistrate enters a finding pursuant to this section is liable during any period it remains in the possession of the
humane officer for the reasonable costs of care, medical
treatment and provisions for the animal not covered by the
posting of the bond as provided in subdivision (1), subsection
(c) of this section. The magistrate shall require the person
liable for these costs to post bond to provide for the
maintenance of the seized animal. This expense, if any,
becomes a lien on the animal and must be discharged before
the animal is released to the owner. Upon dismissal or
withdrawal of the complaint, any unused portion of posted
bonds shall be returned to the owner. Upon a finding in favor
of the humane officer, all interest in the impounded animal
shall transfer to the humane officer for disposition in
accordance with reasonable practices for the humane
treatment of animals. Any additional expense above the
value of the animal may be recovered by the humane officer
or custodial agency.

(e) After the humane officer takes possession of the
animal pursuant to a finding by a magistrate that the animal
has been abandoned, neglected or cruelly treated and a
licensed veterinarian determines that the animal should be
humanely destroyed to end its suffering, the veterinarian may
order the animal to be humanely destroyed and neither the
humane officer, animal euthanasia technician nor the
veterinarian is subject to any civil or criminal liability as a
result of such action.

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

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

(2) Any other humane euthanasia procedure approved by
the American Veterinary Medical Association, the Humane
Society of the United States or the American Humane
Association.
(g) In case of an emergency in which an animal cannot be humanely destroyed in an expeditious manner, an animal may be destroyed by shooting if:

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

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

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

CHAPTER 10

(Com. Sub. for S.B. 150 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed March 16, 2008; in effect from passage.]
[Approved by the Governor on March 21, 2008.]

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.

§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 nine.

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

"Governor" shall mean the Governor of the State of West Virginia.

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

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

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

"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* and no funds so transferred may be transferred to a "personal services" line: 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 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.

*CLERK'S NOTE: The Governor struck language on lines 88 and 89.
other than the purpose for which such funds were dedicated and is permitted.

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

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

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

TITLE II – APPROPRIATIONS.

§1. Appropriations from general revenue.

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Administration, Department of--Office of the Secretary--Fund No. 0186 ....................................... 91
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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 nine.

LEGISLATIVE

I—Senate

Fund 0165 FY 2009 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>003 Compensation of Members (R)</td>
<td>$1,010,000</td>
</tr>
</tbody>
</table>
**APPROPRIATIONS**

| 2 | Compensation and Per Diem of Officers and Employees (R) | 005 | 3,003,210 |
| 4 | Employee Benefits (R) | 010 | 597,712 |
| 5 | Current Expenses and | | |
| 6 | Contingent Fund (R) | 021 | 700,000 |
| 7 | Repairs and Alterations (R) | 064 | 450,000 |
| 8 | Computer Supplies (R) | 101 | 40,000 |
| 9 | Computer Systems (R) | 102 | 250,000 |
| 10 | Printing Blue Book (R) | 103 | 150,000 |
| 11 | Expenses of Members (R) | 399 | 700,000 |
| 12 | BRIM Premium (R) | 913 | 29,482 |
| 13 | Total | | $ 6,930,404 |

The appropriations for the senate for the fiscal year 2008 are to remain in full force and effect and are hereby reappropriated to June 30, 2009. Any balances so reappropriated may be transferred and credited to the fiscal year 2009 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

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0170</td>
<td>2009</td>
<td>2200</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Compensation of Members (R) . . 003</td>
<td>$ 2,270,000</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R) . . 005</td>
<td>700,000</td>
<td></td>
</tr>
</tbody>
</table>
The appropriations for the house of delegates for the fiscal year 2008 are to remain in full force and effect and are hereby reappropriated to June 30, 2009. Any balances so reappropriated may be transferred and credited to the fiscal year 2009 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 of Delegates 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)

| 1 Joint Committee on Government and Finance (R) | 104 | $7,300,000 |
| 2 Legislative Printing (R) | 105 | 800,000 |
| 3 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 | | |
| 10 Funding Increased Compliance (TRAFFIC)(R) | 642 | 15,000,000 |
| 11 BRIM Premium (R) | 913 | 22,000 |
| 12 Total | | $24,315,000 |
The appropriations for the joint expenses for the fiscal year 2008 are to remain in full force and effect and are hereby reappropriated to June 30, 2009. Any balances so reappropriated may be transferred and credited to the fiscal year 2009 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 **2009** Org **2400**

1. Personal Services (R) ............ 001 $ 64,058,926
2. Annual Increment (R) .......... 004 870,250
3. Employee Benefits (R) ........ 010 20,236,863
4. Childrens’ Protection Act ...... 090 862,938
5. Unclassified (R) .................. 099 23,380,486
6. Judges' Retirement System (R) .. 110 2,763,000
7. Retirement Systems-
8. Unfunded Liability (R) ....... 775 3,271,000
9. BRIM Premium (R) ............ 913 374,015
10. Total .......................... $ 115,817,478
The appropriations to the supreme court of appeals for the fiscal years 2007 and 2008 are to remain in full force and effect and are hereby reappropriated to June 30, 2009. Any balances so reappropriated may be transferred and credited to the fiscal year 2009 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 retirement board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2009 Org 0100

1 Personal Services ............... 001 $ 2,433,155
2 Salary of Governor ............. 002 122,500
3 Annual Increment ............... 004 27,870
4 Employee Benefits ............. 010 722,929
5 Unclassified (R) ............... 099 1,446,075
6 National Governors' Association .. 123 95,200
7 Southern States Energy Board .. 124 28,732
8 Southern Governors' Association .. 314 25,000
9 Pharmaceutical Advocate ........ 753 614,601
10  BRIM Premium .................. 913  206,143
11  P20 Jobs Cabinet ............... 954  40,000
12  Total ................................ $ 5,762,205

13  Any unexpended balances remaining in the appropriations
14  for Unclassified (fund 0101, activity 099), Publication of
15  Papers and Transition Expenses—Surplus (fund 0101,
16  activity 359), Capital Outlay, Repairs and Equipment (fund
17  0101, activity 589), JOBS Fund (fund 0101, activity 665),
18  and Pharmaceutical Cost Management Council (fund 0101,
19  activity 796) at the close of the fiscal year 2008 are hereby
20  reappropriated for expenditure during the fiscal year 2009.

6—Governor's Office—
   Custodial Fund

(WV Code Chapter 5)

Fund 0102  FY 2009  Org 0100

1  Unclassified—Total (R) ........... 096  $ 646,936

2  Any unexpended balance remaining in the appropriation
3  for Unclassified-Total (fund 0102, activity 096) at the close
4  of the fiscal year 2008 is hereby reappropriated for
5  expenditure during the fiscal year 2009.

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)
Any unexpended balances remaining in the appropriation for Stream Restoration—Surplus (fund 0105, activity 078), Business and Economic Development Stimulus—Surplus (fund 0105, activity 084), Civil Contingent Fund—Total (fund 0105, activity 114), Civil Contingent Fund—Total—Surplus (fund 0105, activity 238), Civil Contingent Fund—Surplus (fund 0105, activity 263), Business and Economic Development Stimulus (fund 0105, activity 586), and Civil Contingent Fund (fund 0105, activity 614) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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 2009 Org 1200

1 Personal Services .................. 001 $ 2,264,450
2 Salary of Auditor .................. 002 85,000
3 Annual Increment .................. 004 47,686
86

APPROPRIATIONS

4 Employee Benefits .................. 010 $793,983
5 Unclassified ......................... 099 622,226
6 BRIM Premium ....................... 913 15,428
7 Total .................................. $ 3,828,773

9—Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2009 Org 1300

1 Personal Services .................. 001 $1,984,224
2 Salary of Treasurer ................. 002 85,000
3 Annual Increment .................... 004 31,060
4 Employee Benefits .................. 010 640,025
5 Unclassified (R) ..................... 099 849,757
6 Abandoned Property Program .... 118 305,051
7 Tuition Trust Fund (R) ............. 692 157,136
8 Personal Finance Education Program
9 for 21st Century Skills ............ 313 250,000
10 BRIM Premium ...................... 913 30,809
11 Total .................................. $ 4,333,062

12 Any unexpended balances remaining in the appropriations
13 for Unclassified (fund 0126, activity 099) and Tuition Trust
14 Fund (fund 0126, activity 692) at the close of the fiscal year
15 2008 are hereby reappropriated for expenditure during the
16 fiscal year 2009.

10—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2009 Org 1400

1 Personal Services .................. 001 $4,073,184
2 Salary of Commissioner ............ 002 85,000
3 Annual Increment .................... 004 109,293
<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,584,724</td>
</tr>
<tr>
<td>Animal Identification Program</td>
<td>039</td>
<td>207,264</td>
</tr>
<tr>
<td>State Farm Museum</td>
<td>055</td>
<td>110,000</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,457,459</td>
</tr>
<tr>
<td>Gypsy Moth Program (R)</td>
<td>119</td>
<td>1,218,571</td>
</tr>
<tr>
<td>Huntington Farmers Market</td>
<td>128</td>
<td>50,000</td>
</tr>
<tr>
<td>Black Fly Control (R)</td>
<td>137</td>
<td>805,926</td>
</tr>
<tr>
<td>Donated Foods Program</td>
<td>363</td>
<td>50,000</td>
</tr>
<tr>
<td>Predator Control (R)</td>
<td>470</td>
<td>260,000</td>
</tr>
<tr>
<td>Logan Farmers Market</td>
<td>501</td>
<td>43,036</td>
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<tr>
<td>Bee Research</td>
<td>691</td>
<td>75,754</td>
</tr>
<tr>
<td>Microbiology Program (R)</td>
<td>785</td>
<td>161,583</td>
</tr>
<tr>
<td>Moorefield Agriculture Center (R)</td>
<td>786</td>
<td>1,162,363</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>145,962</td>
</tr>
<tr>
<td>4-H Camp Improvements</td>
<td>941</td>
<td>0*</td>
</tr>
<tr>
<td>Threat Preparedness</td>
<td>942</td>
<td>77,107</td>
</tr>
<tr>
<td>WV Food Banks</td>
<td>969</td>
<td>100,000</td>
</tr>
<tr>
<td>Seniors’s Farmers’ Market Nutrition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coupon Program</td>
<td>970</td>
<td>65,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 12,832,226</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified-Surplus (fund 0131, activity 097), Unclassified (fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), Predator Control (fund 0131, activity 470), Microbiology Program (fund 0131, activity 785), and Moorefield Agriculture Center (fund 0131, activity 786) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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.

*CLERK’S NOTE: The Governor reduced the amount in line 18 from $99,000 to $0.
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.

11—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2009 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$502,380</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$10,726</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$197,665</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>$446,997</td>
</tr>
<tr>
<td>5</td>
<td>Soil Conservation Projects (R)</td>
<td>$8,997,620</td>
</tr>
<tr>
<td>6</td>
<td>Marlinton Flood Wall (R)</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>$12,969</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$11,668,357</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), Maintenance of Flood Control Projects (fund 0132, activity 522), and Marlinton Flood Wall (fund 0132, activity 757) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

12—Department of Agriculture—Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2009 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>$684,808</td>
</tr>
</tbody>
</table>
Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

### 13—Department of Agriculture—Agricultural Awards

(WV Code Chapter 19)

**Fund 0136 FY 2009 Org 1400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Programs &amp; Awards for 4-H</td>
<td>577</td>
</tr>
<tr>
<td>2</td>
<td>Clubs and FFA/FHA</td>
<td>$15,000</td>
</tr>
<tr>
<td>3</td>
<td>Commissioner’s Awards and</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Programs</td>
<td>737</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$58,650</td>
</tr>
</tbody>
</table>

### 14—Department of Agriculture—West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

**Fund 0607 FY 2009 Org 1400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$110,000</td>
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</tbody>
</table>

### 15—Attorney General

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

**Fund 0150 FY 2009 Org 1500**

<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 (R)</td>
<td>001</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$2,464,631</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Attorney General</td>
<td>002</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$87,500</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$58,175</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits (R)</td>
<td>010</td>
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<tr>
<td></td>
<td></td>
<td>$871,585</td>
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<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
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<tr>
<td></td>
<td></td>
<td>$791,716</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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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)

Fund 0155 FY 2009 Org 1600

1 Personal Services ............... 001 $ 684,299
2 Salary of Secretary of State ...... 002 82,500
3 Annual Increment ............... 004 14,890
4 Employee Benefits ............. 010 262,196
5 Unclassified (R) ............... 099 95,127
9 Any unexpended balance remaining in the appropriation for Unclassified (fund 0155, activity 099) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

17—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2009 Org 1601

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

DEPARTMENT OF ADMINISTRATION

18—Department of Administration—Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2009 Org 0201

1 Personal Services .................. 001 $ 479,703
2 Annual Increment .................. 004 2,486
3 Employee Benefits ................. 010 124,292
4 Teachers’ Retirement Savings
5 Realized .......................... 095 3,826,000
6 Unclassified ....................... 099 117,632
7 State Employee Sick Leave
8 Fund .............................. 378 5,000,000
9 Lease Rental Payments ............ 516 16,000,000
10 Design-Build Board ............... 540 19,068
11 Financial Advisor ................. 304 200,000
Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, activity 304) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

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

The above appropriation for Teachers’ Retirement Savings Realized (activity 095) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

From the above appropriation for Financial Advisor (activity 304) amounts may be expended for financial consulting services*, conditioned upon the provider of the services' monthly reports to the Joint Committee on Government and Finance on all aspects of its work, including all findings, reports, recommendations, projects and tasks.

19—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2009 Org 0205

Any unexpended balance remaining in the appropriation for Pension Merger Administrative Costs (fund 0195, activity 429) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

*Clerk’s Note: The Governor deleted language on lines 27 through 30.
The division of highways, division of motor vehicles, public service commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

20—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2009 Org 0209

1 Personal Services ................. 001 $ 82,411
2 Annual Increment ................. 004 1,101
3 Employee Benefits .............. 010 29,431
4 Unclassified .................... 099 140,663
5 GAAP Project (R) ............. 125 858,538
6 BRIM Premium ................. 913 16,722
7 Total ......................... $ 1,128,866

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

21—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2009 Org 0211

1 Personal Services ................. 001 $ 1,495,957
2 Annual Increment ................. 004 27,742
3 Employee Benefits .............. 010 597,813
From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (activity 371), the Division shall first restore The Union Soldiers, Sailors and Marines Monument, then consider the suggestions of the National Park Service resulting from its ongoing informal assessment of the condition of these statues and memorials in setting further priorities for preservation and maintenance. The Division shall report on its progress in these efforts at each meeting of the Council of Finance and Administration, along with its priorities for this and future funding. The Division shall also consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2009 Org 0213

1 Personal Services ................. 001 $ 946,578
2 Annual Increment ................. 004 15,360
3 Employee Benefits ............... 010 301,996
4 Unclassified .................... 099 209,345
5 BRIM Premium .................. 913 6,167
6 Total ............................ $ 1,479,446

*CLERK'S NOTE: The Governor struck language on lines 13 through 21.
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 2009 Org 0217

1 Unclassified-Total .............. 096 $ 45,000

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

24-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2009 Org 0219

1 Personal Services ................. 001 $ 650,070
2 Annual Increment ................. 004 10,057
3 Employee Benefits ............... 010 178,618
4 Unclassified ....................... 099 154,567
5 BRIM Premium ..................... 913 3,885
6 Total ............................. $ 997,197

Any unexpended balance remaining in the appropriation for Unclassified-Surplus (fund 0220, activity 097) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.
## 25-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2009 Org 0220

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$713,325</td>
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<tr>
<td>2</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$3,098</td>
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<td>3</td>
<td>Total</td>
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<td>$716,423</td>
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## 26-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2009 Org 0221

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$634,977</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$10,109</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$217,738</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$346,240</td>
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<td>5</td>
<td>Appointed Counsel Fees and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Public Defender Corporations (R)</td>
<td>127</td>
<td>$30,493,799</td>
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<tr>
<td>7</td>
<td>Public Defender Corporations (R)</td>
<td>352</td>
<td>$0</td>
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<tr>
<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$18,340</td>
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<td>9</td>
<td>Total</td>
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<td>$31,721,203</td>
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</table>

Any unexpended balances remaining in the above appropriations for Appointed Counsel Fees and Public Defender Corporations (fund 0226, activity 127), and Public Defender Corporations (fund 0226, activity 352) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

From the above appropriation for Unclassified (activity 099), $37,500 is to be used for the exclusive purpose of hiring additional help for the processing of attorney reimbursements.
27-Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2009 Org 0224

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

28-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2009 Org 0228

1 Forensic Medical Examinations (R) . 683 $ 144,201
2 Federal Funds/Grant Match (R) .. 749 $ 100,991
3 Total ............................. $ 245,192

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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

29-Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2009 Org 0230

1 Unclassified-Total ............. 096 $10,971,688

30-West Virginia Retiree Health Benefit Trust Fund

(WV Code Chapter 5)
Fund 0611 FY 2009 Org 0232

1 Unclassified-Total-Transfer . . . . 402 $ 30,730,000

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

31-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2009 Org 0233

1 Unclassified-Total . . . . . . . . . 096 $ 526,413

DEPARTMENT OF COMMERCE

32-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2009 Org 0304

1 Any unexpended balances remaining in the appropriations for Tourism Special Projects-Surplus (fund 0246, activity 293) and Tourism-Special Projects (fund 0246, activity 859) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

33-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2009 Org 0305

1 Personal Services . . . . . . . . . . . 001 $ 2,588,335
Out of the above appropriation a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

34-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2009 Org 0306

9 Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, activity 207) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

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.

35-West Virginia Development Office
# Fund 0256 FY 2009 Org 0307

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$1,199,889</td>
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<td>ARC-WV Home of Your</td>
<td>048</td>
<td>$40,000</td>
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<tr>
<td>Southern WV Career Center</td>
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<td>$491,750</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$3,079,569</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>
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<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>$167,308</td>
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<td>Mid-Atlantic Aerospace</td>
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<tr>
<td>Complex (R)</td>
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<td>$176,783</td>
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<td>Guaranteed Work Force</td>
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<tr>
<td>Grant (R)</td>
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<td>$2,247,000</td>
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<td>Mingo County Surface/Partnerships (R)</td>
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<td>$125,000</td>
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<td>Robert C. Byrd Institute for Advanced</td>
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<tr>
<td>Chemical Alliance Zone</td>
<td>390</td>
<td>$38,300</td>
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<tr>
<td>WV High Tech Consortium</td>
<td>391</td>
<td>$235,783</td>
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<tr>
<td>Advantage Valley</td>
<td>389</td>
<td>$74,300</td>
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<tr>
<td>Opportunity Centers</td>
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<tr>
<td>WV High Tech Consortium</td>
<td>391</td>
<td>$235,783</td>
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<tr>
<td>Charleston Farmers Market</td>
<td>476</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>
<td>390</td>
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<tr>
<td>WV High Tech Consortium</td>
<td>391</td>
<td>$235,783</td>
</tr>
<tr>
<td>Charleston Farmers Market</td>
<td>476</td>
<td>$100,000</td>
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<tr>
<td>Industrial Park Assistance (R)</td>
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<tr>
<td>International Offices (R)</td>
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<tr>
<td>Small Business Development (R)</td>
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<td>$423,187</td>
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*CLERK'S NOTE: The Governor reduced the amount in line 7 from $3,169,569 to $3,079,569.*
<table>
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<tr>
<th></th>
<th>Appropriations</th>
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<tbody>
<tr>
<td>31</td>
<td>WV Manufacturing Extension</td>
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<td>32</td>
<td>Partnership</td>
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<td>33</td>
<td>Polymer Alliance</td>
<td>754</td>
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<td>34</td>
<td>Regional Councils</td>
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<tr>
<td>35</td>
<td>Mainstreet Program</td>
<td>794</td>
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<tr>
<td>36</td>
<td>National Institute of Chemical Studies</td>
<td>805</td>
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<tr>
<td>37</td>
<td>Studies</td>
<td></td>
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<tr>
<td>38</td>
<td>Local Economic Development Assistance (R)</td>
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<td>39</td>
<td>I-79 Development Council</td>
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<tr>
<td>40</td>
<td>Community College Workforce Development</td>
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<tr>
<td>41</td>
<td>College Transition Program</td>
<td>887</td>
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<tr>
<td>42</td>
<td>WV Advance Workforce Development</td>
<td>893</td>
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<tr>
<td>43</td>
<td>Technical Program Development</td>
<td>894</td>
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<tr>
<td>44</td>
<td>BRIM Premium</td>
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<td>45</td>
<td>Hardwood Alliance Zone</td>
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<td>46</td>
<td>Total</td>
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<tr>
<td>49</td>
<td></td>
<td>$25,831,239</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Tourism—Unclassified—Surplus (fund 0256, activity 075), Unclassified-Surplus (fund 0256, activity 097), 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), Small Business Development (fund 0256, activity 703),

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*CLERK'S NOTE: The Governor reduced the amount in line 40 from $80,000 to $50,000.
Local Economic Development Assistance (fund 0256, activity 819), Economic Development Assistance (fund 0256, activity 900), and Mining Safety Technology (fund 0256, activity 945) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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.

From the above appropriation for the Unclassified (fund 0256, activity 099), $125,000 is for King Coal Highway Authority; $125,000 is for Coal Field Expressway Authority; $100,000 is for Coal Heritage Highway Authority; $100,000 is for Coal Heritage Area Authority; $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 $50,000 is for Route 2-168 Highway Authority.

From the above appropriation for the Unclassified (fund 0256, activity 099) $250,000 is for Hatfield McCoy Recreational Trail; and $80,000 is for the National Railway Historical Society New River Excursion.

*Clerk's Note: The Governor deleted language on lines 90 and 91.
### Ch. 10] APPROPRIATIONS 103

#### 36-Division of Labor
(WV Code Chapters 21 and 47)

**Fund 0260 FY 2009 Org 0308**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>$1,964,122</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>35,812</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>900,554</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>712,975</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>47,521</td>
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<td><strong>Total</strong></td>
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<td>$3,660,984</td>
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#### 37-Division of Natural Resources
(WV Code Chapter 20)

**Fund 0265 FY 2009 Org 0310**

<table>
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<td>Annual Increment</td>
<td>004</td>
<td>327,177</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>4,064,505</td>
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<tr>
<td>Gypsy Moth Suppression Program –</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wildlife Management Areas</td>
<td>014</td>
<td>42,997</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>12,255</td>
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<tr>
<td>Litter Control Conservation Officers</td>
<td>564</td>
<td>161,281</td>
</tr>
<tr>
<td>Upper Mud River Flood Control</td>
<td>654</td>
<td>183,836</td>
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<tr>
<td>Land Purchase</td>
<td>761</td>
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<tr>
<td>Law Enforcement</td>
<td>806</td>
<td>*2,929,345</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>308,815</td>
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<td><strong>Total</strong></td>
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<td>$18,909,993</td>
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</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Fish Hatchery Improvements (fund 0265, activity 825) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

*CLERK'S NOTE: The Governor reduced the amount in line 11 from $4,061,725 to $2,929,345.*
Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the division of natural resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

38-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2009 Org 0314

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>$83,914</td>
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<tr>
<td>Employee Benefits</td>
<td>$2,230,537</td>
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<tr>
<td>Unclassified (R)</td>
<td>$2,197,375</td>
</tr>
<tr>
<td>WV Diesel Equipment Commission</td>
<td>$38,034</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>$72,393</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$10,811,178</strong></td>
</tr>
</tbody>
</table>

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

39-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2009 Org 0319

<table>
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<tr>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$119,465</td>
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</table>

*CLERK'S NOTE: The Governor struck language on lines 9 through 15.*
Ch. 10]  APPROPRIATIONS  105

2 Annual Increment .................. 004  1,004
3 Employee Benefits ................. 010  32,357
4 Unclassified ...................... 099  27,217
5 Total ................................  $ 180,043

40-Coal Mine Safety and Technical Review Committee
(WV Code Chapter 22)

Fund 0285 FY 2009 Org 0320

1 Unclassified ...................... 099  $ 63,352
2 Coal Forum ....................... 664  25,000
3 Total ............................  $ 88,352

41-Department of Commerce-
Office of the Secretary
(WV Code Chapter 19)

Fund 0606 FY 2009 Org 0327

1 Unclassified - Total ............. 096  $ 474,770

42-Division of Energy
(WV Code Chapter 5H)

Fund 0612 FY 2009 Org 0328

1 Unclassified - Total ............. 096  $1,769,661

2 From the above appropriation for Unclassified - Total
3 (fund 0612, activity 096) $730,000 is for West Virginia
4 University and $730,000 is for Southern West Virginia
5 Community and Technical College for the Mine Training and
6 Energy Technologies Academy.
DEPARTMENT OF EDUCATION

43-State Department of Education-
School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2009 Org 0402

<table>
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<tr>
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<td>2 Annual Increment</td>
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<td>3 Employee Benefits</td>
<td>87,562</td>
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<td>4 Unclassified</td>
<td>2,186,597</td>
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<tr>
<td>5 Total</td>
<td>$2,524,357</td>
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</table>

44-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2009 Org 0402

<table>
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<th>Description</th>
<th>Amount</th>
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<tbody>
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<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
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<td>3 Employee Benefits</td>
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<td>4 Unclassified</td>
<td>130,500</td>
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<td>5 BRIM Premium</td>
<td>34,65</td>
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<tr>
<td>6 Total</td>
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</table>

45-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2009 Org 0402

<table>
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<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
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<td>3 Employee Benefits</td>
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<tr>
<td>4 Unclassified (R)</td>
<td>*3,400,000</td>
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*CLERK'S NOTE: The Governor reduced the amount on line 4 from $3,915,000 to $3,400,000.
|  | Appropriations |  
|---|---|---|
| 5 | 34/1000 Waiver | 139 | 320,000 |
| 6 | Increased Enrollment | 140 | 8,680,000 |
| 7 | Safe Schools | 143 | 2,276,132 |
| 8 | Teacher Mentor (R) | 158 | *850,000 |
| 9 | National Teacher Certification (R) | 161 | 1,000,000 |
| 10 | Allowance for County Transfers | 264 | 240,169 |
| 11 | Technology Repair and Modernization | 298 | 1,000,000 |
| 12 | Tax Assessment Errors | 353 | 84,598 |
| 13 | HVAC Technicians | 355 | 496,546 |
| 14 | Early Retirement Notification Incentive | 366 | 300,000 |
| 15 | MATH Program | 368 | 400,000 |
| 16 | Teacher Reimbursement | 573 | 300,000 |
| 17 | Hospitality Training | 600 | 434,199 |
| 18 | Low Student Enrollment Allowance | 615 | 800,000 |
| 19 | Foreign Student Education (R) | 636 | 93,881 |
| 20 | State Teacher of the Year | 640 | 42,643 |
| 21 | Principals Mentorship | 649 | 80,000 |
| 22 | Allowance for Work Based Learning | 744 | 60,000 |
| 23 | Pilot Program of Structured in-school Alternatives | 826 | 100,000 |
| 24 | 21st Century Learners (R) | 886 | 2,746,533 |
| 25 | BRIM Premium | 913 | 338,053 |
| 26 | High Acuity Health Care Needs Program | 920 | 1,000,000 |
| 27 | School Nurse Funding | 921 | 1,107,618 |
| 28 | 21st Century Assessment and Professional Development | 931 | 4,500,000 |
| 29 | WV Commission on Holocaust Education | 935 | *0 |
| 30 | Regional Education Service Agencies | 972 | 4,200,000 |

*CLERK'S NOTE: The Governor reduced the amount on line 8 from $1,000,000 to $850,000; and on line 37, he reduced the amount from $15,000 to $0.
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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

From the above appropriation for Sparse Population Allocation (activity 973), funding shall be provided in the same manner as in Fiscal Year 2008. 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.

*From the above appropriation for Unclassified (activity 099) $150,000 is for Hancock County Board of Education; $120,000 is for Hardy County Board of Education, $225,000 is for Pendleton County Board of Education and $20,000 is for Taylor County Board of Education. This funding is needed to offset the deficits at these County Boards of Education:

46-State Department of Education-Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2009 Org 0402

1 Special Education-Counties .... 159 $ 7,271,757
2 Special Education-Institutions ... 160 3,683,391
3 Education of Juveniles Held in
4 Predispositional Juvenile
5 Detention Centers ............. 302 588,624
6 Education of Institutionalized
7 Juveniles and Adults (R) ..... 472 16,249,117
8 Total ........................... $27,792,889

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 2008 is

*CLERK’S NOTE: The Governor struck language on lines 81 through 87.
hereby reappropriated for expenditure during the fiscal year 2009.

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.

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.

47-State Department of Education-
State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2009 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Other Current Expenses</td>
<td>022</td>
<td>$145,546,433</td>
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<tr>
<td>2</td>
<td>Professional Educators</td>
<td>151</td>
<td>850,299,661</td>
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<tr>
<td>3</td>
<td>Service Personnel</td>
<td>152</td>
<td>275,319,410</td>
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<tr>
<td>4</td>
<td>Fixed Charges</td>
<td>153</td>
<td>104,513,542</td>
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<tr>
<td>5</td>
<td>Transportation</td>
<td>154</td>
<td>65,862,890</td>
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<td>6</td>
<td>Administration</td>
<td>155</td>
<td>35,642,483</td>
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<tr>
<td>7</td>
<td>21st Century Strategic Technology</td>
<td>936</td>
<td>1,882,410</td>
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<tr>
<td>8</td>
<td>Learning Growth</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Improved Instructional Programs</td>
<td>156</td>
<td>34,387,231</td>
</tr>
<tr>
<td>10</td>
<td>Advanced Placement</td>
<td>053</td>
<td>775,245</td>
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<tr>
<td>11</td>
<td>Basic Foundation Allowances</td>
<td></td>
<td>1,514,229,305</td>
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<tr>
<td>12</td>
<td>Less Local Share</td>
<td></td>
<td>(358,289,205)</td>
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<tr>
<td>13</td>
<td>Total Basic State Aid</td>
<td></td>
<td>1,155,940,100</td>
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<td>14</td>
<td>Public Employees’ Insurance</td>
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<td>15</td>
<td>Matching</td>
<td>012</td>
<td>202,961,229</td>
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<td>16</td>
<td>Teachers’ Retirement System</td>
<td>019</td>
<td>49,839,994</td>
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<td>17</td>
<td>School Building Authority</td>
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<td>23,345,075</td>
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</table>
Ch. 10] APPROPRIATIONS

18 Retirement Systems-Unfunded
19 Liability 775 289,707,000
20 Total ...................... $1,721,793,398

48-State Board of Education-
Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2009 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
<td>004</td>
<td>21,910</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>367,061</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>1,210,000</td>
</tr>
<tr>
<td>5 Wood Products-Forestry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Vocational Program</td>
<td>146</td>
<td>57,530</td>
</tr>
<tr>
<td>7 Albert Yanni Vocational Program</td>
<td>147</td>
<td>150,000</td>
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<tr>
<td>8 Vocational Aid</td>
<td>148</td>
<td>17,202,326</td>
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<tr>
<td>9 Adult Basic Education</td>
<td>149</td>
<td>3,895,435</td>
</tr>
<tr>
<td>10 Program Modernization</td>
<td>305</td>
<td>1,000,000</td>
</tr>
<tr>
<td>11 Technical and Secondary Program</td>
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<td></td>
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<tr>
<td>12 Improvement Staff</td>
<td>330</td>
<td>293,054</td>
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<tr>
<td>13 GED Testing</td>
<td>339</td>
<td>583,238</td>
</tr>
<tr>
<td>14 Aquaculture Support</td>
<td>769</td>
<td>89,533</td>
</tr>
<tr>
<td>15 FFA Grant Awards</td>
<td>839</td>
<td>13,000</td>
</tr>
<tr>
<td>16 Pre-Engineering Academy</td>
<td></td>
<td></td>
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<tr>
<td>17 Program</td>
<td>840</td>
<td>300,000</td>
</tr>
<tr>
<td>18 Total</td>
<td></td>
<td>$26,222,375</td>
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</table>

19 Any unexpended balance remaining in the appropriation for GED Testing (fund 0390, activity 339) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

49-State Board of Education-
Division of Educational Performance Audits
### West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2009 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1  Personal Services</td>
<td>431,237</td>
</tr>
<tr>
<td>2  Annual Increment</td>
<td>4,836</td>
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<tr>
<td>3  Employee Benefits</td>
<td>115,435</td>
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<tr>
<td>4  Unclassified</td>
<td>179,782</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$731,290</strong></td>
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</table>

### Department of Education and the Arts

(WV Code Chapter 5F)

Fund 0294 FY 2009 Org 0431

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified (R)</td>
<td>886,687</td>
</tr>
<tr>
<td>2  Center for Professional</td>
<td>3,173,913</td>
</tr>
</tbody>
</table>

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### DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 5F)

Fund 0294 FY 2009 Org 0431

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified (R)</td>
<td>886,687</td>
</tr>
<tr>
<td>2  Center for Professional</td>
<td>3,173,913</td>
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</table>

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

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2009 Org 0403

<table>
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<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1  Personal Services</td>
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<tr>
<td>2  Annual Increment</td>
<td>8,066</td>
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<tr>
<td>3  Employee Benefits</td>
<td>3,195,238</td>
</tr>
<tr>
<td>4  Unclassified</td>
<td>1,607,491</td>
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<tr>
<td>5  Capital Outlay and Maintenance 755</td>
<td>125,000</td>
</tr>
<tr>
<td>6  BRIM Premium</td>
<td>66,286</td>
</tr>
<tr>
<td>7  Total</td>
<td><strong>$13,028,424</strong></td>
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</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Program</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>WV Humanities Council</td>
<td>450,000</td>
</tr>
<tr>
<td>Benedum Professional</td>
<td></td>
</tr>
<tr>
<td>Development Collaborative</td>
<td>1,100,000</td>
</tr>
<tr>
<td>Governor’s Honor Academy (R)</td>
<td>500,450</td>
</tr>
<tr>
<td>Professional Development Collaborative</td>
<td></td>
</tr>
<tr>
<td>Collaborative</td>
<td></td>
</tr>
<tr>
<td>Energy Express</td>
<td>470,000</td>
</tr>
<tr>
<td>Special Olympic Games</td>
<td>25,000</td>
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<tr>
<td>BRIM Premium</td>
<td>4,509</td>
</tr>
<tr>
<td>Total</td>
<td>$6,610,559</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294 activity 115), Governor’s Honor Academy (fund 0294, activity 478), and CPD-Math Initiative (fund 0294, activity 517) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

### 52-Division of Culture and History

(WV Code Chapter 29)

Fund **0293** FY **2009** Org **0432**

<table>
<thead>
<tr>
<th>Program</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>60,977</td>
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<tr>
<td>Employee Benefits</td>
<td>1,038,775</td>
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<tr>
<td>Unclassified</td>
<td>898,468</td>
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<tr>
<td>Culture and History Programming</td>
<td>292,945</td>
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<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>200,000</td>
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<tr>
<td>Historical Highway Marker</td>
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</tr>
<tr>
<td>Program (R)</td>
<td>75,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>48,979</td>
</tr>
<tr>
<td>Total</td>
<td>$5,164,736</td>
</tr>
</tbody>
</table>
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), Independence Hall (fund 0293, activity 812), and Historical Highway Marker Program (fund 0293, activity 844) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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.

53-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2009 Org 0433

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 2009 FY</th>
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</thead>
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<tr>
<td>001</td>
<td>Personal Services</td>
<td>$991,852</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$36,840</td>
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<td>010</td>
<td>Employee Benefits</td>
<td>$375,662</td>
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<td>099</td>
<td>Unclassified</td>
<td>$240,587</td>
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<tr>
<td>181</td>
<td>Services to Blind and Handicapped</td>
<td>$183,750</td>
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<tr>
<td>913</td>
<td>BRIM Premium</td>
<td>$24,817</td>
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</table>
### 54-Educational Broadcasting Authority

(WV Code Chapter 10)

**Fund 0300 FY 2009 Org 0439**

<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>$3,195,396</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>69,536</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,106,562</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,042,965</td>
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<tr>
<td>5</td>
<td>Mountain Stage</td>
<td>249</td>
<td>300,000</td>
</tr>
<tr>
<td>6</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>100,000</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>56,048</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$5,870,507</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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

### 55-State Board of Rehabilitation-Division of Rehabilitation Services

(WV Code Chapter 18)

**Fund 0310 FY 2009 Org 0932**

<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>$7,439,147</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>166,317</td>
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<tr>
<td>3</td>
<td>Independent Living Services</td>
<td>009</td>
<td>500,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,838,985</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>502,066</td>
</tr>
<tr>
<td>6</td>
<td>Workshop Development</td>
<td>163</td>
<td>1,816,149</td>
</tr>
</tbody>
</table>
7 Supported Employment
  Extended Services .................. 206
8 Ron Yost Personal Assistance
10 Fund (R) ............................ 407
11 Employment Attendant
12 Care Program ....................... 598
13 Capital Outlay and
14 Maintenance (R) .................... 755
15 BRIM Premium ...................... 913
16 Total ................................. $14,277,729

17 Any unexpended balances remaining in the appropriations
18 for Ron Yost Personal Assistance Fund (fund 0310, activity
19 407), Capital Outlay, Repairs and Equipment-Surplus (fund
20 0310, activity 677), and Capital Outlay and Maintenance
21 (fund 0310, activity 755) at the close of the fiscal year 2008
22 are hereby reappropriated for expenditure during the fiscal
23 year 2009.

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

56-Environmental Quality Board
(WV Code Chapter 20)

Fund 0270 FY 2009 Org 0311

1 Personal Services ............... 001 $ 73,982
2 Annual Increment ............... 004 260
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
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</table>

#### 57-Division of Environmental Protection

(WV Code Chapter 22)

**Fund 0273 FY 2009 Org 0313**

<table>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Dam Safety</td>
<td>607</td>
</tr>
<tr>
<td>6</td>
<td>West Virginia Stream Partners</td>
<td>637</td>
</tr>
<tr>
<td>7</td>
<td>Program</td>
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</tr>
<tr>
<td>8</td>
<td>WV Contribution to River</td>
<td>776</td>
</tr>
<tr>
<td>9</td>
<td>Commissions</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Office of Water Resources</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Non-Enforcement Activity</td>
<td>855</td>
</tr>
<tr>
<td>12</td>
<td>Water Resources Protection</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>and Management</td>
<td>068</td>
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<tr>
<td>14</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
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<td>15</td>
<td>Welch DEP Office Continuing</td>
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<tr>
<td>16</td>
<td>Operation</td>
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<td>17</td>
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</table>

#### 58-Air Quality Board

(WV Code Chapter 16)

**Fund 0550 FY 2009 Org 0325**

<table>
<thead>
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<th>Description</th>
<th>FY 2009</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>2</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
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</tbody>
</table>
### APK Appropriations

#### Department of Health and Human Resources

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

(WV Code Chapter 5F)

**Fund 0400 FY 2009 Org 0501**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>FY 2009 Budget</th>
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<tbody>
<tr>
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<td>099</td>
<td>$214,461</td>
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<tr>
<td>Women's Commission (R)</td>
<td>191</td>
<td>194,487</td>
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<tr>
<td>Commission for the Deaf</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and Hard of Hearing</td>
<td>704</td>
<td>258,396</td>
</tr>
<tr>
<td>Total</td>
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<td>$667,344</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 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

**60-Division of Health-Central Office**

(WV Code Chapter 16)

**Fund 0407 FY 2009 Org 0506**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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</thead>
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<tr>
<td>Personal Services</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>3,169,593</td>
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<tr>
<td>Chief Medical Examiner</td>
<td>045</td>
<td>4,022,767</td>
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<tr>
<td>Unclassified</td>
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<td>5,127,035</td>
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<tr>
<td>Safe Drinking Water Program</td>
<td>187</td>
<td>533,563</td>
</tr>
<tr>
<td>Women, Infants and Children</td>
<td>210</td>
<td>65,000</td>
</tr>
<tr>
<td>Basic Public Health Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support</td>
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<td>3,359,583</td>
</tr>
<tr>
<td>Ch. 10] APPROPRIATIONS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>10 Early Intervention</td>
<td>223</td>
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<tr>
<td></td>
<td>3,307,043</td>
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<tr>
<td>11 Cancer Registry</td>
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<tr>
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<td>285,854</td>
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*CLERK'S NOTE: The Governor reduced the amount on line 40 from $1,000,000 to $800,000.
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), Capital Outlay and Maintenance (fund 0407, activity 755), Healthy Lifestyles (fund 0407, activity 778), Assistance to Primary Health Care Centers Community Health Foundation (fund 0407, activity 845) and Tobacco Education Program (fund 0407, activity 906) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

From the above appropriation for Unclassified (activity 099), an amount not less than $100,000 is for the West Virginia Cancer Coalition.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) $250,000 is for the West Virginia University Center for Excellence in Women’s Health.

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.
78 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.

82 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 (Randolph); $58,560 for the mortgage payment for Valley Health Systems, Inc. (Woman’s Place and Harts Health Clinic); $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; $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 Minnie Hamilton Health Care Center, Inc.; $54,000 for the mortgage payment for the Shenandoah Valley Medical Systems, Inc.; $45,000 for the mortgage payment for the Change, Inc.; and $28,958 for the mortgage payment for the Wirt County Health Services Association.
Also included in the above appropriation for State Aid to Local Health Departments is additional funding for salary increases.

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

### 61-Consolidated Medical Service Fund

(WV Code Chapter 16)

<table>
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<tr>
<th>Fund</th>
<th>FY</th>
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<th>Description</th>
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<tr>
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Any unexpended balances remaining in the appropriations for Behavioral Health Program-Unclassified (fund 0525, activity 219), Institutional Facilities Operations (fund 0525, activity 335),

---

*CLERK'S NOTE: The Governor reduced the amount on line 6 from $52,829,562 to $52,779,562.*
20 activity 335), Capital Outlay (fund 0525, activity 511),  
21 Capital Outlay and Maintenance (fund 0525, activity 755),  
22 and Colin Anderson Community Placement (fund 0525,  
23 activity 803) at the close of the fiscal year 2008 are hereby  
24 reappropriated for expenditure during the fiscal year 2009.  
25
26 The secretary shall, within fifteen days after the close of  
27 the six-month period of said fiscal year, file with the  
28 legislative auditor and the department of revenue an itemized  
29 report of expenditures made during the preceding six-month  
30 period.  
31
32 Included in the above appropriation for Behavioral Health  
33 Program - Unclassified (fund 0525, activity 219) is  
33 *$150,000 $100,000 for the Four Angels Substance Abuse  
34 Treatment Project development.  
35
36 From the above appropriation to Institutional Facilities  
37 Operations, together with available funds from the division  
38 of health-hospital services revenue account (fund 5156,  
39 activity 335), on July 1, 2008, the sum of one hundred sixty  
40 thousand dollars shall be transferred to the department of  
41 agriculture-land division as advance payment for the  
42 purchase of food products; actual payments for such  
43 purchases shall not be required until such credits have been  
44 completely expended.  
45
46 Additional funds have been appropriated in fund 5156,  
47 fiscal year 2009, organization 0506, for the operation of the  
48 institutional facilities. The secretary of the department of  
49 health and human resources is authorized to utilize up to ten  
50 percent of the funds from the Institutional Facilities  
51 Operations line item to facilitate cost effective and cost  
52 saving services at the community level.  

*Clerk's Note: The Governor reduced the amount on line 32 from $150,000 to $100,000.
62-Division of Health-West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2009 Org 0506

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

4 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.

63-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2009 Org 0510

1 Personal Services .................. 001 $ 735,925
2 Annual Increment .................. 004 19,912
3 Employee Benefits .................. 010 231,987
4 Unclassified .................. 099 261,293
5 BRIM Premium .................. 913 19,326
6 Total .................. $ 1,268,443

64-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2009 Org 0511
Ch. 10]  

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*CLERK'S NOTE: The Governor reduced the amount on line 22 from $6,356,000 to $4,856,000.; and on line 24 reduced the amount from $1,000,000 to $750,000.
33 Child and Family Services ...... 736 2,850,000  
34 Grants for Licensed Domestic Violence Programs and  
35 Statewide Prevention ...... 750 1,500,000  
36 Capital Outlay and Maintenance . 755 25,000  
37 Medical Services  
38 Administrative Costs ........ 789 18,531,012  
39 Indigent Burials (R) ........... 851 1,700,000  
40 BRIM Premium .............. 913 834,187  
41 Rural Hospitals Under 150 Beds . 940 2,596,000  
42 Children’s Trust Fund-Transfer . 951 300,000  
43 Total ...................... . $638,412,415  
44  
45 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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.  
46  
47 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.  
48  
49 The above appropriation for Domestic Violence Legal Services Fund (activity 384) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).  
50  
51 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 Child Support Enforcement (fund 0403, activity 705) an amount not to exceed $300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

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 fourteen (14) 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 Children’s Trust Fund-Transfer (activity 951) shall be transferred to the Children’s Fund (fund 5469, org 0511).

From the WV Works Separate State Program (activity 698), $1,700,000 shall be transferred to the WV WORKS Separate State College Program Fund, and $3,300,000 shall be transferred to the WV WORKS Separate State Two Parent Families Program Fund.
*From the above appropriation for Medical Services (activity 189), the division shall expend any funds necessary to comply with the Court Order dated March 15, 2000 in the Benjamin H. Et. Al. Joan Ohi case.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

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

(WV Code Chapter 5F)

Fund 0430 FY 2009 Org 0601

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Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, activity 099), Capital Outlay (fund 0430, activity 511), Interoperable Communications System-Surplus (fund 0430, activity 771) and Homeland State Security Administrative Agency (fund 0430, activity 953), at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

66-Adjutant General-
State Militia

*CLERK’S NOTE: The Governor deleted language on lines 95 through 98.
Fund 0433  FY 2009  Org 0603

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>*19,954,605</td>
</tr>
<tr>
<td>Mountaineer ChalleNGe</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Academy</td>
<td>709</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td></td>
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<tr>
<td>Total</td>
<td></td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, activity 099), and Armory Capital Improvements—Surplus (fund 0433, activity 325) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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

From the above appropriation for Unclassified (fund 0433, activity 099) *$100,000 is for the Oak Hill Armory and an amount not less than $1,200,000 is for the Mountaineer ChalleNGe Academy.

67-Adjutant General-
Military Fund

*CLERK'S NOTE: The Governor reduced the amount on line 4 from $20,054,605 to $19,954,605 and struck language on line 19.
### 68-West Virginia Parole Board

(WV Code Chapter 62)

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
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</table>

### 69-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
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<td>3</td>
<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>209,172</td>
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<td>5</td>
<td>Salaries of Members of West Virginia Parole Board</td>
<td>227</td>
<td>455,000</td>
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<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
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<table>
<thead>
<tr>
<th>1</th>
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<td>2</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified (R)</td>
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<td>Radiological Emergency</td>
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<tr>
<td>6</td>
<td>Preparedness</td>
<td>554</td>
<td>30,000</td>
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<tr>
<td>7</td>
<td>Federal Funds/Grant Match (R)</td>
<td>749</td>
<td>742,344</td>
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<tr>
<td>8</td>
<td>Mine and industrial Accident</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Rapid Response Call Center</td>
<td>781</td>
<td>558,154</td>
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</tbody>
</table>
10 Early Warning Flood System (R)  877  522,340
11 BRIM Premium  913  35,158
12 Disaster Mitigation  952  100,000
13 WVU Charleston Poison
14 Control Hotline  944  596,100
15 Total  131  $3,536,251

16 Any unexpended balances remaining in the appropriations for Unclassified (fund 0443, activity 099), 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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

70-Division of Corrections-
Central Office

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

Fund 0446 FY 2009 Org 0608

1 Personal Services  001  $ 415,385
2 Annual Increment  004  7,235
3 Employee Benefits  010  130,271
4 Unclassified  099  103,470
5 Total  099  $ 656,361

6 Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

71-Division of Corrections-
Correctional Units
### Appropriations

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

Fund 0450 FY 2009 Org 0608

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity</th>
<th>Fiscal Year</th>
<th>Amount</th>
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<td>1 Employee Benefits</td>
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<tr>
<td>2 Childrens Protection Act (R)</td>
<td>090</td>
<td></td>
<td>927,500</td>
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<tr>
<td>3 Unclassified</td>
<td>099</td>
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<td>1,303,949</td>
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<tr>
<td>4 Charleston Work Release</td>
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<td>1,361,601</td>
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<tr>
<td>5 Beckley Correctional Center</td>
<td>490</td>
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<td>1,004,662</td>
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<tr>
<td>6 Huntington Work Release</td>
<td>495</td>
<td></td>
<td>902,862</td>
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<tr>
<td>7 Anthony Center</td>
<td>504</td>
<td></td>
<td>4,693,121</td>
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<tr>
<td>8 Huttonsville Correctional Center</td>
<td>514</td>
<td></td>
<td>20,592,822</td>
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<tr>
<td>9 Northern Correctional Facility</td>
<td>534</td>
<td></td>
<td>6,882,871</td>
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<tr>
<td>10 Inmate Medical Expenses (R)</td>
<td>535</td>
<td></td>
<td>22,726,064</td>
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<tr>
<td>11 Pruntytown Correctional Center</td>
<td>543</td>
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<td>6,820,548</td>
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<tr>
<td>12 Payments to Federal, County and/or</td>
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<td></td>
<td></td>
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<tr>
<td>13 Regional Jails</td>
<td>555</td>
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<tr>
<td>14 Corrections Academy</td>
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<td>1,287,167</td>
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<tr>
<td>15 Martinsburg Correctional Center</td>
<td>663</td>
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<tr>
<td>16 Parole Services</td>
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<td>2,462,243</td>
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<td>17 Special Services</td>
<td>687</td>
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<td>3,183,086</td>
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<td>18 Capital Outlay and Maintenance (R)</td>
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<tr>
<td>19 Stephens Correctional Facility</td>
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<td>5,724,500</td>
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<tr>
<td>20 St. Mary’s Correctional Facility</td>
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<tr>
<td>21 Denmar Correctional Facility</td>
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<td>4,319,182</td>
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<tr>
<td>22 Ohio County Correctional Facility</td>
<td>883</td>
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<td>1,510,923</td>
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<tr>
<td>23 Mt. Olive Correctional Facility</td>
<td>888</td>
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<td>20,119,819</td>
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<tr>
<td>24 Lakin Correctional Facility</td>
<td>896</td>
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<td>10,470,456</td>
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<tr>
<td>25 BRIM Premium</td>
<td>913</td>
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<td>923,862</td>
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<tr>
<td>26 Total</td>
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<td>$155,946,669</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Children’s Protection Act (fund 0450, activity 090), Unclassified- Surplus (fund 0450, activity 097), Inmate Medical Expenses (fund 0450, activity 535), and Capital Outlay and Maintenance (fund 0450, activity 755) at the
close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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

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

From the above appropriation to Unclassified, on July 1, 2008, 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.

72-West Virginia State Police
(WV Code Chapter 15)

Fund 0453 FY 2009 Org 0612

<table>
<thead>
<tr>
<th>Description</th>
<th>Line Item</th>
<th>FY 2009 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>250,154</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>8,635,864</td>
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<tr>
<td>Childrens Protection Act</td>
<td>090</td>
<td>943,127</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>8,903,839</td>
</tr>
</tbody>
</table>
6 Vehicle Purchase ............... 451 2,000,000
7 Barracks Lease Payments ...... 556 440,088
8 Communications and
9 Other Equipment (R) .......... 558 1,013,285
10 Trooper Retirement Fund ...... 605 4,250,347
11 Retirement Systems-Unfunded
12 Liability .......................... 775 1,271,000
13 Handgun Administration Expense 747 78,388
14 Capital Outlay and
15 Maintenance (R) .............. 755 500,000
16 Automated Fingerprint
17 Identification System (R) .... 898 642,083
18 BRIM Premium ................. 913 5,714,983
19 Total ........................... $76,987,234

Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), Communications and Other Equipment (fund 0453, activity 558), Capital Outlay and Maintenance (fund 0453, activity 755), Law Enforcement-Special Projects (fund 0453, activity 787), and Automated Fingerprint Identification System (fund 0453, activity 898) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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

From the above appropriation for 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.

73-Division of Veterans' Affairs
(WV Code Chapter 9A)

Fund 0456 FY 2009 Org 0613

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>Employee Benefits</td>
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<tr>
<td>Unclassified</td>
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<td>214,847</td>
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<tr>
<td>Veterans’ Field Offices</td>
<td>228</td>
<td>175,985</td>
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<tr>
<td>Veterans’ Nursing Home (R)</td>
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<td>6,511,329</td>
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<tr>
<td>Veterans’ Toll Free Assistance</td>
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<tr>
<td>Veterans’ Reeducation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Veterans’ Reeducation (R)</td>
<td>329</td>
<td>211,604</td>
</tr>
<tr>
<td>Veterans’ Grant Program (R)</td>
<td>342</td>
<td>150,000</td>
</tr>
<tr>
<td>Memorial Day Patriotic Exercise</td>
<td>697</td>
<td>20,000</td>
</tr>
<tr>
<td>Educational Opportunities for</td>
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</tr>
<tr>
<td>Children of Deceased</td>
<td></td>
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<tr>
<td>Veterans (R)</td>
<td>854</td>
<td>100,000</td>
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<tr>
<td>Veterans’ Grave Markers</td>
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<tr>
<td>Veterans’ Transportation</td>
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<td>BRIM Premium</td>
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<td>23,860</td>
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</table>

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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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.

74-Division of Veterans' Affairs-Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2009 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
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<tr>
<td>2 Annual Increment</td>
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<tr>
<td>3 Employee Benefits</td>
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<td>340,249</td>
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<tr>
<td>4 Unclassified</td>
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<td>80,019</td>
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<tr>
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<td>$1,190,915</td>
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</table>

75-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2009 Org 0619

<table>
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<tr>
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<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Unclassified—Total</td>
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</table>

76-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2009 Org 0620

<table>
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<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<td>4 Unclassified</td>
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<tr>
<td>5 Community Corrections (R)</td>
<td>561</td>
<td>3,500,000</td>
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<tr>
<td>6 Statistical Analysis Program</td>
<td>597</td>
<td>51,329</td>
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<tr>
<td>7 Grants Program</td>
<td>694</td>
<td>500,000</td>
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<tr>
<td>8 Child Advocacy Centers</td>
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<td>1,000,000</td>
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<tr>
<td>9 BRIM Premium</td>
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<td>1,660</td>
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</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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

From the above appropriation for Child Advocacy Centers (fund 0546, activity 458), the division may retain an amount not to exceed 5% of the total appropriation for administrative purposes.

### 77-Division of Juvenile Services

(WV Code Chapter 49)

**Fund 0570 FY 2009 Org 0621**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tr>
<td>Jones Building Treatment Center . 261</td>
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<tr>
<td>Statewide Reporting Centers . . . . 262</td>
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<tr>
<td>Robert L. Shell Juvenile Center (R) . . . . 267</td>
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<td>Central Office (R) . . . . . . . . . . 701</td>
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<td>2,307,233</td>
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<tr>
<td>Capital Outlay and Maintenance (R) . . . . 755</td>
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<td>500,000</td>
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<td>Gene Spadaro Juvenile Center (R) . . . . . . . . . 793</td>
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<td>2,101,329</td>
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<td>BRIM Premium . . . . . . . . . . . . . . . . 913</td>
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<td>113,016</td>
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<td>WV Industrial Home for Youth (R) . . . . . . . . 979</td>
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<tr>
<td>Davis Center (R) . . . . . . . . . . . . . . . . 980</td>
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<tr>
<td>Eastern Regional Juvenile Center (R) . . . . . . . 981</td>
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<td>2,058,683</td>
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<tr>
<td>Northern Regional Juvenile Center (R) . . . . . . . . 982</td>
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<td>1,110,465</td>
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<td>North Central Regional Juvenile Center (R) . . . . . . . . 983</td>
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<td>1,871,644</td>
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<td>Appropriations</td>
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<tr>
<td>20</td>
<td>Southern Regional Juvenile Center (R) ............... 984</td>
<td>1,930,002</td>
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<tr>
<td>21</td>
<td>Tiger Morton Center (R) .................. 985</td>
<td>2,077,929</td>
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<td>22</td>
<td>Donald R. Kuhn Juvenile Center (R) ........... 986</td>
<td>4,152,672</td>
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<tr>
<td>23</td>
<td>J.M. “Chick” Buckbee Juvenile Center (R) ........ 987</td>
<td>1,989,111</td>
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<tr>
<td>24</td>
<td>Total ........................................</td>
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</tbody>
</table>

28. 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 980), Eastern Regional Juvenile Center (fund 0570, activity 981), Northern 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 2008 are hereby reappropriated for expenditure during the fiscal year 2009, with the exception of fund 0570, fiscal year 2004, activity 701 ($501.03); fund 0570, fiscal year 2006, activity 267 ($216,431.76); fund 0570, fiscal year 2007, activity 267 ($9,285.16); Fund 0570 fiscal year 2006, activity 792 ($6,611.33); fund 0570, fiscal year 2007, activity 792 ($100,000.00); fund 0570, fiscal year 2006, activity 793 ($42,198.25); fund 0570, fiscal year 2007, activity 793 ($35,000.00); fund 0570, fiscal year 2006, activity 701 ($165,327.61); fund 0570, fiscal year 2007, activity 701 ($29,227.19); fund 0570, fiscal year 2006, activity 979 ($211,279.38); fund 0570, fiscal year 2007, activity 979.
57 ($130,000); fund 0570, fiscal year 2006, activity 980
58 ($3,541.98); fund 0570, fiscal year 2006, activity 981
59 ($127,700.58); fund 0570, fiscal year 2007, activity 981
60 ($460,000.00); fund 0570, fiscal year 2006, activity 983
61 ($52,532.92); fund 0570, fiscal year 2007, activity 983
62 ($73.00); fund 0570, fiscal year 2006, activity 984
63 ($46,871.46); fund 0570, fiscal year 2006, activity 985
64 ($53,802.04); fund 0570, fiscal year 2007, activity 985
65 ($63,028.27); fund 0570, fiscal year 2006, activity 986
66 ($11,391.53); fund 0570, fiscal year 2006, activity 987
67 ($124,477.40); fund 0570, fiscal year 2007, activity 987
68 ($25,000.00); fund 0570, fiscal year 2007, activity 988
69 ($36,044.51); fund 0570, fiscal year 2007, activity 989
70 ($1,436.77); fund 0570, fiscal year 2006, activity 990
71 ($42,508.92); fund 0570, fiscal year 2007, activity 990
72 ($5,728.91); which shall expire on June 30, 2008.

73 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.

80 From the above appropriations, on July 1, 2008, 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.

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

78-Division of Protective Services
### DEPARTMENT OF REVENUE

#### 79-Office of the Secretary

(WV Code Chapter 11)

Fund **0465** FY **2009** Org **0701**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$876,428</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0465, activity 099) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

#### 80-Tax Division

(WV Code Chapter 11)

Fund **0470** FY **2009** Org **0702**
Ch. 10] APPROPRIATIONS

1 Personal Services (R) ............ 001 $13,178,514
2 Annual Increment .................... 004 322,206
3 Employee Benefits (R) ............ 010 4,722,547
4 Unclassified (R) ..................... 099 8,999,097
5 GIS Development Project (R) ...... 562 150,000
6 Remittance Processor (R) ........... 570 381,015
7 Multi State Tax Commission ....... 653 77,958
8 BRIM Premium ....................... 913 14,420
9 Total ................................ 27,845,757

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 (fund 0470, activity 099), Integrated Tax Accounting System (fund 0470, activity 292), GIS Development Project (fund 0470, activity 562), and Remittance Processor (fund 0470, activity 570) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

81-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2009 Org 0703

1 Unclassified (R) ..................... 099 $936,212
2 Pay Equity Reserve ................. 364 250,000
3 BRIM Premium ...................... 913 5,183
4 Total ................................ 1,191,395

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, activity 099) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

82-West Virginia Office of Tax Appeals
142 APPROPRIATIONS [Ch. 10

(WV Code Chapter 11)

Fund **0593** FY **2009** Org **0709**

1 Unclassified-Total (R) ........... 096 $ 685,819

2 Any unexpended balance remaining in the appropriation
for Unclassified—Total (fund 0593, activity 096) at the close
of the fiscal year 2008 is hereby reappropriated for
expenditure during the fiscal year 2009.

83-Division of Professional and Occupational Licenses—
State Athletic Commission

(WV Code Chapter 29)

Fund **0523** FY **2009** Org **0933**

1 Unclassified-Total ............ 096 $ 89,500

DEPARTMENT OF TRANSPORTATION

84-State Rail Authority

(WV Code Chapter 29)

Fund **0506** FY **2009** Org **0804**

1 Unclassified ..................... 099 $ 2,617,304
2 BRIM Premium .................... 913 205,260
3 Total ............................. $ 2,822,564

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

85-Division of Public Transit
Fund 0510 FY 2009 Org 0805

1 Unclassified (R) .............. 099 $ 1,758,342
2 Federal Funds/Grant Match(R) .. 749 $ 1,265,000
3 Total ............................... $ 3,023,342

4 Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), Grant Match (fund 0510, activity 388), and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

86-Public Port Authority

Fund 0581 FY 2009 Org 0806

1 Unclassified (R) .............. 099 $ 437,851
2 BRIM Premium .............. 913 $ 5,570
3 Total ............................... $ 443,421

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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

87-Aeronautics Commission

Fund 0582 FY 2009 Org 0807
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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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.

BUREAU OF SENIOR SERVICES

88-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2009 Org 0508

Any unexpended balance remaining in the appropriation for Unclassified-Total-Surplus (fund 0420, activity 284) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

HIGHER EDUCATION

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

(WV Code Chapter 18B)

Fund 0596 FY 2009 Org 0420
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>New River Community and Technical College</td>
</tr>
<tr>
<td>2</td>
<td>West Virginia Council for Community and Technical Education (R)</td>
</tr>
<tr>
<td>3</td>
<td>Eastern West Virginia Community and Technical College</td>
</tr>
<tr>
<td>4</td>
<td>West Virginia State Community and Technical College</td>
</tr>
<tr>
<td>5</td>
<td>Southern West Virginia Community and Technical College</td>
</tr>
<tr>
<td>6</td>
<td>West Virginia Northern Community and Technical College</td>
</tr>
<tr>
<td>7</td>
<td>West Virginia University-Parkersburg</td>
</tr>
<tr>
<td>8</td>
<td>West Virginia University Institute for Technology Community and Technical College</td>
</tr>
<tr>
<td>9</td>
<td>Marshall Community and Technical College</td>
</tr>
<tr>
<td>10</td>
<td>Community College Workforce Development (R)</td>
</tr>
<tr>
<td>11</td>
<td>Blue Ridge Community and Technical College</td>
</tr>
<tr>
<td>12</td>
<td>College Transition Program (R)</td>
</tr>
<tr>
<td>13</td>
<td>West Virginia Advance Workforce Development (R)</td>
</tr>
<tr>
<td>14</td>
<td>Technical Program Development (R)</td>
</tr>
<tr>
<td>15</td>
<td>Pierpont Community and Technical College</td>
</tr>
<tr>
<td>16</td>
<td>Total</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified-Surplus (fund 0596, activity 097), Unclassified (fund 0596, activity 099), the West Virginia Council for Community and Technical Education (fund 0596,
activity 392), Community College Workforce Development (fund 0596, activity 878), College Transition Program (fund 0596, activity 887), West Virginia Advance Workforce Development (fund 0596, activity 893), and Technical Program Development (fund 0596, activity 894) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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 2009 Org 0441

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$2,981,965</td>
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<tr>
<td>2</td>
<td>Higher Education Grant Program</td>
<td>164</td>
<td>*33,660,000</td>
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<td>3</td>
<td>WVNET</td>
<td>169</td>
<td>2,072,112</td>
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<tr>
<td>4</td>
<td>VISTA E-Learning (R)</td>
<td>519</td>
<td>300,000</td>
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<tr>
<td>5</td>
<td>PROMISE Scholarship—</td>
<td></td>
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</tr>
<tr>
<td>6</td>
<td>Transfer</td>
<td>800</td>
<td>14,616,000</td>
</tr>
<tr>
<td>7</td>
<td>HEAPS Grant Program</td>
<td>867</td>
<td>5,003,696</td>
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<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>56,054</td>
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<td>9</td>
<td>Total</td>
<td></td>
<td>$59,114,403</td>
</tr>
</tbody>
</table>

*CLERK'S NOTE: The Governor reduced the amount on line 2 from $34,084,576 to $33,660,000.
Any unexpended balances remaining in the appropriations for Research Challenge (fund 0589, activity 502), 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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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.

From the above appropriation for Unclassified (activity 099) $800,000 is for West Liberty State College Highland Complex.

91-Higher Education Policy Commission-System-Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2009 Org 0442

1 WVU School of Health Science-
2 Eastern Division .............. 056 $ 2,605,638
3 School of Osteopathic Medicine . 172 7,448,615
4 Marshall Medical School ....... 173 12,331,828
5 WVU—School of Health—Sciences ............... 174 17,095,568
6 WVU School of Health Sciences-
7 Charleston Division ........... 175 2,615,805
8 Rural Health Outreach Programs . 377 600,000
<table>
<thead>
<tr>
<th>No.</th>
<th>Institution</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>School of Osteopathic Medicine</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>BRIM Subsidy</td>
<td>174,475</td>
</tr>
<tr>
<td>12</td>
<td>Bluefield State College</td>
<td>6,442,321</td>
</tr>
<tr>
<td>13</td>
<td>Concord University</td>
<td>9,977,767</td>
</tr>
<tr>
<td>14</td>
<td>Fairmont State University</td>
<td>13,769,754</td>
</tr>
<tr>
<td>15</td>
<td>Glenville State College</td>
<td>6,489,617</td>
</tr>
<tr>
<td>16</td>
<td>Shepherd University</td>
<td>11,018,482</td>
</tr>
<tr>
<td>17</td>
<td>West Liberty State College</td>
<td>9,125,137</td>
</tr>
<tr>
<td>18</td>
<td>West Virginia State University</td>
<td>10,734,590</td>
</tr>
<tr>
<td>19</td>
<td>Marshall University</td>
<td>49,306,129</td>
</tr>
<tr>
<td>20</td>
<td>Marshall University Medical</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>School BRIM Subsidy</td>
<td>1,015,462</td>
</tr>
<tr>
<td>22</td>
<td>West Virginia University</td>
<td>115,142,018</td>
</tr>
<tr>
<td>23</td>
<td>West Virginia University School of Medicine</td>
<td>1,400,038</td>
</tr>
<tr>
<td>24</td>
<td>BRIM Subsidy</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>West Virginia University Institute for Technology</td>
<td>8,547,469</td>
</tr>
<tr>
<td>26</td>
<td>State Priorities-Brownfield</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Professional Development (R)</td>
<td>802,830</td>
</tr>
<tr>
<td>28</td>
<td>Rural Health Initiative-Medical</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Schools Support</td>
<td>475,235</td>
</tr>
<tr>
<td>30</td>
<td>Area Health Education Centers</td>
<td>0</td>
</tr>
<tr>
<td>31</td>
<td>West Virginia State University</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Land Grant Match</td>
<td>1,908,000</td>
</tr>
<tr>
<td>33</td>
<td>Potomac State</td>
<td>4,604,493</td>
</tr>
<tr>
<td>34</td>
<td>Total</td>
<td>$294,101,271</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Marshall School of Medicine-Surplus (fund 0586, activity 452), WVUIT-ABET Accreditation (fund 0586, activity 454), Jackson’s Mill (fund 0586, activity 461), State Priorities-Brownfield Professional Development (fund 0586, activity 531), Jackson’s Mill-Surplus (fund 0586, activity 521).

__CLERK’S NOTE__: The Governor reduced the amount on line 22 from $115,512,018 to $115,142,018; and on line 28, he reduced the amount from $902,830 to $802,830.
activity 842), Higher Education-Special Projects-Surplus (fund 0586, activity 946), and Blanchette Rockefeller Neurological Services-Surplus (fund 0586, activity 947) at the close of fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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 Glenville State College is $200,000 for a 13 county consortium between the County School Systems and Glenville State and $25,000 is for Glenville State Athletic Program.

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, $82,500 for the WVU-Sheep Study, $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, *$260,000 for the Alzheimer's Disease Registry, $110,000 $100,000 for the rifle team, $250,000 for the Jackson’s Mill Arena building, $500,000 for the Jackson’s Mill Infrastructure electricity and water, and $100,000 for Turkey Research at Raymann Memorial Farms.

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.

*From the above appropriation for State Priorities- Brownfield Professional Development (fund 0586, activity 531) $50,000 shall be made payable to both Marshall University and West Virginia University for a demographer.

From the above appropriation for Rural Health Outreach Programs (fund 0586, activity 377) includes rural health

*CLERK'S NOTE: The Governor struck language on lines 82 and 83; on line 83 he reduced the amount from $110,000 to $100,000, and he struck language on lines 99 through 102.
activities and programs; rural residency development and education; and rural outreach activities. These funds shall be dispersed equally among the three (3) medical schools.

From the above appropriation for WVU-Potomac State is $50,000 for maintenance, repairs and equipment, $75,000 for Potomac State Farms for maintenance, repairs, and equipment and $82,500 for the Potomac State Equine Program.

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

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.

Total TITLE II, Section 1-
General Revenue ............. $3,902,732,810

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 nine.

DEPARTMENT OF TRANSPORTATION

92-Division of Motor Vehicles

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

Fund 9007 FY 2009 Org 0802
152 APPROPRIATIONS

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$15,153,148</td>
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<tr>
<td>2 Annual Increment</td>
<td>318,804</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>6,626,528</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>12,747,633</td>
</tr>
<tr>
<td>5 Total</td>
<td>$34,846,113</td>
</tr>
</tbody>
</table>

93-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2009 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>2 Maintenance</td>
<td>296,608,000</td>
</tr>
<tr>
<td>3 Maintenance, Contract Paving and</td>
<td></td>
</tr>
<tr>
<td>4 Secondary Road Maintenance</td>
<td>100,000,000</td>
</tr>
<tr>
<td>5 Bridge Repair and Replacement</td>
<td>50,000,000</td>
</tr>
<tr>
<td>6 Inventory Revolving</td>
<td>2,000,000</td>
</tr>
<tr>
<td>7 Equipment Revolving</td>
<td>15,000,000</td>
</tr>
<tr>
<td>8 General Operations</td>
<td>45,370,538</td>
</tr>
<tr>
<td>9 Interstate Construction</td>
<td>80,000,000</td>
</tr>
<tr>
<td>10 Other Federal Aid Programs</td>
<td>325,700,000</td>
</tr>
<tr>
<td>11 Appalachian Programs</td>
<td>160,000,000</td>
</tr>
<tr>
<td>12 Nonfederal Aid Construction</td>
<td>30,000,000</td>
</tr>
<tr>
<td>13 Highway Litter Control</td>
<td>1,699,000</td>
</tr>
<tr>
<td>14 Total</td>
<td>$1,156,377,538</td>
</tr>
</tbody>
</table>

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

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

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

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

Total TITLE II, Section 2-
State Road Fund $1,191,937,541

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 nine.

LEGISLATIVE

94-Crime Victims Compensation Fund

(WV Code Chapter 14)
Fund 1731 FY 2009 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>286,000</td>
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<tr>
<td>2 Annual Increment</td>
<td>6,200</td>
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<tr>
<td>3 Employee Benefits</td>
<td>109,200</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>135,603</td>
</tr>
<tr>
<td>5 Economic Loss Claim Payment Fund (R)</td>
<td>3,597,775</td>
</tr>
<tr>
<td>6 Total</td>
<td>$4,134,778</td>
</tr>
</tbody>
</table>

8 Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

EXECUTIVE

95-Auditor's Office-
Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2009 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>286,431</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>9,300</td>
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<td>3 Employee Benefits</td>
<td>134,986</td>
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<tr>
<td>4 Unclassified</td>
<td>676,054</td>
</tr>
<tr>
<td>5 Total</td>
<td>$1,106,771</td>
</tr>
</tbody>
</table>

6 There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to pay the direct expenses relating to land sales as provided in chapter eleven-a of the West Virginia Code.
12 The total amount of this appropriation shall be paid from
13 the special revenue fund out of fees and collections as
14 provided by law.

96-Auditor's Office-
Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2009 Org 1200

1 Unclassified-Total .................. 096 $ 154,922

97-Auditor's Office-
Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2009 Org 1200

1 Personal Services .................. 001 $ 1,164,662
2 Annual Increment .................. 004 18,316
3 Employee Benefits .................. 010 469,696
4 Unclassified ....................... 099 1,471,122
5 Total ................................ $3,123,796

98-Auditor's Office-
Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2009 Org 1200

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

2 Fifty percent of the deposits made into this fund shall be
3 transferred to the Treasurer's Office-Technology Support and
4 Acquisition Fund (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 2009 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$3,254,610</td>
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</table>

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

(WV Code Chapter 6)

Fund 1235 FY 2009 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,033,874</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>39,288</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>705,782</td>
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<td>Unclassified</td>
<td>099</td>
<td>622,315</td>
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<tr>
<td>Total</td>
<td></td>
<td>$3,401,259</td>
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</table>

101-Treasurer’s Office - College Prepaid Tuition and Savings Program Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2009 Org 1300

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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<td>$1,402,462</td>
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</table>

102-Treasurer’s Office - Technology Support and Acquisition Fund
### Ch. 10] APPROPRIATIONS [157

(WV Code Chapter 12)

**Fund 1329 FY 2009 Org 1300**

<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>
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</table>

**103-Department of Agriculture-Agriculture Fees Fund**

(WV Code Chapter 19)

**Fund 1401 FY 2009 Org 1400**

<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>$1,310,710</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>22,281</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>472,490</td>
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<td>878,386</td>
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<td>5</td>
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**104-Department of Agriculture-West Virginia Rural Rehabilitation Program**

(WV Code Chapter 19)

**Fund 1408 FY 2009 Org 1400**

<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>
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<td>975,996</td>
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**105-Department of Agriculture-General John McCausland Memorial Farm**

(WV Code Chapter 19)
106-Department of Agriculture-
Farm Operating Fund

(WV Code Chapter 19)

107-Department of Agriculture-
Donated Food Fund

(WV Code Chapter 19)

108-Department of Agriculture-
Integrated Predation Management Fund

(WV Code Chapter 7)

109-Attorney General-
Antitrust Enforcement
### Ch. 10] APPROPRIATIONS

(WV Code Chapter 47)

Fund 1507 FY 2009 Org 1500

<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>
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**110-Attorney General-**

**Preneed Burial Contract Regulation Fund**

(WV Code Chapter 47)

Fund 1513 FY 2009 Org 1500

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<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>$240,591</td>
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</table>

**111-Attorney General-**

**Preneed Funeral Guarantee Fund**

(WV Code Chapter 47)

Fund 1514 FY 2009 Org 1500

<table>
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<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>$775,000</td>
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</table>

**112-Secretary of State-**

**Service Fees and Collection Account**

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2009 Org 1600

<table>
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<tr>
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<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,199,555</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$12,904</td>
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### DEPARTMENT OF ADMINISTRATION

#### 113-Department of Administration-
Office of the Secretary

*Employee Pension and Health Care Benefit Fund*

(WV Code Chapter 18)

**Fund 2044 FY 2009 Org 0201**

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified-Total 096</th>
<th>$ 3,826,000</th>
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</thead>
</table>

The above appropriation for Unclassified-Total (fund 2044, activity 096) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

#### 114-Division of Information Services and Communications

(WV Code Chapter 5A)

**Fund 2220 FY 2009 Org 0210**

| 1 | Personal Services 001 | $ 18,019,794 |
| 2 | Annual Increment 004 | $ 342,459 |
| 3 | Employee Benefits 010 | $ 5,979,009 |
| 4 | Unclassified 099 | $ 13,519,644 |
| 5 | Total 099 | $ 37,860,906 |

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the division of information services and communications as provided by law.
9 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 2009 Org 0222**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>72,348</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>957,191</td>
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<td>Unclassified</td>
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<td>1,182,707</td>
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<tr>
<td>Total</td>
<td></td>
<td>$4,992,739</td>
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</tbody>
</table>

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

### 116-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

**Fund 2521 FY 2009 Org 0228**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>$550,092</td>
</tr>
</tbody>
</table>

2 Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 2521, activity 096) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

### 117-Office of Technology-Chief Technology Officer Administration Fund
APPROPRIATIONS

(WV Code Chapter 5A)

Fund 2531 FY 2009 Org 0231

1 Unclassified-Total ............ 096 $ 2,047,236

2 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 2009 Org 0305

1 Personal Services ............ 001 $ 366,741
2 Annual Increment ............ 004 7,594
3 Employee Benefits ............ 010 120,665
4 Unclassified ............ 099 363,374
5 Total ............... $ 858,374

119-Division of Forestry-
Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2009 Org 0305

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

120-Division of Forestry-
Severance Tax Operations

(WV Code Chapter 11)
Fund 3084 FY 2009 Org 0305

1 Unclassified-Total ............... 096 $ 2,248,548

121-Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2009 Org 0306

1 Personal Services ............... 001 $ 25,821
2 Employee Benefits ............... 010 2,547
3 Unclassified .................... 099 189,911
4 Total .......................... $ 218,279

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

122-West Virginia Development Office-Department of Commerce Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2009 Org 0307

1 Unclassified-Total ............... 096 $ 3,018,485

123-Division of Labor-Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2009 Org 0308

1 Personal Services ............... 001 $ 1,095,009
2 Annual Increment ............... 004 15,928
3 Employee Benefits ............... 010 490,417
### 124-Division of Labor-
**Elevator Safety Act**

(WV Code Chapter 21)

Fund 3188 FY 2009 Org 0308

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$80,254</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,418</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$32,329</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$69,841</td>
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<tr>
<td>Total</td>
<td></td>
<td><strong>$183,842</strong></td>
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</table>

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

(WV Code Chapter 21)

Fund 3191 FY 2009 Org 0308

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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<td><strong>$135,595</strong></td>
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</tbody>
</table>

### 126-Division of Labor-
**Amusement Rides and Amusement Attraction Safety Fund**

(WV Code Chapter 21)

Fund 3192 FY 2009 Org 0308

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td><strong>$106,142</strong></td>
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</tbody>
</table>

### 127-Division of Labor-
**State Manufactured Housing Administration Fund**

(WV Code Chapter 21)
### 128-Division of Labor-Weights and Measures Fund

(WV Code Chapter 47)

**Fund 3195 FY 2009 Org 0308**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
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<tr>
<td>2 Annual Increment</td>
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<td>$1,654</td>
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<td>3 Employee Benefits</td>
<td>010</td>
<td>$48,029</td>
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<td>4 Unclassified</td>
<td>099</td>
<td>$26,382</td>
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<tr>
<td>5 BRIM Premium</td>
<td>913</td>
<td>$3,404</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$181,672</strong></td>
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### 129-Division of Natural Resources

(WV Code Chapter 20)

**Fund 3200 FY 2009 Org 0310**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>096</td>
<td>$50,000</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), and Capital Improvements and Land**
13 Purchase (fund 3200, activity 248) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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

(WV Code Chapter 20)

**Fund 3202 FY 2009 Org 0310**

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

**131-Division of Natural Resources-Nongame Fund**

(WV Code Chapter 20)

**Fund 3203 FY 2009 Org 0310**

1 Personal Services ............. 001 $ 754,478
2 Annual Increment ............. 004 12,152
3 Employee Benefits .......... 010 275,416
4 Unclassified ................. 099 325,380
5 Total ........................ $ 1,367,426

**132-Division of Natural Resources-Planning and Development Division**

(WV Code Chapter 20)

**Fund 3205 FY 2009 Org 0310**

1 Personal Services ............. 001 $ 128,043
2 Annual Increment ............. 004 2,194
3 Employee Benefits .......... 010 44,199
4 Unclassified ................. 099 226,500
5 Total ........................ $ 400,936
133-Division of Natural Resources-
Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2009 Org 0310

1 Unclassified-Total .................. 096 $ 211,660

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

(WV Code Chapter 20)

Fund 3256 FY 2009 Org 0310

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

135-Miners' Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2009 Org 0314

1 Personal Services .................. 001 $ 92,456
2 Employee Benefits .................. 010 27,467
3 WV Mining Extension Service ...... 026 150,000
4 Unclassified ......................... 099 1,048,000
5 Total .................................. $1,317,923

136-Division of Energy-
Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2009 Org 0328
1 Energy Assistance—Total (R) . . . 647 $ 300,000

2 Any unexpended balance remaining in the appropriation for Energy Assistance-Total (fund 3010, activity 647) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

137-Division of Energy-
Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3011 FY 2009 Org 0328

1 Unclassified-Total (R) . . . . . . 096 $ 835,111

2 Any unexpended balance remaining in the above appropriation for Unclassified-Total (fund 3011, activity 096) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

DEPARTMENT OF EDUCATION

138-State Board of Education-
Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2009 Org 0402

1 Unclassified-Total (R) . . . . . . 096 $ 807,545

2 Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 3937, activity 096) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

139-State Department of Education-
School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2009 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2009 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<tr>
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<td>Employee Benefits</td>
<td>010 244,215</td>
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<td>4</td>
<td>Unclassified</td>
<td>099 266,715</td>
</tr>
<tr>
<td>5</td>
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<td>$1,224,124</td>
</tr>
</tbody>
</table>

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

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

(WV Code Chapter 18)

Fund 3960 FY 2009 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
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DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 29)
### Fund 3508 FY 2009 Org 0431

<table>
<thead>
<tr>
<th>Item Description</th>
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<tbody>
<tr>
<td>Governor's Honor Academy</td>
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<tr>
<td>EPSCoR (R)</td>
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<td>Educational Enhancements (R)</td>
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<td>Literacy Project</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$909,368</strong></td>
</tr>
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</table>

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 3508, activity 096), EPSCoR (fund 3508, activity 571), EPSCoR—Total (fund 3508, activity 651) and Educational Enhancements (fund 3508, activity 695) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

### 142-Division of Culture and History—Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2009 Org 0432

<table>
<thead>
<tr>
<th>Item Description</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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### 143-State Board of Rehabilitation—Division of Rehabilitation Services—West Virginia Rehabilitation Center—Special Account

(WV Code Chapter 18)

Fund 8664 FY 2009 Org 0932

<table>
<thead>
<tr>
<th>Item Description</th>
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<tbody>
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### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### 144-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2009 Org 0312

<table>
<thead>
<tr>
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<th>Description</th>
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</thead>
<tbody>
<tr>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>185,953</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>1,792,680</td>
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<td><strong>Total</strong></td>
<td></td>
<td>$2,574,747</td>
</tr>
</tbody>
</table>

#### 145-Division of Environmental Protection-Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2009 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2009 Org 0313</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$311,800</td>
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<td>Annual Increment</td>
<td>8,060</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>118,984</td>
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<td>160,202</td>
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<tr>
<td><strong>Total</strong></td>
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<td>$599,046</td>
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#### 146-Division of Environmental Protection-Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2009 Org 0313

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>FY 2009 Org 0313</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$314,004</td>
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<td>2</td>
<td>Annual Increment</td>
<td>3,670</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>92,763</td>
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<td>594,510</td>
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### 147-Division of Environmental Protection-Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2009 Org 0313

<table>
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<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
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<td>$17,963,733</td>
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### 148-Division of Environmental Protection-Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2009 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$866,798</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$4,885</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>$302,808</td>
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<td>4</td>
<td>Unclassified</td>
<td>$801,653</td>
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<td>$1,976,144</td>
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### 149-Division of Environmental Protection-Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2009 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$866,798</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$302,808</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$801,653</td>
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<td>5</td>
<td>Total</td>
<td>$1,976,144</td>
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</table>

### 150-Division of Environmental Protection-Mining and Reclamation Operations Fund
### Ch. 10] APPROPRIATIONS

(WV Code Chapter 22)

**Fund 3324 FY 2009 Org 0313**

<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>$3,979,202</td>
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<td>2</td>
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<td>004</td>
<td>69,222</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>1,805,114</td>
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<td>099</td>
<td>3,262,525</td>
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<td>5</td>
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<td>$9,116,063</td>
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**151-Division of Environmental Protection-Underground Storage Tank Administrative Fund**

(WV Code Chapter 22)

**Fund 3325 FY 2009 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>$260,084</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,635</td>
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<td>010</td>
<td>93,757</td>
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<td>4</td>
<td>Unclassified</td>
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<td>196,796</td>
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<td>5</td>
<td>Total</td>
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<td>$559,272</td>
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**152-Division of Environmental Protection-Hazardous Waste Emergency Response Fund**

(WV Code Chapter 22)

**Fund 3331 FY 2009 Org 0313**

<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>$500,293</td>
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<td>004</td>
<td>10,354</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td></td>
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</table>
### Appropriations

**153-Division of Environmental Protection—Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Cost</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$555,571</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$183,266</td>
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<td>Unclassified</td>
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<td>$4,026,024</td>
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**154-Division of Environmental Protection—Solid Waste Enforcement Fund**

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Cost</th>
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<tr>
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<td>010</td>
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**155-Division of Environmental Protection—Air Pollution Control Fund**

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Cost</th>
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</thead>
<tbody>
<tr>
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<td>Employee Benefits</td>
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[Ch. 10]
### 156-Division of Environmental Protection-Environmental Laboratory Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2009 Org 0313

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

### 157-Division of Environmental Protection-Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2009 Org 0313

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

### 158-Division of Environmental Protection-Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2009 Org 0313

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

### 159-Division of Environmental Protection-Recycling Assistance Fund
176 APPROPRIATIONS

(WV Code Chapter 22)

Fund 3487 FY 2009 Org 0313

1 Personal Services ............... 001 $ 377,564
2 Annual Increment ................. 004 6,310
3 Employee Benefits ............... 010 132,289
4 Unclassified (R) .................. 099 2,256,743
5 Total ........................... $ 2,772,906

Any unexpended balance remaining in Unclassified (fund 3487, activity 099) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

160-Division of Environmental Protection-Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2009 Org 0313

1 Personal Services ............... 001 $ 769,474
2 Annual Increment ................. 004 10,633
3 Employee Benefits ............... 010 281,953
4 Unclassified ...................... 099 492,090
5 Total ........................... $ 1,554,150

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

(WV Code Chapter 22C)

Fund 3371 FY 2009 Org 0315

1 Personal Services ............... 001 $ 155,814
2 Annual Increment ................. 004 2,976
3 Employee Benefits ................ 010 $37,262
4 Unclassified ...................... 099 $33,206
5 Total .............................. $229,258

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

162-Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2009 Org 0505

1 Personal Services ................. 001 $257,886
2 Annual Increment .................. 004 7,750
3 Employee Benefits ................ 010 110,056
4 Unclassified ...................... 099 101,366
5 Total .............................. $477,058

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

163-WV Board of Medicine

(WV Code Chapter 30)

Fund 5106 FY 2009 Org 0506

1 Unclassified-Total .................. 096 $1,224,852

164-Division of Health-
Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2009 Org 0506
Any unexpended balances remaining in the above appropriations for Institutional Facilities Operations (fund 5124, activity 335) and Tobacco Education Program (fund 5124, activity 906) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009, except for $2,206,610.58 for fund 5124, activity 335, fiscal year 2003; $963,157.19 for fund 5124, activity 335, fiscal year 2006; and $962,749.96 for fund 5124, activity 335, fiscal year 2007, which shall expire on June 30, 2008.

165-Division of Health-
Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2009 Org 0506

1 Personal Services .............. 001 $ 342,687
2 Annual Increment .............. 004 11,190
3 Employee Benefits .............. 010 152,411
4 Unclassified ................... 099 633,288
5 Total ........................ $ 1,139,576

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

(WV Code Chapter 16)

Fund 5156 FY 2009 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
Appropriations

Total ...................... $ 66,394,129

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009, except for fund 5156, activity 040 (fiscal year 2007) which shall expire on June 30, 2008.

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 services fund (fund 0525, fiscal year 2009, 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, 2008, 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
### Fund 5163 FY 2009 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>001</td>
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<td>Annual Increment</td>
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<td>13,774</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>255,534</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,302,955</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,184,264</td>
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</tbody>
</table>

**168-Division of Health-Health Facility Licensing**

### Fund 5172 FY 2009 Org 0506

<table>
<thead>
<tr>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$423,536</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>154,620</td>
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<td>4</td>
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<td>186,626</td>
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<td>5</td>
<td>Total</td>
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</tbody>
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**169-Division of Health-Hepatitis B Vaccine**

### Fund 5183 FY 2009 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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**170-Division of Health-Lead Abatement Fund**
### Fund 5204 FY 2009 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>$40,000</td>
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</table>

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

### Fund 5214 FY 2009 Org 0506

<table>
<thead>
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</thead>
<tbody>
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<td>Personal Services</td>
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<tr>
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<tr>
<td>Total</td>
<td>$24,891,177</td>
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**172-Division of Health-Tobacco Control Special Fund**

### Fund 5218 FY 2009 Org 0506

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

**173-West Virginia Health Care Authority—Health Care Cost Review Fund**

### Fund 5375 FY 2009 Org 0507

<table>
<thead>
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<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>$31,072</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$680,128</td>
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</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 $1,500,000 from this fund to the West Virginia Health Information Network Account (fund 5380) as authorized per 16-29G-4.

### 174-West Virginia Health Care Authority - West Virginia Health Information Network Account

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund 5380 FY 2009 Org 0507</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified ............... 099 $ 1,500,000</td>
</tr>
<tr>
<td>2  Technology Infrastructure</td>
</tr>
<tr>
<td>3  Network ............ 351 $ 3,500,000</td>
</tr>
<tr>
<td>4  Total ................. $ 5,000,000</td>
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</table>

### 175-West Virginia Health Care Authority - Revolving Loan Fund

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund 5382 FY 2009 Org 0507</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified-Total ........ 096 $ 6,000,000</td>
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### 176-Division of Human Services - Health Care Provider Tax
### APPROPRIATIONS

(WV Code Chapter 11)

**Fund 5090 FY 2009 Org 0511**

<table>
<thead>
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<th>Item Description</th>
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<tbody>
<tr>
<td>Medical Services</td>
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<tr>
<td>Medical Services Administrative Costs</td>
<td>$789,409,869</td>
</tr>
<tr>
<td>Total</td>
<td>$166,005,147</td>
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</tbody>
</table>

4. From the above appropriation, an amount not to exceed $209,623 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).

**177-Division of Human Services-Child Support Enforcement**

(WV Code Chapter 48A)

**Fund 5094 FY 2009 Org 0511**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Unclassified-Total (R)</td>
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</table>

2. Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 5094, activity 096) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009, except $3,000,000 for fund 5094, activity 096, fiscal year 2006 and $2,315,968 for fund 5094, activity 096, fiscal year 2007 which shall expire on June 30, 2008.

**178-Division of Human Services-Medical Services Trust Fund**

(WV Code Chapter 9)

**Fund 5185 FY 2009 Org 0511**
Medical Services Administrative Costs $ 528,691

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.

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

(WV Code Chapter 16)

Fund 5454 FY 2009 Org 0511

1 Unclassified-Total ............... 096 $ 1,609,076

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

(WV Code Chapter 48)

Fund 5455 FY 2009 Org 0511

1 Unclassified-Total ............... 096 $ 838,022

181-Division of Human Services-
West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)
Fund 5467 FY 2009 Org 0511

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

182-Division of Human Services-
West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2009 Org 0511

1 Unclassified-Total ............ 096 $ 3,300,000

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

183-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 2009 Org 0601

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

184-State Armory Board-
General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2009 Org 0603

1 Unclassified-Total ............ 096 $ 1,459,901
185-Division of Homeland Security and Emergency Management-West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2009 Org 0606

1 Unclassified-Total (R) ............. 096 $ 2,000,000

2 Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 6295, activity 096) at the close of fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

186-West Virginia Division of Corrections-Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2009 Org 0608

1 Personal Services ............... 001 $ 175,493
2 Annual Increment ............... 004 2,071
3 Employee Benefits ............. 010 69,037
4 Unclassified .................. 099 496,204
5 Total ......................... $ 742,805

187-West Virginia State Police-Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2009 Org 0612

1 Personal Services ............... 001 $ 761,976
2 Annual Increment ............... 004 31,880
3 Employee Benefits ............. 010 302,258
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.

188-West Virginia State Police-Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2009 Org 0612

1 Unclassified ....................... 099 $ 1,327,000
2 BRIM Premium ..................... 913 154,452
3 Total .............................. $ 1,481,452

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.

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

(WV Code Chapter 15)

Fund 6516 FY 2009 Org 0612

1 Unclassified ....................... 099 $ 444,980
2 BRIM Premium ..................... 913 77,222
3 Total .............................. $ 522,202

190-West Virginia State Police-Surplus Transfer Account
Fund 6519 FY 2009 Org 0612

<table>
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<td>3</td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 6519, fiscal year 2008, activity 099) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

191-West Virginia State Police-Central Abuse Registry Fund

Fund 6527 FY 2009 Org 0612

<table>
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192-West Virginia State Police-Bail Bond Enforcer Fund

Fund 6532 FY 2009 Org 0612

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<tr>
<td>1</td>
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<td>$3,308</td>
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</table>

193-Division of Veterans' Affairs-Veterans' Facilities Support Fund

(WV Code Chapter 15)
Fund 6703 FY 2009 Org 0613

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

194-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2009 Org 0615

1 Personal Services ................. 001 $ 1,348,744
2 Annual Increment ................. 004 21,860
3 Employee Benefits ............... 010 433,097
4 Debt Service .................. 040 9,000,000
5 Unclassified .................. 099 545,235
6 Total ........................ $ 11,348,936

195-Division of Veterans' Affairs-
Veterans' Home

(WV Code Chapter 9A)

Fund 6754 FY 2009 Org 0618

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

196-Fire Commission-
Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2009 Org 0619

1 Personal Services ................. 001 $ 1,850,929
2 Annual Increment ................. 004 31,024
3 Employee Benefits ............... 010 654,695
4 Unclassified .................. 099 1,505,575
5 Total ........................ $ 4,042,223
Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2008 is hereby available for expenditure as part of the fiscal year 2009 appropriation.

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

(WV Code Chapter 62)

Fund 6386 FY 2009 Org 0620

1 Unclassified-Total ............ 096 $ 2,010,348

198-Criminal Justice Services-
Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2009 Org 0620

1 Unclassified-Total ............ 096 $ 2,544,773

DEPARTMENT OF REVENUE

199-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2009 Org 0303

1 Personal Services ............... 001 $ 1,751,407
2 Annual Increment ............... 004 $ 22,320
3 Employee Benefits ............. 010 $ 528,449
4 Unclassified .................. 099 $ 692,658
5 Total ......................... $ 2,994,834
200–Office of the Secretary-
State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2009 Org 0701

1 Unclassified-Total-Transfer . . . . 402 $13,700,000

2 The above appropriation for Unclassified-Total-Transfer
shall be transferred to the Other Post-Employment
Contribution Accumulation Fund (fund 2541, org 0232).

201-Tax Division-
Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2009 Org 0702

1 Personal Services ................. 001 $17,274
2 Annual Increment ................. 004 310
3 Employee Benefits ............... 010 5,845
4 Unclassified .................... 099 7,747
5 Total .......................... $31,176

202-Tax Division-
Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2009 Org 0702

1 Personal Services ................. 001 $895,551
2 Annual Increment ................. 004 23,100
3 Employee Benefits ............... 010 331,342
4 Unclassified .................... 099 229,847
5 Total ...................... $ 1,479,840

203-Tax Division-
Special District Excise Tax Administration Fund

(WV Code Chapter 11)

Fund 7086 FY 2009 Org 0702

1 Unclassified-Total ............ 096 $ 51,372

204-Tax Division-
Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2009 Org 0702

1 Unclassified-Total ............ 096 $ 255,734

205-State Budget Office-
Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2009 Org 0703

1 Public Employees Insurance Reserve
2 Fund—Transfer ............... 903 $ 6,800,000

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

206-Insurance Commissioner-
Examination Revolving Fund
### Fund 7150 FY 2009 Org 0704

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<thead>
<tr>
<th>Item</th>
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<tr>
<td>Personal Services</td>
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<td>004</td>
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<tr>
<td>Employee Benefits</td>
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#### 207-Insurance Commissioner-Consumer Advocate

### Fund 7151 FY 2009 Org 0704

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<th>Item</th>
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<td>Employee Benefits</td>
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#### 208-Insurance Commissioner

### Fund 7152 FY 2009 Org 0704

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<td>Annual Increment (R)</td>
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<td>14,320,190</td>
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<td><strong>Total (R)</strong></td>
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Any unexpended balances remaining in the appropriations at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.
9 The total amount of this appropriation shall be paid from
10 a special revenue fund out of collections of fees and charges
11 as provided by law.

209-Insurance Commissioner—Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2009 Org 0704

1 Unclassified-Total ............. 096 $550,000,000

210-Insurance Commissioner—Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2009 Org 0704

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

211-Insurance Commissioner—Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2009 Org 0704

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

212-Insurance Commissioner—Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2009 Org 0704
<table>
<thead>
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<th>Account</th>
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<td>096</td>
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<tr>
<td>096</td>
<td>213-Insurance Commissioner--Private Carrier Guaranty Fund</td>
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<tr>
<td>096</td>
<td>214-Insurance Commissioner--Assigned Risk Fund</td>
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<tr>
<td>096</td>
<td>215-Lottery Commission--Revenue Center Construction Fund</td>
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<td>096</td>
<td>216-Municipal Bond Commission</td>
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<tr>
<td>001</td>
<td>Personal Services</td>
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<td>$163,463</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
<td></td>
<td>67,128</td>
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</table>
APPROPRIATIONS [Ch. 10

196

4 Unclassified .................. 099 $ 88,089
5 Total ............................ $ 324,012

217-Racing Commission-
Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2009 Org 0707

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

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

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

218-Racing Commission-
Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2009 Org 0707

1 Personal Services .............. 001 $ 123,351
2 Annual Increment ............... 004 2,170
3 Employee Benefits .............. 010 33,056
4 Unclassified .................. 099 82,161
5 Total ............................ $ 240,738

219-Racing Commission-
General Administration

(WV Code Chapter 19)

Fund 7305 FY 2009 Org 0707
1 Personal Services .................. 001 $1,822,625
2 Annual Increment .................. 004 25,206
3 Employee Benefits ................. 010 433,993
4 Unclassified ...................... 099 755,728
5 Total ............................. $3,037,552

220-Racing Commission-
Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2009 Org 0707

1 Unclassified-Total ............... 096 $1,500,956

221-Alcohol Beverage Control Administration-
Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2009 Org 0708

1 Personal Services .................. 001 $112,338
2 Annual Increment .................. 004 3,780
3 Employee Benefits ................. 010 50,468
4 Unclassified ...................... 099 140,324
5 Total ............................. $306,910

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

222-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2009 Org 0708
1 Personal Services .................. 001  $3,867,662
2 Annual Increment .................. 004  98,092
3 Employee Benefits ................. 010  1,666,014
4 Unclassified (R) ................. 099  3,362,948
5 Total ............................. $8,994,716

Any unexpended balance remaining in the appropriation for Unclassified (fund 7352, activity 099) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

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

223-Division of Motor Vehicles-
Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220  FY 2009  Org 0802

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

224-Division of Motor Vehicles-
Motor Vehicle Fees Fund
### APPROPRIATIONS

(WV Code Chapter 17B)

**Fund 8223** FY 2009 Org 0802

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2009</th>
<th>Org 0802</th>
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<tr>
<td>1</td>
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225-Division of Highways-
A. James Manchin Fund

(WV Code Chapter 17)

**Fund 8319** FY 2009 Org 0803

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<tr>
<th>Item</th>
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<th>Org 0803</th>
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<tbody>
<tr>
<td>1</td>
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<td>$ 3,276,000</td>
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</table>

226-Public Port Authority-
Special Railroad and Intermodal Enhancement Fund

(WV Code Chapter 17)

**Fund 8254** FY 2009 Org 0806

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2009</th>
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<tr>
<td>1</td>
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### BUREAU OF SENIOR SERVICES

227-Bureau of Senior Services-
Community Based Service Fund

(WV Code Chapter 22)

**Fund 5409** FY 2009 Org 0508

<table>
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<tr>
<th>Item</th>
<th>Description</th>
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<th>Org 0508</th>
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<td>$ 5,000,000</td>
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### HIGHER EDUCATION

228-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 2009  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 appropriations at the close of fiscal year 2008 are hereby  
   reappropriated for expenditure during the fiscal year 2009.  

7 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 of  
   each year.  

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

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

(WV Code Chapters 18 and 18B)  

Fund 4903  FY 2009  Org 0442  

1 Debt Service (R) .............. 040    $23,470,321  
2 General Capital Expenditures (R)  306    3,000,000
Facilities Planning and Administration (R) ........ 386
Total ........................................ $26,882,885

Any unexpended balances remaining in the appropriations at the close of fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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.

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

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2009 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

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.
231-Health Sciences-
West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2009 Org 0463

1 Unclassified-Total (R) ........... 096 $15,812,292

Any unexpended balance remaining in the appropriation at the close of fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

MISCELLANEOUS BOARDS AND COMMISSIONS

232-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2009 Org 0509

1 Personal Services ................. 001 $ 48,520
2 Annual Increment .................. 004 1,116
3 Employee Benefits ............... 010 18,567
4 Unclassified ...................... 099 30,572
5 Total ............................ $ 98,775

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.

233-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2009 Org 0906
234-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2009 Org 0907

<table>
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235-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2009 Org 0926

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<td>Employee Benefits</td>
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<tr>
<td>Unclassified</td>
<td>$2,957,041</td>
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<td>PSC Weight Enforcement</td>
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<td>Debt Payment/Capital Outlay</td>
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<tr>
<td>BRIM Premium</td>
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<tr>
<td>Total</td>
<td>$19,066,396</td>
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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 8625, org 0926) due to the amendment and reenactment of §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.
### 236-Public Service Commission—
**Gas Pipeline Division**

*Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

**Fund 8624 FY 2009 Org 0926**

<table>
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<tr>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services</td>
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6. 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.

### 237-Public Service Commission—
**Motor Carrier Division**

(WV Code Chapter 24A)

**Fund 8625 FY 2009 Org 0926**

<table>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,873,436</strong></td>
</tr>
</tbody>
</table>

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

(WV Code Chapter 24)

**Fund 8627 FY 2009 Org 0926**

<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>$533,932</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>8,692</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>165,481</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>339,611</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>3,978</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,051,694</strong></td>
</tr>
</tbody>
</table>

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

### 239--Real Estate Commission

(WV Code Chapter 30)

**Fund 8635 FY 2009 Org 0927**

<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>$368,686</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>8,828</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>121,671</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>300,622</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$799,807</strong></td>
</tr>
</tbody>
</table>

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

### 240-WV Board of Examiners for Speech-Language Pathology and Audiology

(WV Code Chapter 30)
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.

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

Total TITLE II, Section 3-
Other Funds .............. $1,384,272,607

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

After first satisfying the requirements for Fund 2252,
Fund 3963, and Fund 4908 pursuant to section eighteen,
article twenty-two, chapter twenty-nine of the code, the
director of the lottery shall make available from the
remaining net profits of the lottery any amounts needed to
pay debt service for which an appropriation is made for Fund
9065, Fund 4297, and Fund 3514 and is authorized to transfer
any such amounts to Fund 9065, Fund 4297, and Fund 3514
for that purpose. Upon receipt of reimbursement of amounts
so transferred, the director of the lottery shall deposit the
reimbursement amounts to the following accounts as required
by this section.

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

(WV Code Chapter 5)
### Appropriations [Ch. 10]

#### Fund 2252 FY 2009 Org 0211

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

#### 246-West Virginia Development Office-
Division of Tourism

(WV Code Chapter 5B)

#### Fund 3067 FY 2009 Org 0304

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism-Telemarketing Center .. 463</td>
<td>$ 90,000</td>
</tr>
<tr>
<td>WV Film Office ..................... 498</td>
<td>360,680</td>
</tr>
<tr>
<td>Tourism-Advertising (R) ........... 618</td>
<td>3,151,519</td>
</tr>
<tr>
<td>Tourism-Unclassified (R) ......... 662</td>
<td>4,358,529</td>
</tr>
<tr>
<td>Total ................................ $ 7,960,728</td>
<td></td>
</tr>
</tbody>
</table>

6. 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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

#### 247-Division of Natural Resources

(WV Code Chapter 20)

#### Fund 3267 FY 2009 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gypsy Moth Suppression .. 017</td>
<td>$ 42,997</td>
</tr>
<tr>
<td>Program for State Parks (R) .. 017</td>
<td>$ 42,997</td>
</tr>
</tbody>
</table>
Ch. 10] APPROPRIATIONS

3 Unclassified (R) .............. 099  2,304,163
4 Pricketts Fort State Park .... 324  120,000
5 Non-Game Wildlife (R) ...... 527  435,683
6 State Parks and
7 Recreation Advertising (R) .. 619  589,402
8 Total ...................... . 3,492,245

9 Any unexpended balances remaining in the
10 appropriations for Gypsy Moth Suppression Program for
11 State Parks (fund 3267, activity 017), Unclassified (fund
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 and State Parks-Special Projects (fund 3267, activity 860) at
16 the close of the fiscal year 2008 are hereby reappropriated for
17 expenditure during the fiscal year 2009.

248-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2009 Org 0402

1 Unclassified ..................... 099 $ 4,200,000
2 READS Program .............. 365  300,000
3 MATH Program .............. 368  0
4 FBI Checks .............. 372  111,546
5 Vocational Education
6 Equipment Replacement .... 393  819,750
7 Assessment Program (R) .... 396  6,495,906
8 21st Century Fellows .......... 507  300,000
9 SAS in Schools ............. 613  125,000
10 21st Century Technology Infrastructure
11 Network Tools and Support (R) 933  22,838,746
12 Total ...................... . $ 35,190,948

13 Any unexpended balances remaining in the
14 appropriations for Unclassified (fund 3951, activity 099),
Technology Infrastructure Network (fund 3951, activity 351), Assessment Program (fund 3951, activity 396), Technology Demonstration Project (fund 3951, activity 639), 21st Century Technology Infrastructure Network Tools and Support (fund 3951, activity 933), and Computer Study (fund 3951, activity 998) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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

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

(WV Code Chapter 18)

Fund 3963 FY 2009 Org 0402

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

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

(WV Code Chapter 5F)

Fund 3508 FY 2009 Org 0431

1 Unclassified (R) ............... 099 $ 120,000
2 WV Humanities Council ......... 168 0
3 Commission for National and
   Community Service ............ 193 435,050
Ch. 10] APPROPRIATIONS 211

5 Arts Programs (R) ............ 500 80,000
6 College Readiness (R) ........ 579 203,080
7 Challenger Learning Center .... 862 125,000
8 Statewide STEM 21st ............ 
9 Century Academy ............ 897 150,000
10 Special Olympic Games ........ 966 0
11 Total ...................... $ 1,113,130

12 Any unexpended balances remaining in the
13 appropriations for Unclassified (fund 3508, activity 099),
14 Arts Programs (fund 3508, activity 500), College Readiness
15 (fund 3508, activity 579) and Literacy Project (fund 3508,
16 activity 899) at the close of fiscal year 2008 are hereby
17 reappropriated for expenditure during the fiscal year 2009.

251-Division of Culture and History-
Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2009 Org 0432

1 Huntington Symphony ............ 027 $ 100,000
2 Martin Luther King, Jr.
3 Holiday Celebration ............ 031 10,800
4 Fairs and Festivals ............ 122 *2,686,000
5 Archeological Curation/Capital
6 Improvements (R) ............ 246 52,611
7 Historic Preservation Grants (R) . 311 553,935
8 West Virginia Public Theater . . . . 312 200,000
9 Tri-County Fair Association . . . . 343 *25,000
10 George Tyler Moore Center for the
11 Study of the Civil War ........ 397 60,000
12 Theater Arts of West Virginia . . 464 300,000

*CLERK'S NOTE: The Governor reduced the amount on line 4 from $2,990,000
to $2,686,000; and on line 9 he reduced the amount from $125,000 to
$25,000.
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Greenbrier Valley Theater</td>
<td>423</td>
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<tr>
<td>14</td>
<td>Marshall Artists Series</td>
<td>518</td>
</tr>
<tr>
<td>15</td>
<td>Grants for Competitive Arts Program (R)</td>
<td>624</td>
</tr>
<tr>
<td>16</td>
<td>West Virginia State Fair</td>
<td>657</td>
</tr>
<tr>
<td>17</td>
<td>Contemporary American</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Theater Festival</td>
<td>811</td>
</tr>
<tr>
<td>19</td>
<td>Independence Hall</td>
<td>812</td>
</tr>
<tr>
<td>20</td>
<td>Mountain State Forest Festival</td>
<td>864</td>
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<tr>
<td>21</td>
<td>WV Symphony</td>
<td>907</td>
</tr>
<tr>
<td>22</td>
<td>Wheeling Symphony</td>
<td>908</td>
</tr>
<tr>
<td>23</td>
<td>Appalachian Children’s Chorus</td>
<td>916</td>
</tr>
<tr>
<td>24</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>$6,172,346</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Archeological Curation/Capital Improvements (fund 3534, activity 246), Historic Preservation Grants (fund 3534, activity 311), Capital Outlay, Repairs and Equipment (fund 3534, activity 589), Grants for Competitive Arts Program (fund 3534, activity 624), and Project ACCESS (fund 3534, activity 865) at the close of the fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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) *5,000 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,
48 Apple Butter Festival (Morgan) 6,000, Aracoma Story
49 (Logan) 50,000, Arkansaw Homemaker's Heritage Weekend
50 (Hardy) 3,500, Armed Forces Day-South Charleston
51 (Kanawha) 3,000, Arthurdale Heritage New Deal Festival
52 (Preston) 5,000, Arts Monongahela (Monongalia) 20,000,
53 Athens Town Fair (Mercer) 2,000, Augusta Fair (Randolph)
54 5,000, Barbour County Arts & Humanities Council 1,500,
55 Barbour County Fair 25,000, Barboursville Octoberfest
56 (Cabell) 5,000, Bass Festival (Pleasants) 1,850, Battelle
57 District Fair (Monongalia) 5,000, Battle of Dry Creek
58 (Greenbrier) 1,500, *Battle of Lewisburg-Civil War Days
59 (Greenbrier) 3,000, Battle of Point Pleasant Memorial
60 Committee (Mason) 5,000, Beckley Main Street (Raleigh)
61 5,000, Belington VFD Community Fair (Barbour) 1,750,
62 Belle Boyd House (Berkeley) 2,000, Belle Town Fair
63 (Kanawha) 4,500, Bergoo Down Home Days (Webster)
64 2,500, Berkeley County Youth Fair 3,500, Birch River Days
65 Festival (Nicholas) 2,000, Black Bear 4K Mountain Bike
66 Race 1,000, Black Heritage Festival (Harrison) 6,000, Black
67 Walnut Festival (Roane) 10,000, Blue-Gray Reunion
68 (Barbour) 3,500, Boone County Fair *10,000 6,500, Boone
69 County Labor Day Celebration 4,000, Bradshaw Fall Festival
70 (McDowell) 2,000, Bramwell Street Fair (Mercer) 1,500,
71 Braxton County Fairs and Festivals Association 11,500,
72 Brooke County Fair *3,500 2,500, Bruceton Mills Good
73 Neighbor Days (Preston) 2,000, Buckwheat Festival
74 (Preston) 8,500, Buffalo 4th of July Celebration (Putnam)
75 500, Buffalo Creek Memorial (Logan) 5,000, Burlington
76 Apple Harvest Festival (Mineral) 30,000, Cabell County Fair
77 10,000, Calhoun County Wood Festival 2,000, Cape
78 Coalwood Festival Association (McDowell) 2,500, Capon
79 Bridge Annual VFD Celebration (Hampshire) 1,000, Capon
80 Springs Ruritan 4th of July (Hampshire) 1,000, Carnegie
81 Hall, Inc. (Greenbrier) 70,000, Cass Homecoming
82 (Pocahontas) 2,000, Cedarville Town Festival (Gilmer)
83 *1,000 500, Celebration in the Park (Wood) 4,000,
84 Celebration of America (Monongalia) 6,000, Ceredo
85 Historical Society (Wayne) 2,000, Ceredo-Kenova Railroad
86 Museum (Wayne) 2,000, Chapmanville Apple Butter Festival
87 (Logan) 1,000, Chapmanville Fire Department 4th of July
88 3,000, Charles Town Christmas Festival (Jefferson) 5,000,
89 Charles Town Heritage Festival (Jefferson) 5,000, Charleston
90 Sternwheel Regatta (Kanawha) 20,000, Cherry River Festival
91 (Nicholas) 6,500, Chester Fireworks (Hancock) 1,500,
92 *Chester Fourth of July Festivities (Hancock) 5,000; Chief
93 Logan State Park-Civil War Celebration (Logan) 8,000,
94 Christmas in Shepherdstown (Jefferson) 4,000, *Christmas
95 in the Park (Brooke) 5,000; Christmas in the Park (Logan)
96 25,000, City of Dunbar Critter Dinner (Kanawha) 10,000,
97 *City of Pinegrove Centennial Celebration (Wetzel) 5,000,
98 City of Pleasant Valley Celebration (Marion) 2,500, Civil
99 War Horse Cavalry Race (Barbour) 1,000, Clay County
100 Golden Delicious Apple Festival 5,000, Coal Field Jamboree
101 (Logan) 35,000, Coalton Days Fair (Randolph) 7,000, Collis
102 P. Huntington Railroad Historical Society 10,000, Country
103 Roads Festival (Fayette) 2,000, Cowen Railroad Festival
104 (Webster) 3,500, Craigsville Fall Festival (Nicholas) 3,500,
105 Delbarton Homecoming (Mingo) *3,500 2,000, Doddridge
106 County Fair 5,200, Dunlow Fall Festival (Wayne) 2,000,
107 Durbin Days (Pocahontas) 5,000, Elbert/Filbert Reunion
108 Festival (McDowell) 1,500, Elizabethtown Festival
109 (Marshall) 4,000, Fairview 4th of July Celebration (Marion)
110 1,000, Farm Safety Day (Preston) 2,000, Fayette American
111 Legion 4th of July 1,000, FestivALL Charleston (Kanawha)
112 20,000, First Stage Children's Theater Company (Cabell)
113 2,000, Flanagan Murrell House (Summers) 10,000, Flatwood
114 Days (Braxton) 1,000, Flemington Day Fair and Festival
115 (Taylor) 3,500, Follansbee Community Days (Brooke)
116 *8,250 7,250, Fort Ashby Fort (Mineral) 1,500, Fort Gay
117 Mountain Heritage Days (Wayne) 5,000, Fort New Salem
118 (Harrison) 3,700, Fort Randolph (Mason) 5,000, Frankford
119 Autumnfest (Greenbrier) *5,000 3,000, Franklin Fishing
Ch. 10] APPROPRIATIONS 215

120 Derby (Pendleton) 7,500, *Freshwater Folk Festival (Greenbrier) 5,000, Friends Auxiliary of W.R. Sharpe Hospital 5,000, *Frontier Days (Harrison) 3,000, Frontier Fest/Canaan Valley (Taylor County) 5,000, Fund for the Arts-Wine & All that Jazz Festival 2,500, Gassaway Days Celebration (Braxton) 5,000, General Adam Stephen Memorial Foundation 18,525, Gilbert Kiwanis Harvest Festival (Mingo) *4,000 3,000, Gilbert Spring Fling (Mingo) 5,000, Gilmer County Farm Show *4,000 3,500, Grafton Mother's Day Shrine Committee (Taylor) 8,500, Grant County Arts Council 2,000, Grape Stomping Wine Festival (Nicholas) 2,000, *Great Greenbrier River Race (Pocahontas) 50,000, Greater Quinwood Days (Greenbrier) 2,000, Green Spring Days (Hampshire) 1,000, Guyandotte Civil War Days (Cabell) 10,000, Hamlin 4th of July Celebration (Lincoln) 5,000, Hampshire Civil War Celebration Days 1,000, *Hampshire County 4th of July Celebration 20,000, Hampshire County Fair 6,000, Hampshire County French & Indian War Celebration 1,000, Hampshire Heritage Days 3,000, Hancock County Oldtime Fair 5,000, Hardy County Commission - 4th of July 10,000, Hardy County Tour and Crafts Association 20,000, Harts Community Celebration (Lincoln) 1,000, *Hatfield McCoy Matewan Reunion Festival (Mingo) 5,000, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) 5,000, Heritage Craft Center of the Eastern Panhandle 7,000, *Heritage Craft Festival (Monroe) 1,000, Heritage Days Festival (Roane) 1,500, Heritage Farm Museum & Village (Cabell) 50,000, Hicks Festival (Tucker) 2,000, Hilltop Festival (Huntington) 1,000, Hinton Railroad Days (Summers) 5,500, Historic Fayette Theater (Fayette) 5,500, Historic Middleway Conservancy (Jefferson) 1,000, Holly River Festival (Webster) 1,500, Hundred 4th of July (Wetzel) 7,250, Hundred American Legion Earl Kiger Post Bluegrass Festival (Wetzel) 2,000, Huntington Outdoor Theater (Cabell) 2,000, *Hurricane 4th of July Celebration (Putnam)
<table>
<thead>
<tr>
<th>Event Description</th>
<th>Location</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iaeger Lions Club Annual Golf Show</td>
<td>McDowell</td>
<td>5,000</td>
</tr>
<tr>
<td>Iaeger Town Fair</td>
<td>McDowell</td>
<td>1,500</td>
</tr>
<tr>
<td>Indian Mound Cemetery</td>
<td>Hampshire</td>
<td>2,000</td>
</tr>
<tr>
<td>International Ramp Cook-Off</td>
<td>Randolph</td>
<td>2,000</td>
</tr>
<tr>
<td>Irish Heritage Festival of WV</td>
<td>Raleigh</td>
<td>5,000</td>
</tr>
<tr>
<td>Italian Heritage Festival-Clarksburg</td>
<td>Harrison</td>
<td>2,000</td>
</tr>
<tr>
<td>Irish Spring Festival</td>
<td>Lewis</td>
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<tr>
<td>Jefferson Co. Black History Preservation Society</td>
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<tr>
<td>Jefferson Co. Historical Landmark Commission</td>
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<tr>
<td>Jefferson County African American Heritage Festival</td>
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<td>Jefferson County Fair Association</td>
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<tr>
<td>Jersey Mountain Ruritan Pioneer Days</td>
<td>Hampshire</td>
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<tr>
<td>John Henry Days Festival</td>
<td>Monroe</td>
<td>5,000</td>
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<tr>
<td>Johnnie Johnson Blues and Jazz Festival</td>
<td>Marion</td>
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<td>Johnstown Community Fair</td>
<td>Harrison</td>
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<tr>
<td>Kanawha Coal Riverfest-St. Albans July</td>
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<td>Kay Ford Reunion</td>
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<td>Kenova Fall Festival</td>
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<tr>
<td>Kermit Fall Festival</td>
<td>Mingo</td>
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<td>Keyser Old Fashioned 4th of July Celebration</td>
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<td>King Coal Festival</td>
<td>Mingo</td>
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<td>Kingwood Downtown Street Fair and Heritage Days</td>
<td>Preston</td>
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<tr>
<td>Veterans Reunion</td>
<td>Greenbrier</td>
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</tr>
<tr>
<td>Lady of Agriculture (Preston)</td>
<td></td>
<td>1,000</td>
</tr>
<tr>
<td>Lamb and Steer Show</td>
<td>Lewis</td>
<td>9,000</td>
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<tr>
<td>Larry Joe Harless Center Octoberfest Hatfield McCoy Trail</td>
<td>Mingo</td>
<td>5,000</td>
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<tr>
<td>Last Blast of Summer</td>
<td>McDowell</td>
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<td>Laurel Mt. Re-enactment Committee</td>
<td>Barbour</td>
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<td>VFD Lawn Association</td>
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<td>Lewis County Fair Association</td>
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<td>Lewisburg Shanghai</td>
<td>Greenbrier</td>
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<tr>
<td>Lincoln County Fall Festival</td>
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<tr>
<td>Lincoln County Winterfest</td>
<td>Marion</td>
<td>5,000</td>
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<tr>
<td>Lincoln District Fair</td>
<td>Marion</td>
<td>2,500</td>
</tr>
<tr>
<td>Lindside 4th of July</td>
<td>Monroe</td>
<td>500</td>
</tr>
<tr>
<td>Little Birch Days Celebration</td>
<td>Braxton</td>
<td>500</td>
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<tr>
<td>Little Levels Heritage Festival</td>
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<tr>
<td>Logan County Arts and Crafts Fair</td>
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<td>4,000</td>
</tr>
<tr>
<td>Freedom Festival</td>
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<td>10,000</td>
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<tr>
<td>Lost Creek Community Festival</td>
<td>Cabell</td>
<td>7,500</td>
</tr>
</tbody>
</table>
Ch. 10] APPROPRIATIONS

192 Mannington District Fair (Marion) 6,000, Maple Syrup
193 Festival (Randolph) 1,000, Marion County FFA Farm Fest
194 2,500, Marmet Annual Labor Day Celebration (Kanawha)
195 2,000, Marshall County Antique Power Show 2,500,
196 Marshall County Fair 7,500, Marshall County Historical
197 Society 8,500, Mason County Fair 5,000, Mason Dixon
198 Festival (Monongalia) 7,000, Matewan Massacre
199 Reenactment (Mingo) *6,000 5,000, Matewan-Magnolia Fair
200 (Mingo) *45,000 20,000, McAERTS-McDowell County
201 20,000, McCoy Theater (Hardy) 20,000, McDowell County
202 Fair 2,500, McGrew House History Day 2,000, McNeill's
203 Rangers (Mineral) 8,000, Meadow Bridge Hometown
204 Festival (Fayette) 1,250, Meadow River Days Festival 3,000,
205 Mercer Bluestone Valley Fair 2,000, Mercer County Fair
206 2,000, Mid Ohio Valley Antique Engine Festival (Wood)
207 3,000, Milton Christmas in the Park (Cabell) 2,500, Milton
208 Fourth of July Celebration (Cabell) 2,500, Mineral County
209 Fair 1,750, Mineral County Veterans Day Parade 1,500,
210 Molasses Festival (Calhoun) 2,000, Moncove Lake Festival
211 (Monroe) 2,000, Monroe County Farmer's Day - Union
212 2,000, *Monroe County Harvest Festival 2,000, Morgan
213 County Fair History Wagon 1,500, Morgantown Theater
214 Company 20,000, Mothers' Day Festival (Randolph) 2,500,
215 Moundsville Bass Festival 4,000, Moundsville July 4th
216 Celebration (Marshall) 5,000, Mount Liberty Fall Festival
217 (Barbour) 2,500, Mountain Fest (Monongalia) 20,000,
218 Mountain Festival (Mercer) 4,625, Mountain Heritage Arts
219 and Crafts Festival 5,000, Mountain Music Festival 2,500,
220 Mountain State Apple Harvest Festival (Berkeley) 7,500,
221 Mountain State Arts Crafts Fair Cedar Lakes (Jackson) 5,000,
222 Mountaineer Boys' State (Lewis) 10,000, Mountaineer Hot
223 Air Balloon Festival (Monongalia) 4,000, Mud River Festival
224 (Lincoln) 8,000, Mullens Dogwood Festival (Wyoming)
225 6,000, Multi-Cultural Festival of West Virginia 20,000,
226 Museum in the Community (Putnam) 45,000, Music Hall of
227 Fame (Marion) 5,000, *New Cumberland Christmas Parade
(Hancock) 3,000, New Cumberland Fourth of July Fireworks
(Hancock) 5,000, New River Bridge Day Festival (Fayette)
*40,000 35,000, Newburg Volunteer Fireman's Field Day
(Preston) 1,000, Newell Annual Clay Festival (Hancock)
3,000, *Nicholas County Fair 5,000, Nicholas County Potato
Festival 3,500, Nicholas Old Main Foundation (Nicholas)
2,000, Norman Dillon Farm Museum (Berkeley) 10,000,
North Preston Farmers Club - Civil War Times 1,000, North
River Valley Festival (Hampshire) 1,000, Northern Preston
Mule Pull and Farmers Days 4,000, Oak Leaf Festival
(Fayette) 4,000, Oceana Heritage Festival (Wyoming) 6,000,
Oglebay City Park - Festival of Lights (Ohio) *80,000
75,000, Oglebay Festival (Ohio) *40,000 5,000, Ohio County
Fair 8,500, Ohio Valley Beef Association (Wood) 2,500, Old
Central City Fair (Huntington) 5,000, Old Opera House
Theater Company (Jefferson) 15,000, Old Tyme Christmas
(Jefferson) 2,400, Paden City Labor Day Festival (Wetzel)
6,500, 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
(Ritchie) 2,000, Petersburg Fourth of July Celebration
(Grant) 20,000, Petersburg HS Celebration (Grant) 10,000,
Peterstown 4th of July Horse Show (Grant) 1,000, Piedmont-
Annual Back Street Festival (Mineral) 4,000, Pinch Reunion
(Kanawha) 1,500, Pine Bluff Fall Festival (Harrison) 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 Stern Wheel Regatta
(Mason) 5,900, Potomac Highlands Maple Festival (Grant)
6,000, Princeton Street Fair (Mercer) 5,000, Putnam County
Fair 5,000, Quartets on Parade (Hardy) 4,000, Rainelle Fall
264 Festival (Greenbrier) 3,000, Raleigh County All Wars
265 Museum 10,000, Randolph County Community Arts Council
266 3,000, Randolph County Fair 7,000, Ranson Christmas
267 Festival (Jefferson) 5,000, Ranson Festival (Jefferson) 5,000,
268 Ravenswood Oktoberfest (Jackson) 5,000, Ravenswood Ohio
269 River Festival (Jackson) 3,000, Reedsville VFD Fair
270 (Preston) 2,000, Renick Liberty Festival (Greenbrier) 1,000,
271 Rhododendron Girls' State (Ohio) 10,000, Riders of the
272 Flood (Greenbrier) 3,000, Ripley 4th of July (Jackson)
273 15,000, Ritchie County Fair and Exposition *5,000 2,000,
274 Ritchie County Pioneer Days 1,000, Ritter Park Days
275 (Cabell) 3,000, River Heritage Days - Speed Boat Race
276 (Wetzel) 5,000, River Heritage Days Festival (Wetzel) 6,000,
277 Riverfest (Marion) 2,000, Roane Co. 4-H and FFA Youth
278 Livestock Program 5,000, Roane County Agriculture Field
279 Day 3,000, Ronceverte River Festival (Greenbrier) *5,000
280 3,000, Rowlesburg Labor Day Festival (Preston) 1,000,
281 Rupert Country Fling (Greenbrier) 3,000, Salem Apple
282 Butter Festival (Harrison) 4,000, Scottish Heritage Society/N.
283 Central WV Central 5,000, Sistersville 4th of July Fireworks
284 (Tyler) 5,500, Smoke on the Water (Kanawha) 2,000, Smoke
285 on the Water (Wetzel) 3,000, *Society for the Preservation of
286 McGrew House (Preston) 3,500, Soldiers' Memorial Theater
287 (Raleigh) 10,000, Southern Wayne County Fall Festival
288 1,000, Southern WV Veterans' Museum (Summers) 4,500,
289 Spirit of Grafton Celebration (Taylor) 7,000, Spring
290 Mountain Festival (Grant) 4,000, Springfield Peach Festival
291 (Hampshire) 1,200, St. Albans City of Lights - December
292 5,000, *St. Spyridon Greek Festival (Harrison) 2,500, Stoco
293 Reunion (Raleigh) 2,500, Stonewall Jackson Heritage Arts
294 and Crafts 11,000, Storytelling Festival (Lewis) 500,
295 Strawberry Festival (Upshur) *30,000 20,000, Summers
296 County Historic Landmark Commission 5,000, *Taste of
297 Parkersburg (Wood) 5,000, Taylor County Fair 5,500, Terra
298 Alta VFD 4th of July Celebration (Preston) 1,000, Those
299 Who Served War Museum (Mercer) 4,000, Three Rivers
300  Avian Center (Summers) 15,000, Three Rivers Coal Festival
301  (Marion) 7,750, Thunder on the Tygart - Mothers' Day
302  Celebration *15,000 5,000, Town of Delbarton 4th of July
303  Celebration 3,000, *Town of Fayetteville Heritage Festival
304  (Fayette) 7,500; Town of Matoka-annual Hog Roast (Mercer)
305  1,000, Treasure Mountain Festival (Pendleton) 25,000, Tri-
306  County Fair (Grant) 15,000, Tucker County Arts Festival and
307  Celebration 18,000, Tucker County Fair 4,750, Tucker
308  County Health Fair 2,000, Tug Valley Arts Council (Mingo)
309  5,000, Tug Valley Chamber of Commerce Coal House
310  (Mingo) 2,000, Tunnelton Depot Days (Preston) 1,000,
311  Tunnelton Historical Society (Preston) 2,000, Turkey Festival
312  (Hardy) 3,000, Tyler County Fair 5,200, Tyler County Fourth
313  of July 500, Uniquely West Virginia Festival (Morgan)
314  2,000, Upper Ohio Valley Italian Festival (Ohio) 7,000,
315  Upper West Fork Blue Grass Festival (Calhoun) 500, Upshur
316  County Fair 7,000, Valley District Fair- Reedsville (Preston)
317  3,500, *Veterans Welcome Home Celebration (Cabell) 3,000,
318  Volcano Days at Mountwood Park (Wood) 5,000, War
319  Homecoming Fall Festival 1,500, Wardensville Fall Festival
320  (Hardy) 5,000, Wayne County Fair 5,000, Wayne County
321  Fall Festival 5,000, Webb Chapel Cemetery Association
322  Event (Preston) 2,000, Webster County Wood Chopping
323  Festival *15,000 4,500, Webster Wild Water Weekend 2,000,
324  Weirton July 4th Celebration (Hancock) *20,000 3,000,
325  Wellsburg 4th of July Celebration (Brooke) 7,500, Wellsburg
326  Apple Festival of Brooke County 5,000, West Virginia
327  Autumn Festival (Braxton) 2,500, West Virginia Blackberry
328  Festival (Harrison) 5,000, West Virginia Coal Festival
329  (Boone) *10,000 7,000, West Virginia Dairy Cattle Show
330  10,000, *West Virginia Dandelion Festival (Greenbrier)
331  5,000; West Virginia Fair and Exposition (Wood) 8,100,
332  West Virginia Fireman's Rodeo (Fayette) 2,500, West
333  Virginia Highland Games & Celtic Festival 3,000, West
334  Virginia Honey Festival (Wood) 2,000, West Virginia
335  Museum of Glass (Lewis) 5,000, West Virginia Oil and Gas
Festival (Tyler) 11,000, West Virginia Polled Hereford Assoc. 1,500, West Virginia Poultry Festival (Hardy) 5,000, West Virginia Pumpkin Festival (Cabell) *10,000 7,500, West Virginia Roundhouse Rail Days (Berkeley) 25,000, West Virginia State Folk Festival (Gilmer) *5,000 4,500, West Virginia Water Festival - City of Hinton (Summers) 16,000, West Virginia Wine & Jazz Festival (Monongalia) 9,000, West Virginia Wine and Arts Festival (Berkeley) 5,000, Weston VFD 4th of July Firemen Festival (Lewis) 2,000, Wetzel County Autumnfest 5,500, Wetzel County Town and Country Days 17,000, Wheeling Celtic Festival (Ohio) 2,000, Wheeling City of Lights (Ohio) 8,000, Wheeling Sternwheel Regatta (Ohio) 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 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, 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 (Ohio) 100,000, Youth Museum of Southern WV (Raleigh) 12,000, Youth Stockman Beef Expo. (Lewis) 2,000, Z.D. Ramsdell House (Wayne) 4,500.

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

252-Library Commission-
Lottery Education Fund

(WV Code Chapter 10)
### APPROPRIATIONS

**Fund 3559 FY 2009 Org 0433**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Books and Films</td>
<td>179</td>
<td>$450,000</td>
</tr>
<tr>
<td>2 Services to Libraries</td>
<td>180</td>
<td>$550,000</td>
</tr>
<tr>
<td>3 Grants to Public Libraries</td>
<td>182</td>
<td>*8,348,884</td>
</tr>
<tr>
<td>4 Digital Resources</td>
<td>309</td>
<td>219,992</td>
</tr>
<tr>
<td>5 Libraries-Special Projects</td>
<td>625</td>
<td>800,000</td>
</tr>
<tr>
<td>6 Infomine Network</td>
<td>884</td>
<td>1,184,686</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$12,553,562</strong></td>
</tr>
</tbody>
</table>

*CLERK’S NOTE: The Governor reduced the amount on line 3 from $9,348,884 to $8,348,884; and he reduced the amount on line 10 from $3,100,000 to $2,600,000.*

**253-Bureau of Senior Services-Lottery Senior Citizens Fund**

(WV Code Chapter 29)

**Fund 5405 FY 2009 Org 0508**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$137,542</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>2,600</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>59,675</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>348,881</td>
</tr>
<tr>
<td>5 Local Programs Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Delivery Costs</td>
<td>200</td>
<td>2,475,250</td>
</tr>
<tr>
<td>7 Silver Haired Legislature</td>
<td>202</td>
<td>15,000</td>
</tr>
<tr>
<td>8 Area Agencies Administration</td>
<td>203</td>
<td>78,685</td>
</tr>
<tr>
<td>9 Senior Citizen Centers and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Programs (R)</td>
<td>462</td>
<td>*2,600,000</td>
</tr>
<tr>
<td>11 Transfer to Division of Human</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 Services for Health Care and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13 Title XIX Waiver for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14 Senior Citizens</td>
<td>539</td>
<td>23,822,578</td>
</tr>
<tr>
<td>15 Roger Tompkins Alzheimers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 Respite Care</td>
<td>643</td>
<td>1,795,864</td>
</tr>
</tbody>
</table>

*CLERK’S NOTE: The Governor reduced the amount on line 3 from $9,348,884 to $8,348,884; and he reduced the amount on line 10 from $3,100,000 to $2,600,000.*
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Regional Aged and Disabled Resource Center</td>
</tr>
<tr>
<td>18</td>
<td>Senior Services Medicaid Transfer</td>
</tr>
<tr>
<td>19</td>
<td>Legislative Initiatives for the Elderly</td>
</tr>
<tr>
<td>20</td>
<td>Long Term Care Ombudsman</td>
</tr>
<tr>
<td>21</td>
<td>BRIM Premium</td>
</tr>
<tr>
<td>22</td>
<td>West Virginia Elder Watch</td>
</tr>
<tr>
<td>23</td>
<td>In-Home Services and Nutrition for Senior Citizens</td>
</tr>
<tr>
<td>24</td>
<td>WV Senior Corps</td>
</tr>
<tr>
<td>25</td>
<td>Total</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, activity 462) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

*From the above appropriation for Senior Citizen Centers and Programs (fund 5405, activity 462) $500,000 is for emergency needs as determined by the Commissioner of Senior Services:

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.

*CLERK’S NOTE: The Governor struck language on lines 34 through 37.
## Appropriations

### Fund 4908 FY 2009 Org 0442

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service-Total</td>
<td>310</td>
<td>$5,000,000</td>
</tr>
</tbody>
</table>

*255-Higher Education Policy Commission-
Lottery Education-
Higher Education Policy Commission-
Control Account*

(WV Code Chapters 18B and 18C)

### Fund 4925 FY 2009 Org 0441

<table>
<thead>
<tr>
<th>Description</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>$464,080</td>
</tr>
<tr>
<td>2 WVU Health Sciences- RHI Program and Site Support (R)</td>
<td>035</td>
<td>1,276,388</td>
</tr>
<tr>
<td>3 District Consortia (R)</td>
<td>036</td>
<td>2,410,172</td>
</tr>
<tr>
<td>4 RHI Program and Site Support- RHEP Program</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>104,915</td>
</tr>
<tr>
<td>6 Debt Service (R)</td>
<td>040</td>
<td>0</td>
</tr>
<tr>
<td>7 Higher Education Grant Program (R)</td>
<td>164</td>
<td>0</td>
</tr>
<tr>
<td>8 Tuition Contract Program (R)</td>
<td>165</td>
<td>1,020,809</td>
</tr>
<tr>
<td>9 Minority Doctoral Fellowship (R)</td>
<td>166</td>
<td>150,000</td>
</tr>
<tr>
<td>10 Underwood—Smith Scholarship Program-Student Awards (R)</td>
<td>167</td>
<td>141,142</td>
</tr>
<tr>
<td>11 Health Sciences Scholarship (R)</td>
<td>176</td>
<td>250,787</td>
</tr>
<tr>
<td>24</td>
<td>Vice Chancellor for Health Sciences—Rural Health Residency Program (R)</td>
<td>601</td>
</tr>
<tr>
<td>25</td>
<td>MA Public Health Program and Health Science Technology (R)</td>
<td>623</td>
</tr>
<tr>
<td>26</td>
<td>Marshall University Graduate College Writing Project (R)</td>
<td>807</td>
</tr>
<tr>
<td>27</td>
<td>HEAPS Grant Program (R)</td>
<td>867</td>
</tr>
<tr>
<td>28</td>
<td>WV Engineering, Science, and Technology Scholarship Program (R)</td>
<td>868</td>
</tr>
<tr>
<td>29</td>
<td>Health Sciences Career Opportunities Program (R)</td>
<td>869</td>
</tr>
<tr>
<td>30</td>
<td>HSTA Program (R)</td>
<td>870</td>
</tr>
<tr>
<td>31</td>
<td>WV Autism Training Center (R)</td>
<td>932</td>
</tr>
<tr>
<td>32</td>
<td>Center for Excellence in Disabilities (R)</td>
<td>967</td>
</tr>
<tr>
<td>33</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of fiscal year 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

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.

Total TITLE II, Section 4-
Lottery Revenue | $170,096,512
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.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified-Total-Transfer . . . . . 402</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Unclassified-Total-Transfer . . . . . 402</td>
</tr>
</tbody>
</table>

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

Fund 4295 FY 2009 Org 0441

1 Unclassified-Total-Transfer ........ 402 $ 27,000,000

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

6 The Legislature has explicitly set a finite amount of
7 available appropriations and directed the administrators of
8 the Program to provide for the award of scholarships within
9 the limits of available appropriations.

259-Economic Development Authority-
Economic Development Project Fund

Fund 9065 FY 2009 Org 0944

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

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

260-School Building Authority

Fund 3514 FY 2009 Org 0402

1 Unclassified-Total .............. 096 $ 19,000,000
Any unexpended balance remaining in the appropriation for Unclassified-Total-Transfer (fund 3514, activity 402) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

261-West Virginia Infrastructure Council

Fund 3390 FY 2009 Org 0316

1 Unclassified-Total-Transfer . . . . 402 $ 40,000,000

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.

262-Higher Education Improvement Fund

Fund 4297 FY 2009 Org 0441

1 Unclassified-Total ................. 096 $ 10,000,000

263-State Park Improvement Fund

Fund 3277 FY 2009 Org 0310

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

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

Appropriations to the State Park Improvement Fund are not to be expended on personal services or employee benefits.

264-Lottery Commission-Excess Lottery Revenue Fund Surplus
Ch. 10] APPROPRIATIONS 229

Fund 7208 FY 2009 Org 0705

1 Capital Outlay-Parks ............ 288  $       0
2 Other Post Employee Benefits-
3 Transfer .......................... 289  46,600,000
4 Capitol Complex-Capital Outlay . 417  18,200,000
5 Unclassified-Transfer ............ 482  62,900,000
6 School Access Safety .......... 978  8,000,000
7 Total .............................. $135,700,000

8 The above appropriation for Unclassified-Transfer
9 (activity 482) shall be transferred to the General Revenue
10 Fund only after all funding required by chapter twenty-nine,
11 article twenty-two, section eighteen-a of the code has been
12 satisfied as determined by the director of the lottery.

13 The above appropriation for School Access Safety (fund
14 7208, activity 978), shall be transferred to the School Access
15 Safety Fund (fund 3516) only after all funding required by
16 chapter twenty-nine, article twenty-two, section eighteen-a of
17 the code and the transfer to the General Revenue Fund (fund
18 7208, org 0705, activity 482) has been satisfied as
19 determined by the director of the lottery.

20 The above appropriation for Capitol Complex-Capital
21 Outlay (fund 7208, activity 417), shall be transferred to the
22 Capitol Dome and Capital Improvements Fund (fund 2257)
23 only after all the appropriations for activities 482 and 978
24 have been satisfied.

25 The above appropriation for Other Post-Employee
26 Benefits-Transfer (fund 7208, activity 289) shall be
27 transferred to the Other Post-Employment Contribution
28 Accumulation Fund (fund 2541, org 0232) only after the
29 above appropriations for activities 482, 978, and 417 have
30 been satisfied.
Should the actual revenues accruing to the total Excess Lottery Fund be insufficient to fully fund all appropriations, the appropriation to the Other Post-Employee Benefits-Transfer (activity 289) shall be reduced to the extent funds are available and the appropriation made in the reduced amount and thereafter transferred to the Other Post-Employment Contribution Accumulation Fund (fund 2541).

265—Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2009 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 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

266—Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2009 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 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

267—Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2009 Org 0231
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 2008 are hereby reappropriated for expenditure during the fiscal year 2009.

268—West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2009 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 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

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.

269-Division of Health—Central Office

(WV Code Chapter 16)

Fund 5219 FY 2009 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 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

270—Tax Division

(WV Code Chapter 11)

Fund 7082 FY 2009 Org 0702

Any unexpended balance remaining in the appropriation for Remittance Processor—Lottery Surplus (fund 7082, activity 054) at the close of the fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

Total TITLE II, Section 5-
Excess Lottery Funds $ 330,700,000

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 nine.

LEGISLATIVE

271-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2009 Org 2300

<table>
<thead>
<tr>
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<th>Federal Funds</th>
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<tr>
<td>Unclassified-Total</td>
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JUDICIAL

272-Supreme Court

Fund 8867 FY 2009 Org 2400

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

EXECUTIVE

273-Governor's Office-
Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2009 Org 0100

1 Unclassified-Total ............ 096 $ 7,272,541

274-Governor's Office-
Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2009 Org 0100

1 Unclassified-Total ............ 096 $ 5,668,195

275-Auditor's Office-
National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2009 Org 1200

1 Unclassified-Total ............ 096 $ 14,006,826

276-Department of Agriculture
234 APPROPRIATIONS [Ch. 10

(WV Code Chapter 19)

Fund 8736 FY 2009 Org 1400

1 Unclassified-Total .......... 096 $ 4,303,826

277-Department of Agriculture-
Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2009 Org 1400

1 Unclassified-Total .......... 096 $ 852,868

278-Department of Agriculture-
State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2009 Org 1400

1 Unclassified-Total .......... 096 $ 1,814,314

279-Secretary of State-
State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2009 Org 1600

1 Unclassified-Total .......... 096 $ 832,108

DEPARTMENT OF ADMINISTRATION

280-West Virginia Prosecuting Attorney’s Institute
### APPROPRIATIONS

(WV Code Chapter 7)

**Fund 8834 FY 2009 Org 0228**

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*281-Children's Health Insurance Agency*

(WV Code Chapter 5)

**Fund 8838 FY 2009 Org 0230**

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### DEPARTMENT OF COMMERCE

*282-Division of Forestry*

(WV Code Chapter 19)

**Fund 8703 FY 2009 Org 0305**

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*283-Geological and Economic Survey*

(WV Code Chapter 29)

**Fund 8704 FY 2009 Org 0306**

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*284-West Virginia Development Office*

(WV Code Chapter 5B)

**Fund 8705 FY 2009 Org 0307**
<table>
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<tr>
<th>Item</th>
<th>Description</th>
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<th>Fiscal Year</th>
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<td>1</td>
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<td>8706</td>
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<td>1</td>
<td>Reed Act 2002—Unemployment Compensation</td>
<td>8835</td>
<td>FY 2009</td>
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</table>

236 APPROPRIATIONS [Ch. 10

1 Unclassified-Total ............... 096 $ 9,684,681

285 - Division of Labor
(WV Code Chapters 21 and 47)

Fund 8706 FY 2009 Org 0308

1 Unclassified-Total ............... 096 $ 566,143

286 - Division of Natural Resources
(WV Code Chapter 20)

Fund 8707 FY 2009 Org 0310

1 Unclassified-Total ............... 096 $ 8,568,663

287 - Division of Miners' Health, Safety and Training
(WV Code Chapter 22)

Fund 8709 FY 2009 Org 0314

1 Unclassified-Total ............... 096 $ 784,352

288 - Workforce West Virginia
(WV Code Chapter 23)

Fund 8835 FY 2009 Org 0323

1 Unclassified ..................... 099 $ 512,657
2 Reed Act 2002—Unemployment Compensation ............... 622 $ 2,850,000
4 Reed Act 2002—Employment Services ............... 630 $ 1,650,000
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 Workforce West Virginia 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.

289-Division of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2009 Org 0328

1 Unclassified-Total ............. 096 $ 1,505,435

DEPARTMENT OF EDUCATION

290-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2009 Org 0402

1 Unclassified-Total ............. 096 $ 230,320,468

291-State Department of Education School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2009 Org 0402

6 Total ......................... $ 5,012,657
APPROPRIATIONS

1 Unclassified-Total 096 $114,028,264

292-State Board of Education-Vocational Division
(WV Code Chapters 18 and 18A)
Fund 8714 FY 2009 Org 0402

1 Unclassified-Total 096 $16,536,946

293-State Department of Education-Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
Fund 8715 FY 2009 Org 0402

1 Unclassified-Total 096 $103,764,986

DEPARTMENT OF EDUCATION AND THE ARTS

294-Department of Education and the Arts-Office of the Secretary
(WV Code Chapter 5F)
Fund 8841 FY 2009 Org 0431

1 Unclassified-Total 096 $325,000

295-Division of Culture and History
(WV Code Chapter 29)
Fund 8718 FY 2009 Org 0432
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<td>297</td>
<td>Educational Broadcasting Authority</td>
<td>0439</td>
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<td>298</td>
<td>State Board of Rehabilitation-Division of Rehabilitation Services</td>
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<td>$27,224,316</td>
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<td>299</td>
<td>State Board of Rehabilitation-Division of Rehabilitation Services-Disability Determination Services</td>
<td>0932</td>
<td>$21,731,781</td>
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

300-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2009 Org 0313

1 Unclassified-Total ............... 096 $ 139,010,466

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

301-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2009 Org 0506

1 Unclassified-Total ............... 096 $ 7,325,557

302-Division of Health-
Central Office

(WV Code Chapter 16)

Fund 8802 FY 2009 Org 0506

1 Unclassified-Total ............... 096 $ 86,579,129

303-Division of Health-
West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2009 Org 0506

1 Unclassified-Total ............... 096 $ 16,000,000
304-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2009 Org 0507

1 Unclassified-Total ............ 096 $ 2,577,112

305-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2009 Org 0510

1 Unclassified-Total ............ 096 $ 438,899

306-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2009 Org 0511

1 Unclassified .................. 099 $ 155,854,516
2 Medical Services ............... 189 1,806,784,280
3 Medical Services Administrative
4 Costs .......................... 789 53,282,651
5 Total .......................... $ 2,015,921,447

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

307-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2009 Org 0601

1 Unclassified-Total ............ 096 $ 20,002,304
308-Adjutant General-State Militia

(WV Code Chapter 15)

Fund 8726 FY 2009 Org 0603

1 Unclassified-Total .............. 096 $ 96,633,010

309-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2009 Org 0606

1 Unclassified-Total .............. 096 $ 32,060,431

310-Division of Corrections

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

Fund 8836 FY 2009 Org 0608

1 Unclassified-Total .............. 096 $ 650,000

311-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2009 Org 0612

1 Unclassified-Total .............. 096 $ 1,655,945

312-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2009 Org 0613
Ch. 10] APPROPRIATIONS 243

1 Unclassified-Total ............. 096 $ 2,750,000

313-Division of Veterans' Affairs-Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2009 Org 0618

1 Unclassified-Total ............. 096 $ 1,774,230

314-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2009 Org 0619

1 Unclassified-Total ............. 099 $ 80,000

315-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2009 Org 0620

1 Unclassified-Total ............. 096 $ 12,896,131

316-Division of Juvenile Services

(WV Code Chapter 49)

Fund 8855 FY 2009 Org 0621

1 Unclassified-Total ............. 096 $ 386,875

DEPARTMENT OF REVENUE

317-Insurance Commissioner
APPROPRIATIONS [Ch. 10

(WV Code Chapter 33)

Fund 8883 FY 2009 Org 0704

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

DEPARTMENT OF TRANSPORTATION

318-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2009 Org 0802

1 Unclassified-Total ................ 096 $ 18,167,668

319-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2009 Org 0805

1 Unclassified-Total ................ 096 $ 16,377,478

320-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2009 Org 0806

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

BUREAU OF SENIOR SERVICES

321-Bureau of Senior Services

(WV Code Chapter 29)
Fund 8724 FY 2009 Org 0508

1 Unclassified-Total 096 $14,515,250

MISCELLANEOUS BOARDS AND COMMISSIONS

322-Board of Pharmacy
(WV Code Chapter 30)

Fund 8857 FY 2009 Org 0913

1 Unclassified-Total 096 $155,122

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

Fund 8743 FY 2009 Org 0926

1 Unclassified-Total 096 $1,562,171

324-Public Service Commission-Gas Pipeline Division
(WV Code Chapter 24B)

Fund 8744 FY 2009 Org 0926

1 Unclassified-Total 096 $282,370

325-WV Statewide Addressing and Mapping Board
(WV Code Chapter 24E)

Fund 8868 FY 2009 Org 0940
1 Unclassified-Total .............. 096 $ 100,000

326-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2009 Org 0941

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

327-Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2009 Org 0942

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

2 Total TITLE II, Section 6-
3 Federal Funds $3,114,682,336

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 2009.

328-Governor’s Office-
Office of Economic Opportunity
Community Services

Fund 8799 FY 2009 Org 0100

1 Unclassified-Total .............. 096 $ 9,521,284

329-West Virginia Development Office-
Community Development
Fund 8746 FY 2009 Org 0307

1 Unclassified-Total ............... 096 $ 28,351,067

330-Workforce West Virginia
- Workforce Investment Act

Fund 8749 FY 2009 Org 0323

1 Unclassified-Total ............... 096 $ 25,030,749

331-Division of Health-
Maternal and Child Health

Fund 8750 FY 2009 Org 0506

1 Unclassified-Total ............... 096 $ 10,974,424

332-Division of Health-
Preventive Health

Fund 8753 FY 2009 Org 0506

1 Unclassified-Total ............... 096 $ 2,244,387

333-Division of Health-
Substance Abuse Prevention and Treatment

Fund 8793 FY 2009 Org 0506

1 Unclassified-Total ............... 096 $ 11,586,339

334-Division of Health-
Community Mental Health Services

Fund 8794 FY 2009 Org 0506
1 Unclassified-Total .......... 096 $ 3,345,285

335-Division of Health-Abstinence Education Program

Fund 8825 FY 2009 Org 0506

1 Unclassified-Total .......... 096 $ 1,691,522

336-Division of Human Services-Energy Assistance

Fund 8755 FY 2009 Org 0511

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

337-Division of Human Services-Social Services

Fund 8757 FY 2009 Org 0511

1 Unclassified-Total .......... 096 $ 16,007,529

338-Division of Human Services-Temporary Assistance for Needy Families

Fund 8816 FY 2009 Org 0511

1 Unclassified-Total .......... 096 $ 130,250,890

339-Division of Human Services-Child Care and Development

Fund 8817 FY 2009 Org 0511

1 Unclassified-Total .......... 096 $ 40,022,445

340-Division of Criminal Justice Services-
Juvenile Accountability Incentive Fund 8829 FY 2009 Org 0620

1 Unclassified-Total ............ 096 $ 500,395

2 Total TITLE II, Section 7- Federal Block Grants $304,526,316

Sec. 8. Awards for claims against the state.—There are hereby appropriated for fiscal year 2009, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $1,886,796, special revenue funds in the amount of $558,413, and state road funds in the amount of $713,890 for payment of claims against the state.

Sec. 9. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year two thousand nine appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter eleven-b of the code, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 10. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the
governor on behalf of the state during the fiscal year two thousand nine, 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 nine 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. 11. 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. 12. 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. 13. 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. 14. 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. 15. 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. 16. General school fund.-The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is
appropriated for expenditure in accordance with section
sixteen, article nine-a, chapter eighteen of the code.

TITLE III-ADMINISTRATION.

§1. Appropriations conditional.
§2. Constitutionality.

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.
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 eight, to the Department of Transportation - Division of Motor Vehicles, fund 8787, fiscal year 2008, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 8787, fiscal year 2008, 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

311—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2008 Org 0802

<table>
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The purpose of this supplementary appropriation bill is to supplement and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand eight.

CHAPTER 12

(H.B. 4713 - By Delegates White, Boggs, M. Poling, M. Poling, Campbell, Klemper, Laquinta, Stalnaker and Border)

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT expiring funds to the balance of the Department of Health and Human Resources, West Virginia Health Care Authority -
West Virginia Health Information Network Account, fund 5380, fiscal year 2008, organization 0507, for the fiscal year ending the thirtieth day of June, two thousand eight, in the amount of three million five hundred thousand dollars from the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2008, organization 0218.

WHEREAS, The Governor finds that the account balance in the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2008, organization 0218, exceeds that which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2008, organization 0507, be increased by expiring to that fund three million five hundred thousand dollars from the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2008, organization 0218.

The purpose of this bill is to expire three million five hundred thousand dollars from the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2008, organization 0218 to the balance of the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2008, organization 0507, for the fiscal year ending the thirtieth day of June, two thousand eight.
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 eight, to the Department of Commerce - Division of Labor - Crane Operator Certification Fund, fund 3191, fiscal year 2008, organization 0308, to the Department of Commerce - Miners' Health, Safety and Training Fund, fund 3355, fiscal year 2008, organization 0314, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services - West Virginia Rehabilitation Center - Special Account, fund 8664, fiscal year 2008, organization 0932, and to the Department of Military Affairs and Public Safety - Fire Commission - Fire Marshal Fees, fund 6152, fiscal year 2008, organization 0619, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Commerce - Division of Labor - Crane Operator Certification Fund, fund 3191, fiscal year 2008, organization 0308, the Department of Commerce - Miners' Health, Safety and Training Fund, fund 3355, fiscal year 2008, organization 0314, the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services - West Virginia Rehabilitation Center - Special Account, fund 8664,
fiscal year 2008, organization 0932, and the Department of Military Affairs and Public Safety - Fire Commission - Fire Marshal Fees, fund 6152, fiscal year 2008, organization 0619, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 3191, fiscal year 2008, organization 0308, be supplemented and amended by increasing the total appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE

126-Division of Labor-

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2008 Org 0308

<table>
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</thead>
<tbody>
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<td>$ 20,000</td>
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And, That the total appropriation for fiscal year ending the thirtieth day of June, two thousand eight, to fund 3355, fiscal year 2008, organization 0314, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 3. Appropriations from other funds.
DEPARTMENT OF COMMERCE

136—Miners’ Health, Safety, and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2008 Org 0314

<table>
<thead>
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<th>Activity</th>
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<tbody>
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<td>Disaster Mitigation (R)</td>
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Any unexpended balance remaining in the appropriation for Disaster Mitigation (fund 3355, activity 952) at the close of fiscal year 2008 is hereby reappropriated for expenditure during the fiscal year 2009.

And, That the total appropriation for fiscal year ending the thirtieth day of June, two thousand eight, to fund 8664, fiscal year 2008, organization 0932, be supplemented and amended by increasing the total appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 18)
And, That the total appropriation for fiscal year ending the thirtieth day of June, two thousand eight, to fund 6152, fiscal year 2008, organization 0619, be supplemented and amended by increasing the total appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

193–Fire Commission-
Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2008 Org 0619

The purpose of this supplementary appropriation bill is to supplement, amend, increase and add items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand eight.
CHAPTER 14

(H.B. 4715 - By Delegates White, Boggs, Craig, Kominar, Perdue, M. Poling, Stalnaker, Yost, Ashley, Border and Evans)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 14, 2008.]

AN ACT supplementing, amending and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2008, organization 0803, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document on January 9, 2007 that contains a Statement of the State Road Fund, setting forth therein the cash balances and investments as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It thus appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Road Fund, to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2008, organization 0803, be amended and increased in the line items as follows:
TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

Division of Highways

Fund 9017 FY 2008 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Maintenance, Contract Paving and</td>
</tr>
<tr>
<td>4</td>
<td>Secondary Road Maintenance . . 272</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and increase an existing item in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight.

CHAPTER 15

(S.B. 673 - By Senators Helmick, Sharpe, Plymale, Chafin, Prezioso, Edgell, Love, McCabe, Sypolt, Facemyer, Boley, Sprouse and Guills)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources -
Division of Human Services, fund 0403, fiscal year 2008, organization 0511, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven; and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0403, fiscal year 2008, organization 0511, be supplemented and amended by adding a new item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

65–Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2008 Org 0511
Ch. 16] APPROPRIATIONS 263

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 Social Services - Surplus</td>
<td>082 $5,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation bill is to supplement, amend and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand eight.

CHAPTER 16

(S.B. 674 - By Senators Helmick, Sharpe, Plymale, Chafin, Prezioso, Edgell, Love, McCabe, Sypolt, Facemyer, Boley, Sprouse and Guills)

[Passed March 8, 2008; in effect from passage.] [Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2008, organization 0201, and to the Department of Military Affairs and Public Safety - Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2008, organization 0601, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a statement of the State Fund, General
Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor’s statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0186, fiscal year 2008, organization 0201, be supplemented and amended by decreasing an existing item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF ADMINISTRATION**

*18-Department of Administration-*  
*Office of the Secretary*

*(WV Code Chapter 5F)*

Fund 0186 FY 2008 Org 0201

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Lease Rental Payments</td>
<td>516 $ 775,769</td>
</tr>
</tbody>
</table>
2 And that the total appropriation for the fiscal year ending
3 the thirtieth day of June, two thousand eight, to fund 0186,
4 fiscal year 2008, organization 0201, be supplemented and
5 amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF ADMINISTRATION

18–Department of Administration-
Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2008 Org 0201

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>3a Debt Service</td>
<td>$ 775,769</td>
</tr>
</tbody>
</table>

2 And that the total appropriation for the fiscal year ending
3 the thirtieth day of June, two thousand eight, to fund 0430,
4 fiscal year 2008, organization 0601, be supplemented and
5 amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

66–Department of Military Affairs and Public Safety-
Office of the Secretary
The above appropriation for Unclassified - Transfer (fund 0430, activity 482) shall be transferred to the Department of Military Affairs and Public Safety - Office of the Secretary - Law Enforcement and Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003).

The purpose of this supplemental appropriation bill is to supplement, amend, decrease, increase and add items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand eight.

CHAPTER 17

(Com. Sub. for S.B. 292 - By Senators Minard, Jenkins and Plymale)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §31-17-4 of the Code of West Virginia, 1931, as amended, relating to permitting bond claims by the Commissioner of Banking to collect unpaid civil administrative penalties and unpaid examination invoices while allowing priority for pending consumer claims.
Be it enacted by the Legislature of West Virginia:

That §31-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

(a) Application for a lender's or broker's license shall each year be submitted in writing under oath, in the form prescribed by the commissioner, and shall contain the full name and address of the applicant and, if the applicant is a partnership, limited liability company or association, of every member thereof, and, if a corporation, of each officer, director and owner of ten percent or more of the capital stock thereof and further information as the commissioner may reasonably require. Any application shall also disclose the location at which the business of lender or broker is to be conducted. Application for a loan originator's license shall be initially submitted prior to the first day of September, two thousand two, and thereafter in every fifth year beginning in two thousand five. If the loan originator changes sponsoring mortgage brokers, a new application must be submitted in accordance with this article.

(b) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the
application net worth of at least two hundred fifty thousand dollars;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of one hundred thousand dollars, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

(4) Pay to the commissioner a license fee of one thousand two hundred fifty dollars plus the actual cost of fingerprint processing. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the investigation. An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(c) At the time of making application for a broker's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;
(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least ten thousand dollars;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of fifty thousand dollars, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state: Provided, That the bond must be in the amount of one hundred thousand dollars before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of three hundred fifty dollars plus the actual cost of fingerprint processing; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(d) Application for a loan originator license shall be submitted by the sponsoring mortgage broker prior to the loan originator engaging in mortgage activity, in writing under oath, on a form prescribed by the commissioner. At the time of making application for a loan originator license, the loan originator therefor shall:

(1) Submit a statement under oath that he or she originates loans exclusively for one broker, together with an acknowledgment of employment by the sponsoring mortgage broker;
Pay to the commissioner a license fee of one hundred fifty dollars plus the actual cost of fingerprint processing;

(3) Disclose the location at which the business of the sponsoring mortgage broker is to be conducted by the licensed loan originator; and

(4) If at any time a loan originator ceases working for the sponsoring mortgage broker indicated on the license application, such loan originator and sponsoring mortgage broker shall notify the commissioner within fifteen business days and return the original loan originator license to the Division of Banking. The license of a loan originator is not effective during any period when that person is not employed by a sponsoring mortgage broker licensed under this article and a loan originator shall not be employed simultaneously by more than one sponsoring mortgage broker.

(e) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of the bond.

(f) Nonresident lenders and brokers licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

(g) The commissioner may elect to reduce or waive the application fees, bond amounts and net worth requirements imposed by this section for nonprofit corporations whose residential mortgage lending or brokering activities provide housing primarily to households or persons below the HUD-established median income for their area of residence.
(h) Every broker and lender licensee shall pay a fee of five dollars for each residential mortgage loan originated, made or brokered in a calendar year. This fee shall be paid semiannually to the Division of Banking and remitted with the report required pursuant to subsection (b), section eleven of this article for loans made, brokered or originated during the last six months of the previous calendar year and with the lender or broker license renewal application required pursuant to subsection (b), section seven of this article for the loans made, brokered or originated in the first six months of that calendar year. In the event a licensee ceases operation, it shall remit any fees due since the last reporting period when it relinquishes its license.

(i) If a claim for a consumer restitution is pending on a bond required pursuant to this section when the commissioner makes a claim for a civil administrative penalty or an unpaid examination invoice, the consumer claim shall be resolved before any payments may be made for an unpaid penalty or examination invoice.

CHAPTER 18
(H.B. 2517 - By Delegates Moore, Kominar, Perry, Barker, Carmichael and Ashley)

[Passed February 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on February 14, 2008.]

AN ACT to amend and reenact §31A-8A-2 and §31A-8A-3 of the Code of West Virginia, 1931, as amended, relating to establishing requirements for a West Virginia state bank or a
West Virginia state bank holding company in control of a West Virginia state bank to acquire an out-of-state bank or bank holding company; requiring that the application for the acquisition filed with the appropriate federal regulator be filed with the commissioner of banking prior to the acquisition; exceptions for certain acquisitions involving a merger and establishment of branches.

Be it enacted by the Legislature of West Virginia:

That §31A-8A-2 and §31A-8A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8A. ACQUISITION OF BANKS BY BANK HOLDING COMPANIES.


This article sets forth the conditions under which a company may acquire a West Virginia state bank may form or acquire a West Virginia bank holding company, or may acquire an out-of-state bank or out-of-state bank holding company. This article is intended not to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, 12 U.S.C. §1842(d), as amended, effective September 29, 1995, by Section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328.

§31A-8A-3 Permitted acquisitions.

(a) Except as otherwise expressly permitted by federal law, a company may not form a West Virginia bank holding company or acquire a West Virginia state bank or a bank
holding company controlling a West Virginia state bank without the prior application and approval upon order of the board. A West Virginia state bank or West Virginia state bank holding company which controls, directly or indirectly, a West Virginia state bank may not acquire an out-of-state bank or out-of-state bank holding company without first filing with the commissioner a copy of the application it files with the appropriate federal regulator unless the acquisition involves a merger and establishment of branches pursuant to article eight-d of this chapter.

(b) The prohibition in subsection (a) of this section shall not apply where the acquisition is made:

(1) Solely for the purpose of facilitating an acquisition otherwise permitted under this article;

(2) In a transaction arranged by the commissioner with the consent of the West Virginia board of banking and financial institutions with another state or federal bank supervisory agency to prevent the insolvency or closing of the acquired bank; or

(3) In a transaction in which a national bank or out-of-state state bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company.

(c) In any transaction involving the acquisition or change in control of a West Virginia bank, West Virginia bank holding company, bank branch located in West Virginia by a bank holding company, the formation of a West Virginia bank holding company or the acquisition of a thrift institution in West Virginia by a bank holding company for which an application to the board for approval is not initially required under subsection (a) of this section, the party seeking the action shall give written notice to the commissioner at the
time the application or notice is filed with the responsible federal bank supervisory agency and at least forty-five days before the effective date of the acquisition, unless a shorter period of notice is required under applicable federal law. In addition, the parties shall give the commissioner copies of all final federal and state applications filed in connection with the transaction together with a two hundred fifty dollar filing fee. Unless preempted by federal law, the commissioner has thirty days from receipt of the written notice to object to any proposed transaction, require an application and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner, or, in his or her discretion, the commissioner may, at any time, consent in writing.

(d) To the extent that any acquisition under this section involves the merger of a bank with and into a West Virginia state bank, the merger transaction remains subject to the jurisdiction and approval of the board pursuant to section seven, article seven of this chapter or article eight-d of this chapter, as applicable.

(e) An acquisition shall not be permitted under this article or otherwise if upon consummation of the transaction, the resulting bank or bank holding company, including any depository institutions affiliated with the applicant, would assume sufficient additional deposits to cause it to control deposits in this state in excess of that allowed by section twelve-a, article two of this chapter: Provided, That the commissioner may by rule adopt a procedure whereby the acquisition deposit limitation as set forth in this code may be waived for good cause shown. The commissioner shall calculate the acquisition deposit limitation based upon the most recently available reports containing the deposit information filed with state or federal authorities.
AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating to providing that beer kegs are not considered scrap metal unless the purchaser received the keg or keg parts directly from a beer manufacturer or its authorized representative.

Be it enacted by the Legislature of West Virginia:

That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

1   (a) For the purposes of this section, the following terms have the following meanings:

3   (1) “Business registration certificate” has the same meaning ascribed to it in section two, article twelve, chapter eleven of this code.
(2) "Purchaser" means any person in the business of purchasing scrap metal, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of scrap metal.

(3) "Scrap metal" means any form of copper, aluminum, brass, lead or other nonferrous metal of any kind, or steel railroad track and track material.

(b) Any purchaser of scrap metal shall make a record of such purchase that shall contain the following information for each transaction:

(1) The full name, permanent home and business addresses, and telephone number, if available, of the seller;

(2) A description and the motor vehicle license number of any vehicle used to transport the purchased scrap metal to the place of purchase;

(3) The time and date of the transaction;

(4) A complete description of the kind, character and weight of the scrap metal purchased; and

(5) A statement of whether the scrap metal was purchased, taken as collateral for a loan, or taken on consignment.

(c) A purchaser also shall require and retain from the seller of the scrap metal the following:

(1) A signed certificate of ownership of the scrap metal being sold or a signed authorization from the owner of the scrap metal to sell said scrap metal; and
(2) A photocopy of a valid driver's license or identification card issued by the West Virginia Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid photo identification of the seller issued by any other state or the federal government: Provided, That, if the purchaser has a copy of the seller's valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.

(d) It shall be unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (b) and (c) of this section. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process: Provided, That the purchaser retains and makes available for review consistent with subsection (f) of this section the contract, bill of sale, or similar documentation of the purchase made at wholesale under contract or as a result of a bidding process: Provided, however, That the purchaser may redact any pricing or other commercially sensitive information from said contract, bill of sale, or similar documentation before making it available for inspection.

(e) No purchaser of scrap metal shall knowingly purchase or possess a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the keg or keg parts from the beer manufacturer or its authorized representative.

(f) Within thirty days of the effective date of the amendment and reenactment of this section during the second extraordinary session of the Legislature in two thousand seven, the West Virginia State Police shall make available a standard form purchasers of scrap metal may use to record all the information required under subsections (b) and (c) of this section.
(g) Using the form authorized under subsection (f) above, or his or her own form, a purchaser of scrap metal shall retain the records required by this section at his or her place of business for not less than three years after the date of the purchase. Upon completion of a purchase, the records required to be retained at a purchaser’s place of business shall be available for inspection by any law-enforcement officer or, upon written request and during the purchaser’s regular business hours, by any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property: Provided, That in lieu of the purchaser keeping the records at their place of business, the purchaser shall file the records with the local detachment of the State Police and with the chief of police of the municipality or the sheriff of the county wherein he or she is transacting business within seventy-two hours of completion of the purchase. The records shall be retained by the State Police and the chief of police of the municipality or the sheriff for a period of not less than three years.

(h) To the extent otherwise permitted by law, any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property may accompany a law-enforcement officer upon the premises of a purchaser in the execution of valid warrant or assist law enforcement in the review of records required to be retained pursuant to this section.

(i) Upon the entry of a final determination and order by a court of competent jurisdiction, scrap metal found to have been misappropriated, stolen or taken under false pretenses may be returned to the proper owner of such material.

(j) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial materials having a marginal value per individual unit.
(k) Any person who knowingly or with fraudulent intent violates any provision of this section, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction of a first offense thereof, shall be fined not less than one thousand dollars nor more than three thousand dollars; upon conviction of a second offense thereof, shall be fined not less than two thousand dollars and not more than four thousand dollars and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the tax commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense thereof shall be fined not less than three thousand dollars and not more than five thousand dollars and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the tax commissioner to cancel any business registration certificate held by that person and state the date said cancellation shall take effect.

CHAPTER 20

(H.B. 4078 - By Delegates Morgan, Martin, Argento, Beach, Eldridge, Hartman, D. Poling, Staggers, Andes, Porter and Rowan)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to repeal §29-8-2, §29-8-3, §29-8-4 and §29-8-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §20-5-3 of said code; to amend and reenact §29-8-1, all relating to the termination of the Blennerhassett Island Historical State
Park Commission; exempting the termination of the commission from the wind down provisions of §4-10-12; and providing for the transfer of all remaining property and authority of the commission to the Division of Natural Resources parks and recreation section.

Be it enacted by the Legislature of West Virginia:

That §29-8-2, §29-8-3, §29-8-4 and §29-8-5 of the Code of West Virginia, 1931, as amended be repealed; that §20-5-3 of said code be amended and reenacted; and that §29-8-1 of said code be amended and reenacted, all to read as follows:

Chapter
20. Natural Resources.
29. Miscellaneous Boards and Officers.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5. PARKS AND RECREATION.

§20-5-3. Section of parks and recreation; purpose; powers and duties generally.

1 The purposes of the section of parks and recreation shall be to promote conservation by preserving and protecting natural areas of unique or exceptional scenic, scientific, cultural, archaeological or historic significance and to provide outdoor recreational opportunities for the citizens of this state and its visitors. It shall be the duty of the section of parks and recreation to have within its jurisdiction and supervision:

8 (a) All state parks and recreation areas, including all lodges, cabins, swimming pools, motorboating and all other recreational facilities therein, except the roads heretofore transferred pursuant to section one, article four, chapter seventeen of this code to the state road system and to the responsibility of the commissioner of highways with respect to the construction, reconstruction and maintenance of the roads or any future roads
for public usage on publicly owned lands for future state parks, state forests and public hunting and fishing areas;

(b) The authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks and recreational areas;

(c) The administration of all laws and regulations relating to the establishment, development, protection, use and enjoyment of all state parks and state recreational facilities consistent with the provisions of this article;

(d) The continued operation and maintenance of the Berkeley Springs historical state park, in Morgan County, as a state recreational facility, designated the Berkeley Springs sanitarium under prior enactment of this code;

(e) The continued operation and maintenance of that portion of Washington Carver camp in Fayette County formerly incorporated within the boundaries of Babcock state park;

(f) The continued operation and maintenance of Camp Creek state park as a state recreational facility, formerly delineated according to section three, article one-a, chapter nineteen of this code;

(g) The continued operation and maintenance of Moncove Lake state park as a state recreational facility, formerly delineated pursuant to enactment of section thirteen, article one, chapter five-b of this code in the year one thousand nine hundred ninety;

(h) The continued protection, operation and maintenance of approximately seventy-five miles of right-of-way along the former Greenbrier subdivision of the Chessie railroad system between Caldwell in Greenbrier County and Cass in Pocahontas County, designated the Greenbrier river trail, including the protection of the trail from motorized vehicular traffic and
operation for the protection of adjacent public and private property;

(i) The continued protection, operation and maintenance of approximately sixty and fifty-seven one-hundredths miles of right-of-way of the CSX railway system between Walker in Wood County and Wilsonburg in Harrison County, designated the North Bend rail trail, including the protection of the trail from motorized vehicular traffic and operation for the protection of adjacent public and private property; and

(j) The continued development, operation and maintenance of Blennerhassett Island Historical State park, including all the property, powers and authority previously held by the Blennerhassett Island Historical State Park Commission formerly delineated pursuant to article eight, chapter twenty-nine of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 8. BLENNERHASSETT ISLAND HISTORICAL STATE PARK COMMISSION.

§29-8-1. Blennerhassett Island Historical State Park Commission termination.

The Blennerhassett Island Historical State Park Commission shall cease to exist on the first day of July, two thousand eight. The termination of the commission is exempt from the wind down provisions of section twelve, article ten, chapter four of this code. All members of the commission duly appointed and serving shall cease to hold the office or perform the duties that the office may provide. All property, real or tangible, all powers, expressed or implied, and all authority granted to the commission transfers to the Division of Natural Resources effective upon passage of this section.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-6a, relating to the creation of brownfield economic development districts; providing eligibility criteria; exempting brownfield economic development districts from land-use planning provisions; and requiring the development office to promulgate emergency rules by the first day of July, two thousand eight, to implement this new section.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5B-2-6a, to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-6a. Brownfield economic development districts; applications; fees; rules.

(a) Any property owner of a tract of land that is a brownfield or voluntary remediated site pursuant to article twenty-two, chapter twenty-two of this code may, if the site and surrounding area were involved in the extraction and processing of coal, limestone or other natural resources,
apply to the development office to become a brownfield economic development district.

(1) Applicants for a brownfield economic development district must demonstrate that the district when designated will create significant economic development activity;

(2) Applicants shall submit a development plan that provides specific details on proposed financial investment, direct and indirect jobs to be created and the viability of the district;

(3) Brownfield economic development districts:

(A) May not contain single-family housing;

(B) Shall provide all the infrastructure within the district without cost to the state, county, public service district or local municipal government;

(4) Applicants shall demonstrate that were it not for this designation, the contemplated development would not be possible and that the development is in the best interest of the state;

(5) The applicant shall own or control the property within the district;

(6) All costs for the application process shall be borne by the applicant;

(7) An applicant shall demonstrate that the applicant has attempted to work in good faith with local officials in regard to land-use issues;

(8) Brownfield economic development districts are not subject to the provisions of chapter eight-a of this code;
(9) Prior to granting a designation of brownfield economic development district, the applicant shall provide documentation that the applicant has met all the requirements set forth in article twenty-two, chapter twenty-two of this code to be designated as a brownfield site or voluntary remediated site and is in compliance with the remediation plan;

(10) Nothing may be construed by this section to exempt brownfield economic districts from environmental regulation that would pertain to the development;

(11) The decision of the development office in regard to an application is final; and

(12) Once designated, the district shall work in conjunction with the regional brownfield assistance centers of Marshall University and West Virginia University as specified in section seven, article eleven, chapter eighteen-b of this code.

(b) The development office shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement this section and the rules shall include, but not be limited to, the application and time line process, notice provisions, additional application consideration criteria and application fees sufficient to cover the costs of the consideration of an application. The development office shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code by the first day of October, two thousand eight, to facilitate the initial implementation of this section.
AN ACT to amend and reenact §31B-10-1003 of the Code of West Virginia, 1931, as amended; to amend and reenact §31D-15-1501 of said code; and to amend and reenact §31E-14-1401 of said code, all relating to conducting certain activities that do not constitute conducting affairs or transacting business within the state.

Be it enacted by the Legislature of West Virginia:

That §31B-10-1003 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31D-15-1501 of said code be amended and reenacted; and that §31E-14-1401 of said code be amended and reenacted, all to read as follows:

Chapter

31D. West Virginia Business Corporation Act.
31E. West Virginia Nonprofit Corporation Act.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 10. FOREIGN LIMITED LIABILITY.

§31B-10-1003. Activities not constituting transacting business.
(a) Activities of a foreign limited liability company that do not constitute transacting business in this state within the meaning of this article include:

1. Maintaining, defending or settling an action or proceeding;
2. Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
7. Creating or acquiring indebtedness, mortgages or security interests in real or personal property;
8. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;
9. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner;
10. Transacting business in interstate commerce;
(11) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign limited liability company in another state; and

(12) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia: Provided, That the foreign limited liability company does not produce goods, services or otherwise conduct business in the State of West Virginia.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation or regulation under any other law of this state.

CHAPTER 31D, WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 15. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.


(a) A foreign corporation may not conduct affairs in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:
7 (1) Maintaining, defending or settling any proceeding;

8 (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

9 (3) Maintaining bank accounts;

10 (4) Selling through independent contractors;

11 (5) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

12 (6) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

13 (7) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts: Provided, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;

14 (8) Owning, without more, real or personal property;

15 (9) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

16 (10) Conducting affairs in interstate commerce;

17 (11) Granting funds or other gifts;

18 (12) Distributing information to its shareholders or members;
(13) Effecting sales through independent contractors;

(14) The acquisition by purchase of lands secured by mortgage or deeds;

(15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia;

(16) The management, rental, maintenance and sale or the operating, maintaining, renting or otherwise dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale;

(17) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state; and

(18) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia. Provided, That the foreign corporation does not produce goods, services or otherwise conduct business in the State of West Virginia.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation is deemed to be transacting business in this state if:

(1) The corporation makes a contract to be performed, in whole or in part, by any party thereto in this state;

(2) The corporation commits a tort, in whole or in part, in this state; or
59  (3) The corporation manufactures, sells, offers for sale or
60 suppliess any product in a defective condition and that product
61 causes injury to any person or property within this state
62 notwithstanding the fact that the corporation had no agents,
63 servants or employees or contacts within this state at the time
64 of the injury.

65  (e) A foreign corporation's making of a contract, the
66 committing of a manufacture or sale, offer of sale or supply
67 of defective product as described in subsection (d) of this
68 section is deemed to be the agreement of that foreign
69 corporation that any notice or process served upon, or
70 accepted by, the Secretary of State in a proceeding against
71 that foreign corporation arising from, or growing out of,
72 contract, tort or manufacture or sale, offer of sale or supply
73 of the defective product has the same legal force and validity
74 as process duly served on that corporation in this state.

CHAPTER 31E. WEST VIRGINIA
NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.

§31E-14-1401. Authority to conduct affairs required.

1  (a) A foreign corporation may not conduct affairs in this
2 state until it obtains a certificate of authority from the
3 Secretary of State.

4  (b) The following activities, among others, do not
5 constitute conducting affairs within the meaning of
6 subsection (a) of this section:

7  (1) Maintaining, defending, or settling any proceeding;
(2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Selling through independent contractors;

(5) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(6) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property: Provided, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;

(7) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(8) Owning, without more, real or personal property;

(9) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(10) Conducting affairs in interstate commerce;

(11) Granting funds or other gifts;

(12) Distributing information to its shareholders or members;

(13) Effecting sales through independent contractors;
(14) The acquisition by purchase of lands secured by mortgage or deeds;

(15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia;

(16) The management, rental, maintenance and sale; or the operating, maintaining, renting or otherwise, dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale; and

(17) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation is to be deemed to be conducting affairs in this state if:

(1) The corporation makes a contract to be performed, in whole or in part, by any party thereto, in this state;

(2) The corporation commits a tort, in whole or in part, in this state; or

(3) The corporation manufactures, sells, offers for sale or supplies any product in a defective condition and that product causes injury to any person or property within this state notwithstanding the fact that the corporation had no agents, servants or employees or contacts within this state at the time of the injury.
(e) A foreign corporation's making of a contract, the committing of a manufacture or sale, offer of sale or supply of defective product as described in subsection (d) of this section is deemed to be the agreement of that foreign corporation that any notice or process served upon, or accepted by, the Secretary of State in a proceeding against that foreign corporation arising from, or growing out of, contract, tort, or manufacture or sale, offer of sale or supply of the defective product has the same legal force and validity as process duly served on that corporation in this state.

CHAPTER 23

[Passed February 28, 2008; in effect from passage.]
[Approved by the Governor on March 12, 2008.]
engaged in unlawful activity in any place other than a home or residence where the person reasonably believes the intruder or attacker intends to kill or inflict serious bodily harm; establishing that use of reasonable and proportionate force to defend oneself is a full and complete defense civilly to an action brought by an intruder or attacker based upon the use of such force; and exceptions.

Be it enacted by the Legislature of West Virginia:

That §55-7-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-22. Civil relief for persons resisting certain criminal activities.

(a) A lawful occupant within a home or other place of residence is justified in using reasonable and proportionate force, including deadly force, against an intruder or attacker to prevent a forcible entry into the home or residence or to terminate the intruder’s or attacker’s unlawful entry if the occupant reasonably apprehends that the intruder or attacker may kill or inflict serious bodily harm upon the occupant or others in the home or residence or if the occupant reasonably believes that the intruder or attacker intends to commit a felony in the home or residence and the occupant reasonably believes deadly force is necessary.

(b) A lawful occupant within a home or other place of residence does not have a duty to retreat from an intruder or attacker in the circumstances described in subsection (a) of this section.

(c) A person not engaged in unlawful activity who is attacked in any place he or she has a legal right to be outside
of his or her home or residence may use reasonable and proportionate force against an intruder or attacker: Provided, That such person may use deadly force against an intruder or attacker in a place that is not his or her residence without a duty to retreat if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

(d) The justified use of reasonable and proportionate force under this section shall constitute a full and complete defense to any civil action brought by an intruder or attacker against a person using such force.

(e) The full and complete civil defense created by the provisions of this section is not available to a person who:

(1) Is attempting to commit, committing or escaping from the commission of a felony;

(2) Initially provokes the use of force against himself, herself or another with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or

(3) Otherwise initially provokes the use of force against himself, herself or another, unless he or she withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

(f) The provisions of this section do not apply to the creation of a hazardous or dangerous condition on or in any real or personal property designed to prevent criminal conduct or cause injury to a person engaging in criminal conduct.
47 (g) Nothing in this section shall authorize or justify a
48 person to resist or obstruct a law-enforcement officer acting
49 in the course of his or her duty.

CHAPTER 24

(Com. Sub. for H.B. 4500 - By Delegates Webster, Mahan,
Long, Campbell, Laquinta, Staggers, Yost, Varner and Ennis)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §15-2C-1 and §15-2C-6 of the Code
of West Virginia, 1931, as amended; and to amend said code by
adding a new section, designated §15-2C-9, all relating to
providing qualified entities access to the West Virginia Central
Abuse Registry; amending and adding definitions; defining the
responsibilities of qualified entities; charging fees for requests
by qualified entities; and keeping records of security audits.

Be it enacted by the Legislature of West Virginia:

That §15-2C-1 and §15-2C-6 of the Code of West Virginia,
1931, as amended, be amended and reenacted; and that said code be
amended by adding a new section, designated §15-2C-9, to read as
follows:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.
§15-2C-6. Fees.
§15-2C-1. Definitions.

The following words when used in this article have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Central abuse registry" or "registry" means the registry created by this article which shall contain the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services.

(b) "Child abuse and neglect" or "child abuse or neglect" means those terms as defined in section three, article one, chapter forty-nine of this code, and shall include any act with respect to a child which is a crime against the person pursuant to article two, chapter sixty-one of this code, any act which is unlawful pursuant to article eight-d of said chapter sixty-one, and any offense with respect to a child which is enumerated in section three of this article.

(c) "Abuse or neglect of an incapacitated adult" means "abuse," "neglect" and "incapacitated adult" as those terms are defined in section one, article six, chapter nine, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to article two, chapter sixty-one of this code, and any offense with respect to an incapacitated adult which is enumerated in section three of this article.

(d) "Adult receiving behavioral health services" means a person over the age of eighteen years who is receiving any behavioral health service from a licensed behavioral health
31 provider or any behavioral health provider whose services are
32 paid for, in whole or in part, by medicaid or medicare.

33 (e) "Conviction" of a felony or a misdemeanor means an
34 adjudication of guilt by a court or jury following a hearing on
35 the merits, or entry of a plea of guilty or nolo contendere.

36 (f) "Residential care facility" means any facility where a
37 child or an incapacitated adult or an adult receiving
38 behavioral health services resides which is subject to
39 registration, licensure or certification by the Department of
40 Health and Human Resources, and shall include nursing
41 homes, personal care homes, residential board and care
42 homes, adult family care homes, group homes, legally
43 unlicensed service providers, residential child care facilities,
44 family based foster care homes, specialized family care
45 homes and intermediate care facilities for the mentally
46 retarded.

47 (g) "Misappropriation of property" means any act which
48 is a crime against property under article three, chapter sixty-
49 one of this code with respect to a child in a residential care
50 facility or an incapacitated adult or an adult receiving
51 behavioral health services in a residential care facility or a
52 child or an incapacitated adult or an adult receiving
53 behavioral health services who is a recipient of home care
54 services.

55 (h) "Home care" or "home care services" means services
56 provided to children or incapacitated adults or adults
57 receiving behavioral health services in the home through a
58 hospice provider, a community care provider, a home health
59 agency, through the medicaid waiver program, or through
60 any person when that service is reimbursable under the state
61 medicaid program.
(i) "Requester" means the West Virginia Department of Education, any residential care facility, any state licensed day care center, any qualified entity as defined in this section or any provider of home care services or an adult receiving behavioral health services providing to the Central Abuse Registry the name of an individual and other information necessary to identify that individual, and either: (1) certifying that the individual is being considered for employment or service as a volunteer by the requester or for a contractual relationship with the requester wherein the individual will provide services to a child or an incapacitated adult or an adult receiving behavioral health services for compensation; or contractors and vendors who have or may have unsupervised access to the child, disabled or elderly person for whom the qualified entity provides care; or (2) certifying that an allegation of abuse, neglect or misappropriation of property has been made against the individual.

(j) "Qualified entity" means any business, agency or organization that provides care, treatment, education, training, instruction, supervision or recreation for children, the elderly or individuals with disabilities and is a public, private or not-for-profit entity within the State of West Virginia and meets the definition of qualified entity under the federal National Child Protection Act of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

§15-2C-6. Fees.

The criminal identification bureau may charge, and any requester shall pay a user charge of ten dollars for each request for information made by a requester to the central abuse registry. In order to expedite requests by requesters, the criminal identification bureau may establish a procedure permitting service providers or qualified entities as defined in section one of this article to deposit funds with the bureau.
in anticipation of requests. Fees pursuant to this section shall be paid into a special account in the State Treasury to be expended for registry purposes and criminal record keeping: 

Provided, That for and after the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, all expenditures shall be made in accordance with appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for Central Abuse Registry and criminal record keeping purposes may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. For purposes of this section, the term "criminal record keeping" means the compiling of fingerprints, photographs, criminal disposition reports, uniform crime report statistics and other relevant data regarding the arrest, conviction, incarceration and post-conviction status of criminal violators and sex offenders. "Criminal record keeping" does not include the creation of any data.

§15-2C-9 Responsibilities of a Qualified Entity.

(a) Any business, agency or organization that provides care, treatment, education, training, instruction, supervision or recreation for children, the elderly or individuals with disabilities and is a public, private or not-for-profit entity within the State of West Virginia and is a qualified entity as defined in section one of this article may utilize the Central Abuse Registry for part of its screening process for its current and/or prospective employees. Prospective employees and volunteers, for the purposes of this section, include contractors and vendors who have or may have unsupervised access to children or disabled or elderly persons for whom the qualified entity provides care.

(b) In order to verify eligibility as a qualified entity, the business, agency or organization shall apply to the West Virginia State Police on a form prescribed by the Superintendent.
(c) Once verified as a qualified entity by the West Virginia State Police, the entity shall keep all records necessary to facilitate a security audit by the West Virginia State Police and shall cooperate in such audits as the West Virginia State Police or other authorities may deem necessary. Such records include, but are not limited to, criminal history records; notification that an individual has no criminal history; internal policies and procedures articulating the provisions for physical security; records of all disseminations of criminal history information; and a current, executed qualified entity user agreement with the West Virginia State Police.

CHAPTER 25

(Com Sub. for H.B. 4327 - By Delegates Fragale and Iaquinta)

[Passed February 20, 2008; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2008.]

AN ACT to amend and reenact §47-20-12a of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-21-12 of said code, all relating to charitable bingo and charitable raffles; amending the range of compensation which may be paid to operators of charitable bingo and charitable raffles; and amending the range of compensation which may be paid to concession workers.

Be it enacted by the Legislature of West Virginia:
That §47-20-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §47-21-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 20. CHARITABLE BINGO.

§47-20-12a. Compensation of bingo operator; number of employees.

1 (a) Within the guidelines set forth in subsections (b), (c) and (d) of this section, a licensee may pay a salary, the minimum of which is the federal minimum wage and the maximum of which is not more than one hundred and twenty percent of the state minimum wage to operators of bingo games who are either:

2 (1) Active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license; or

3 (2) Employees of the licensee organization or its authorized auxiliary organization who are:

4 (A) Residents of this state;

5 (B) Residents of a state bordering this state if the county of his or her residence is contiguous to the county in which the bingo operation is conducted; or

6 (C) Residents of a bordering state who reside within thirty-five miles of the county in which the bingo operation is conducted.
(b) If the licensee's gross receipts from bingo occasions equal or exceed one hundred thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than eight operators.

c) If the licensee's gross receipts from bingo occasions are less than one hundred thousand dollars, but equal or exceed fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than five operators.

d) If the licensee's gross receipts from bingo occasions are less than fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than three operators.

e) If the licensee also possesses a super bingo license, it may pay a salary to not more than fifteen operators during the super bingo occasion.

(f) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable bingo operator employees allowed under this limitation for bingo licensees is in addition to the number of charitable raffle operator employees allowed under section fifteen, article twenty-one of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations and the charitable bingo fund and the charitable raffle fund and payments from the funds may not be commingled.

(g) For purposes of the limitations set forth in this section, the term "operator" or "bingo operator" or "raffle operator" does not include concession stand workers. Wages paid to concession workers may not exceed more than one hundred and twenty percent of the state minimum wage.
ARTICLE 21. CHARITABLE RAFFLES.


(a) A licensee may pay a salary, the minimum of which is the federal minimum wage and the maximum of which is not more than one hundred and twenty percent of the state minimum wage to operators of charitable raffle games who are either:

(1) Active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable raffle license or the most recent filing of an application for renewal of the license; or

(2) Employees of the licensee organization or its authorized auxiliary organization who are:

(A) Residents of this state;

(B) Residents of a state bordering this state if the county of his or her residence is contiguous to the county in this state in which the raffle operation is conducted; or

(C) Residents of a bordering state who reside within thirty-five miles of the county in which the raffle operation is conducted.

(b) If the licensee's gross receipts from raffle occasions equal or exceed one hundred thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than eight operators.

(c) If the licensee's gross receipts from charitable raffle occasions are less than one hundred thousand dollars, but equal or exceed fifty thousand dollars for the licensee's most
recently filed annual financial report, a salary may be paid to not more than five operators.

(d) If the licensee's gross receipts from charitable raffle occasions are less than fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to no more than three operators.

(e) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable raffle operator employees allowed under this limitation for charitable raffle licensees is in addition to the number of charitable bingo operator employees allowed under section twelve-a, article twenty of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations and the charitable bingo fund and the charitable raffle fund and payments from the funds may not be commingled.

(f) For purposes of the limitations set forth in this section, the term "operator" or "bingo operator" or "raffle operator" do not include concession stand workers. Wages paid to concession workers may not exceed more than one hundred and twenty percent of the state minimum wage.

CHAPTER 26

(Com Sub. for S.B. 504 - By Senators Bowman and Unger)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]
§48-1-225, §48-1-230 and §48-1-302 of said code; to amend and reenact §48-11-103 and §48-11-105 of said code; to amend said code by adding thereto a new section, designated §48-13-804; to amend and reenact §48-14-102, §48-14-106, §48-14-203, §48-14-302, §48-14-404, §48-14-407, §48-14-408, §48-14-502, §48-14-503, §48-14-701 and §48-14-801 of said code; to amend said code by adding thereto a new section, designated §48-14-108; to amend and reenact §48-15-201 of said code; to amend and reenact §48-17-101, §48-17-102, §48-17-103, §48-17-105, §48-17-106, §48-17-107 and §48-17-109 of said code; to amend and reenact §48-18-102, §48-18-118, §48-18-120, §48-18-202, §48-18-205 and §48-18-206 of said code; and to amend said code by adding thereto a new section, designated §48-18-118a, all relating generally to child support enforcement; providing for extension of statute of limitations for child support in certain instances; clarifying findings of fact in court orders when income is attributed for purposes of setting child support; clarifying that prescription drugs are included in medical support; providing that inmate concession accounts are income for withholding purposes; reducing the interest rate on unpaid child support from ten percent per annum to five percent per annum; providing for support to continue past age eighteen by operation of law under certain circumstances; establishing a procedure for refunding of properly withheld amounts when a support order is modified; requiring copy of modification order be sent to Bureau for Child Support Enforcement within five days; requiring family court judges enter default orders setting child support; allowing the Bureau for Child Support Enforcement to bring an action for medical support; providing refund procedures when a party to a support order is deceased; clarifying that an affidavit of accrued support may be filed in the court where the original order was entered; allowing the collection through income withholding of court-ordered fees; clarifying that withholding limitations do not apply to bonuses; creating consistency among civil contempt penalties; authorizing the Bureau for Child Support Enforcement to collect an additional two hundred dollars when arrearage triggers are met; eliminating
the requirement that the Bureau for Child Support Enforcement attorney meet with the parties prior to the posting of a bond; authorizing the Tax Commissioner to deny issuance or reissuance of a business license; reconstituting the Child Support Enforcement Commission to allow for review of the child support formula by the commission; clarifying the duties of the Bureau for Child Support Enforcement Commissioner with respect to review of the child support formula; requiring report to the Legislative Oversight Commission on Health and Human Resources Accountability; allowing the Tax Commissioner to supply names and addresses of an obligor’s employer to the Bureau for Child Support Enforcement for enforcement of support obligations; allowing collection of overpayments to support obligees from state tax refunds; requiring that parties receive monthly statements of child support accounts; requiring Bureau for Child Support Enforcement determine when person owing child support will be incarcerated more than six months and modify child support; requiring Bureau for Child Support Enforcement send notice to obligors in arrears one thousand dollars or more of modification options; requiring petition for contempt in certain cases; requiring motion for modification in certain cases; providing Bureau for Child Support Enforcement one year to send notification of modification options to obligors currently in arrears one thousand dollars or more; clarifying that when attorneys for the Bureau for Child Support Enforcement enter a proposed order to modify a child support obligation without objection, a modification order will be entered; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §38-3-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-1-205, §48-1-225, §48-1-230 and §48-1-302 of said code be amended and reenacted; that §48-11-103 and §48-11-105 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated
§48-13-804; that §48-14-102, §48-14-106, §48-14-203, §48-14-302, §48-14-404, §48-14-407, §48-14-408, §48-14-502, §48-14-503, §48-14-701 and §48-14-801 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §48-14-108; that §48-15-201 of said code be amended and reenacted; that §48-17-101, §48-17-102, §48-17-103, §48-17-105, §48-17-106, §48-17-107 and §48-17-109 of said code be amended and reenacted; that §48-18-102, §48-18-118, §48-18-120, §48-18-202, §48-18-205 and §48-18-206 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §48-18-118a, all to read as follows:

Chapter
38. Liens.
48. Domestic Relations.

CHAPTER 38. LIENS.

ARTICLE 3. JUDGMENT LIENS.

§38-3-18. Limitations on enforcement of judgments.

1. (a) On a judgment, execution may be issued within ten years after the date thereof. Where execution issues within ten years as aforesaid, other executions may be issued on such judgment within ten years from the return day of the last execution issued thereon, on which there is no return by an officer, or which has been returned unsatisfied.

2. (b) For any order for child support in an action filed on and after the amendment and reenactment of this section during the legislative session of two thousand eight, an execution may be issued upon a judgment for child support, as those terms are defined in chapter forty-eight of this code, within ten years after the emancipation of the child: Provided, That in cases where the support order is for more than one child, the limitations set forth in subsection (a) of this section commence when the youngest child who is the
subject of the order on which the execution is based reaches
the age of eighteen or is otherwise legally emancipated.

(c) An action, suit or scire facias may be brought upon a
judgment where there has been a change of parties by death
or otherwise at any time within ten years next after the date
of the judgment; or within ten years from the return day of
the last execution issued thereon on which there is no return
by an officer or which has been returned unsatisfied. But if
such action, suit or scire facias be against the personal
representative of a decedent, it shall be brought within five
years from the qualification of such representative.

CHAPTER 48. DOMESTIC RELATIONS.

Article.
1. General Provisions; Definitions.
15. Enforcement of Support Order Through Action Against License.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-205. Attributed income defined.
§48-1-225. Extraordinary medical expenses defined.
§48-1-230. Income defined.
§48-1-302. Calculation of interest.

§48-1-205. Attributed income defined.

(a) "Attributed income" means income not actually earned
by a parent but which may be attributed to the parent because
he or she is unemployed, is not working full time or is
working below full earning capacity or has nonperforming or
underperforming assets. Income may be attributed to a
parent if the court evaluates the parent's earning capacity in
the local economy (giving consideration to relevant evidence
that pertains to the parent's work history, qualifications, education and physical or mental condition) and determines that the parent is unemployed, is not working full time or is working below full earning capacity. Income may also be attributed to a parent if the court finds that the obligor has nonperforming or underperforming assets.

(b) If an obligor: (1) Voluntarily leaves employment or voluntarily alters his or her pattern of employment so as to be unemployed, underemployed or employed below full earning capacity; (2) is able to work and is available for full-time work for which he or she is fitted by prior training or experience; and (3) is not seeking employment in the manner that a reasonably prudent person in his or her circumstances would do, then an alternative method for the court to determine gross income is to attribute to the person an earning capacity based on his or her previous income. If the obligor's work history, qualifications, education or physical or mental condition cannot be determined, or if there is an inadequate record of the obligor's previous income, the court may, as a minimum, base attributed income on full-time employment (at forty hours per week) at the federal minimum wage in effect at the time the support obligation is established. In order for the court to consider attribution of income, it is not necessary for the court to find that the obligor's termination or alteration of employment was for the purpose of evading a support obligation.

(c) Income shall not be attributed to an obligor who is unemployed or underemployed or is otherwise working below full earning capacity if any of the following conditions exist:

(1) The parent is providing care required by the children to whom both of the parties owe a legal responsibility for support and such children are of preschool age or are
handicapped or otherwise in a situation requiring particular care by the parent;

(2) The parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education: Provided, That if the parent is involved in an educational program, the court shall ascertain that the person is making substantial progress toward completion of the program;

(3) The parent is, for valid medical reasons, earning an income in an amount less than previously earned; or

(4) The court makes a written finding that other circumstances exist which would make the attribution of income inequitable: Provided, That in such case the court may decrease the amount of attributed income to an extent required to remove such inequity.

(d) The court may attribute income to a parent's nonperforming or underperforming assets, other than the parent's primary residence. Assets may be considered to be nonperforming or underperforming to the extent that they do not produce income at a rate equivalent to the current six-month certificate of deposit rate or such other rate that the court determines is reasonable.

§48-1-225. Extraordinary medical expenses defined.

"Extraordinary medical expenses" means uninsured medical expenses in excess of two hundred fifty dollars per year per child which are recurring and can reasonably be predicted by the court at the time of establishment or modification of a child support order. Such expenses shall include, but not be limited to, insurance copayments and
deductibles, reasonable costs for necessary orthodontia, dental treatment, asthma treatments, physical therapy, prescription pharmaceuticals, vision therapy and eye care and any uninsured chronic health problem.

§48-1-230. Income defined.

"Income" includes, but is not limited to, the following:

(1) Commissions, earnings, salaries, wages and other income due or to be due in the future to an individual from his or her employer and successor employers;

(2) Any payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, Social Security, unemployment compensation, supplemental employment benefits, workers' compensation benefits, state lottery winnings and prizes and overtime pay;

(3) Any amount of money which is owing to an individual as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state or any other legal entity which is indebted to the obligor;

(4) Any amount of money which is held by the Regional Jail Authority for an inmate in an inmate's concession account.

§48-1-302. Calculation of interest.

(a) Notwithstanding any other provisions of the code, if an obligation to pay interest arises under this chapter, the rate of interest is five percent per annum and proportionate thereto for a greater or lesser sum, or for a longer or shorter time.
Interest awarded shall only be simple interest and nothing in this section may be construed to permit awarding of compound interest. Interest accrues only upon the outstanding principal of such obligation.

(b) Notwithstanding any other provision of law, no court may award or approve prejudgment interest in a domestic relations action against a party unless the court finds, in writing, that the party engaged in conduct that would violate subsection (b), Rule 11 of the West Virginia Rules of Civil Procedure. If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the offending representation was presented to the court pursuant to subsection (a) of this section.

(c) Upon written agreement by both parties, an obligor may petition the court to enter an order conditionally suspending the collection of all or part of the interest that has accrued on past-due child support prior to the date of the agreement: Provided, That said agreement shall also establish a reasonable payment plan which is calculated to fully discharge all arrearages within twenty-four months. Upon successful completion of the payment plan, the court shall enter an order which permanently relieves the obligor of the obligation to pay the accrued interest. If the obligor fails to comply with the terms of the written agreement, then the court shall enter an order which reinstates the accrued interest.

(d) Amendments to this section enacted by the Legislature during the two thousand six regular session shall become effective the first day of January, two thousand seven.
§48-11-103. Child support beyond age eighteen.

(a) An order for child support shall provide that payments of such support continue beyond the date when the child reaches the age of eighteen, so long as the child is unmarried and residing with a parent, guardian or custodian and is enrolled as a full-time student in a secondary educational or vocational program and making substantial progress towards a diploma. Provided, That such payments may not extend past the date that the child reaches the age of twenty.

(b) Nothing herein shall be construed to abrogate or modify existing case law regarding the eligibility of handicapped or disabled children to receive child support beyond the age of eighteen.

(c) The reenactment of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-four shall not, by operation of law, have any effect upon or vacate any order or portion thereof entered under the prior enactment of this section which awarded educational and related expenses for an adult child accepted or enrolled and making satisfactory progress in an educational program at a certified or accredited college. Any such order or portion thereof shall continue in full force and effect until the court, upon motion of a party, modifies or vacates the order upon a finding that:

(1) The facts and circumstances which supported the entry of the original order have changed, in which case the order may be modified;

(2) The facts and circumstances which supported the entry of the original order no longer exist because the child has not been accepted or is not enrolled in and making satisfactory progress in an educational program at a certified or accredited college or the parent ordered to pay such
(3) The child, at the time the order was entered, was under the age of sixteen years, in which case the order shall be vacated;

(4) The amount ordered to be paid was determined by an application of child support guidelines in accordance with the provisions of section one hundred one, article thirteen, et seq., of this chapter, or legislative rules promulgated thereunder, in which case the order may be modified or vacated; or

(5) The order was entered after the fourteenth day of March, one thousand nine hundred ninety-four, in which case the order shall be vacated.

§48-11-105. Modification of child support order.

(a) The court may modify a child support order, for the benefit of the child, when a motion is made that alleges a change in the circumstances of a parent or another proper person or persons. A motion for modification of a child support order may be brought by a custodial parent or any other lawful custodian or guardian of the child, by a parent or other person obligated to pay child support for the child or by the Bureau for Child Support Enforcement of the Department of Health and Human Resources of this state.

(b) The provisions of the order may be modified if there is a substantial change in circumstances. If application of the guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered a substantial change.
(c) An order that modifies the amount of child support to be paid shall conform to the support guidelines set forth in section one hundred one, article thirteen, *et seq.*, of this chapter unless the court disregards the guidelines or adjusts the award as provided in section seven hundred two of said article.

(d) The Supreme Court of Appeals shall make available to the courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income or that the amount of support required to be aid is not within fifteen percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the family court shall make the forms available to persons desiring to represent themselves in filing a motion for modification of the support award.

(e) Upon entry of an order modifying a child support amount the court shall, no later than five days from entry of the order, provide a copy of the modified order to the Bureau for Child Support Enforcement. If an overpayment to one of the parties occurs as a result of the modified terms of the order, funds properly withheld by the Bureau for Child Support Enforcement pursuant the terms of the original order shall not be returned until such time as the Bureau for Child Support Enforcement receives repayment from the party in possession of the overpayment.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.


(a) In any proceeding in which support is to be established, if a party has been served with proper pleadings and notified of the date, time and place of a hearing before a
When applying the child support guidelines, the court may accept financial information from the other party as accurate, pursuant to rule 13(b) of the Rules of Practice and Procedure for Family Court; or

(2) If financial information is not available, the court may attribute income to the party based upon either:

(i) The party’s work history;

(ii) Minimum wage, if appropriate; or

(iii) At a minimum, enter a child support order in a nominal amount unless, in the court’s discretion, a zero support order should be entered.

(b) All orders shall provide for automatic withholding from income of the obligor pursuant to part 4, article fourteen of this chapter.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.
§48-14-102. Who may bring action for child support order.

An action may be brought under the provisions of section one hundred one of this article by:

1 (1) A custodial parent of a child when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;

2 (2) A primary caretaker of a child;

3 (3) A guardian of the property of a child or the committee for a child; or

4 (4) The Bureau for Child Support Enforcement, on behalf of the state, when the Department of Health and Human Resources is providing assistance on behalf of the child or the person to whom a duty of support is owed, in the form of temporary assistance to needy families or medical assistance, and any right to support has been assigned to the department or in any other case wherein a party has applied for child support enforcement services from the Bureau for Child Support Enforcement.

§48-14-106. Modification of support order.

(a) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order and make a new order as the altered circumstances or needs of a child, an obligee or the obligor may render necessary to meet the ends of justice.

(b) The Supreme Court of Appeals shall make available to the family courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change
affecting income or that the amount of support required to be
paid is not within fifteen percent of the child support
guidelines. The clerk of the circuit court and the
secretary-clerk of the family court shall make such forms
available to persons desiring to petition the court pro se for
a modification of the support award.

(c) Upon entry of an order modifying a child support
amount the court shall, no later than five days from entry of
the order, provide a copy of the modified order to the Bureau
for Child Support Enforcement. If an overpayment to one of
the parties occurs as a result of the modified terms of the
order, funds properly withheld by the Bureau for Child
Support Enforcement pursuant the terms of the original order
shall not be returned until such time as the Bureau for Child
Support Enforcement receives repayment from the party in
possession of the overpayment.

§48-14-108. Deceased parties in support cases.

(a) In the event of the death of any party to a domestic
relations support action, support payments or a refund of
support payments due to the party by the obligee, obligor or
the Bureau for Child Support Enforcement, not in excess of
one thousand dollars, may, upon proper demand, be paid, in
the absence of actual notice of the pendency of probate
proceedings, without requiring letters testamentary or of
administration in the following order of preference to
decedent's:

(1) Surviving spouse;

(2) Children eighteen years of age and over in equal
shares;

(3) Father and mother, or survivor; and

(4) Sisters and brothers.
(b) Payments under this section shall release and
discharge the obligee, obligor or the Bureau for Child
Support Enforcement to the amount of such payment.

§48-14-203. Affidavit of accrued support.

(a) The affidavit of accrued support may be filed with the
clerk of the circuit court in the county in which the obligee or
the obligor resides, in the county where the order originated
or where the obligor's source of income is located.

The affidavit may be filed when a payment required by
such order has been delinquent, in whole or in part, for a
period of fourteen days.

(b) The affidavit shall:

(1) Identify the obligee and obligor by name and address,
and shall list the last four digits of the obligor's Social
Security number or numbers, if known;

(2) Name the court which entered the support order and
set forth the date of such entry;

(3) State the total amount of accrued support which has
not been paid by the obligor; and

(4) State the name and address of the obligor's source of
income, if known.

§48-14-302. Affidavit of accrued support.

The affidavit and abstract as provided in section four,
article three, chapter thirty-eight of this code shall be filed
with the clerk of the county commission in which the real
property is located or in the county where the order
originated. The affidavit shall:

The withholding from an obligor’s income of amounts payable as spousal or child support or fees awarded by a court of competent jurisdiction to the state in connection with the establishment of paternity and support or the enforcement of a support order shall be enforced by the Bureau for Child Support Enforcement in accordance with the provisions of part 4 of this article. If an overpayment of spousal or child support occurs and an arrearage exists, the Bureau for Child Support Enforcement shall first offset the overpayment of spousal or child support against the arrearage. If no arrearage exists with which to offset the overpayment or the arrearage is not sufficient to offset the overpayment and the obligee does not enter into a repayment agreement with the Bureau for Child Support Enforcement, the Bureau for Child Support Enforcement may issue an income withholding to the obligee’s employer to recoup the amount of the overpayment. The income withholding shall be in the same manner as provided in this article: Provided, That in no circumstances may the amount withheld exceed thirty-five percent of the disposable earnings for the period, regardless of the length of time that the overpayment has been owed.
§48-14-407. Contents of notice to source of income.

(a) The source of income of any obligor who is subject to withholding, upon being given notice of withholding, shall withhold from such obligor's income the amount specified by the notice and pay such amount to the Bureau for Child Support Enforcement for distribution. The notice given to the source of income shall contain only such information as may be necessary for the source of income to comply with the withholding order and no source of income may require additional information or documentation. Such notice to the source of income shall include, at a minimum, the following:

(1) The amount to be withheld from the obligor's disposable earnings and a statement that the amount to be withheld for support and other purposes, including the fee specified under subdivision (3) of this subsection, may not be in excess of the maximum amounts permitted under Section 303(b) of the federal Consumer Credit Protection Act or limitations imposed under the provisions of this code;

(2) That the source of income shall send the amount to be withheld from the obligor's income to the Bureau for Child Support Enforcement, along with such identifying information as may be required by the bureau, the same day that the obligor is paid;

(3) That, in addition to the amount withheld under the provisions of subdivision (1) of this subsection, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income for each withholding;

(4) That withholding is binding on the source of income until further notice by the Bureau for Child Support Enforcement or until the source of income notifies the Bureau for Child Support Enforcement of a termination of
the obligor's employment in accordance with the provisions of section four hundred twelve of this article;

(5) That the source of income is subject to a fine for discharging an obligor from employment, refusing to employ or taking disciplinary action against any obligor because of the withholding;

(6) That when the source of income fails to withhold income in accordance with the provisions of the notice, the source of income is liable for the accumulated amount the source of income should have withheld from the obligor's income;

(7) That the withholding under the provisions of this part shall have priority over any other legal process under the laws of this state against the same income and shall be effective despite any exemption that might otherwise be applicable to the same income;

(8) That when an employer has more than one employee who is an obligor who is subject to wage withholding from income under the provisions of this code, the employer may combine all withheld payments to the Bureau for Child Support Enforcement when the employer properly identifies each payment with the information listed in this part. A source of income is liable to an obligee, including the State of West Virginia or the Department of Health and Human Resources where appropriate, for any amount which the source of income fails to identify with the information required by this part and is therefore not received by the obligee;

(9) That the source of income shall implement withholding no later than the first pay period or first date for payment of income that occurs after fourteen days following the date the notice to the source of income was mailed; and
(10) That the source of income shall notify the Bureau for Child Support Enforcement promptly when the obligor terminates his or her employment or otherwise ceases receiving income from the source of income and shall provide the obligor's last known address and the name and address of the obligor's new source of income, if known.

(b) The Bureau for Child Support Enforcement shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this part. When a court reduces an order of support, the Bureau for Child Support Enforcement is not liable for refunding amounts which have been withheld pursuant to a court order enforceable at the time that the bureau received the funds unless the funds were kept by the state. The obligee or obligor who received the benefit of the withheld amounts shall be liable for promptly refunding any amounts which would constitute an overpayment of the support obligation.

§48-14-408. Determination of amounts to be withheld.

Notwithstanding any other provision of this code to the contrary which provides for a limitation upon the amount which may be withheld from earnings through legal process, the amount of an obligor's aggregate disposable earnings for any given workweek which may be withheld as support payments is to be determined in accordance with the provisions of this subsection, as follows:

(1) After ascertaining the status of the payment record of the obligor under the terms of the support order, the payment record shall be examined to determine whether any arrearage is due for amounts which should have been paid prior to a twelve-week period which ends with the workweek for which withholding is sought to be enforced.
(2) Prior to the first day of January, two thousand one, when none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty percent of the obligor's disposable earnings for that week.

(3) Prior to the first day of January, two thousand one, when a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) Where the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor's disposable earnings for that week.

(4) Beginning the first day of January, two thousand one, when none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld
may not exceed forty percent of the obligor's disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week.

(5) Beginning the first day of January, two thousand one, when a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week.

(6) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this section, it shall be a further limitation that when the current month's obligation plus arrearages are being withheld from salaries or wages in no case shall the total amounts withheld for the current month's obligation plus arrearage exceed the amounts withheld for the current obligation by an amount greater than twenty-five percent of the current monthly support obligation.

(7) The provisions of this section shall apply directly to the withholding of disposable earnings of an obligor regardless of whether the obligor is paid on a weekly, biweekly, monthly or other basis.
(8) The Bureau for Child Support Enforcement has the authority to prorate the current support obligation in accordance with the pay cycle of the source of income. This prorated current support obligation shall be known as the "adjusted support obligation". The current support obligation or the adjusted support obligation is the amount, if unpaid, on which interest will be charged.

(9) When an obligor acts so as to purposefully minimize his or her income and to thereby circumvent the provisions of part 4 of this article which provide for withholding from income of amounts payable as support, the amount to be withheld as support payments may be based upon the obligor's potential earnings rather than his or her actual earnings, and such obligor may not rely upon the percentage limitations set forth in this subsection which limit the amount to be withheld from disposable earnings.

(10) Notwithstanding any other provision of this section, the Bureau for Child Support Enforcement may withhold not more than fifty percent of any earnings denominated as an employment-related bonus to satisfy an outstanding child support arrearage.

§48-14-502. Willful failure or refusal to comply with order to pay support.

If the court finds that the obligor willfully failed or refused to comply with an order requiring the payment of support, the court shall find the obligor in contempt and may do one or more of the following:

(1) Require additional terms and conditions consistent with the court’s support order.

(2) After notice to both parties and a hearing, if requested by a party, on any proposed modification of the order, modify the order in the same manner and under the same
requirements as an order requiring the payment of support
may be modified under the provisions of Part 5-701, et seq.
A modification sought by an obligor, if otherwise justified,
shall not be denied solely because the obligor is found to be
in contempt.

(3) Order that all accrued support and interest thereon be
paid under such terms and conditions as the court, in its
discretion, may deem proper.

(4) Order the contemnor to pay support in accordance
with a plan approved by the Bureau for Child Support
Enforcement or to participate in such work activities as the
court deems appropriate.

(5) If appropriate under the provisions of section 1-304:

(A) Commit the contemnor to the regional jail; or

(B) Commit the contemnor to the regional jail with the
privilege of leaving the jail, during such hours as the court
determines and under such supervision as the court considers
necessary, for the purpose of allowing the contemnor to go to
and return from his or her place of employment.

§48-14-503. Limitation on length of commitment.

(a) In a commitment under subdivision (5) of section 14-
502 the court shall confine the contemnor for an
indeterminate period not to exceed six months or until such
time as the contemnor has purged himself or herself,
whichever shall first occur.

(b) An obligor committed under subdivision (5), section
five hundred two of this article shall be released by court
order if the court has reasonable cause to believe that the
obligor will comply with the court's order.
§48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.

An obligor with a pattern of overdue support may be required by order of the court to post bond, give security or some other guarantee to secure payment of overdue support. The guarantee may include an order requiring that stocks, bonds or other assets of the obligor be held in escrow by the court until the obligor pays the support.

§48-14-801. When monthly payments may be increased to satisfy overdue support.

(a) For the purpose of securing overdue support, the Bureau for Child Support Enforcement has the authority to increase the monthly support payments of an obligor by as much as one hundred dollars per month to satisfy the arrearage when:

(1) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for six months if the order requires support to be paid in monthly installments; or

(2) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for twenty-seven weeks if the order requires support to be paid in weekly or biweekly installments.

(b) For the purpose of securing overdue support, the Bureau for Child Support Enforcement has the authority to increase the monthly support payments of an obligor by as much as two hundred dollars per month to satisfy the arrearage when:

(1) An obligor's gross income equals or exceeds sixty-five thousand dollars; and
(2) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for twelve months if the order requires support to be paid in monthly installments; or

(3) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for fifty-four weeks if the order requires support to be paid in weekly or biweekly installments.

(c) An increase in monthly support under this section will be in addition to any amounts withheld from income pursuant to this article.

(d) This increase in monthly support may be enforced through the withholding process.

ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.

PART 2. ACTION AGAINST LICENSE.

§48-15-201. Licenses subject to action.

The following licenses are subject to an action against a license as provided for in this article:

(1) A business registration certificate issued under article twelve, chapter eleven of this code authorizing a person to transact business in the State of West Virginia;

(2) A permit or license issued under chapter seventeen-b of this code authorizing a person to drive a motor vehicle;

(3) A commercial driver's license issued under chapter seventeen-e of this code authorizing a person to drive a class of commercial vehicle;
(4) A permit, license or stamp issued under article two or two-b, chapter twenty of this code regulating a person's activities for wildlife management purposes, authorizing a person to serve as an outfitter or guide or authorizing a person to hunt or fish;

(5) A license or registration issued under chapter thirty of this code authorizing a person to practice or engage in a profession or occupation;

(6) A license issued under article twelve, chapter forty-seven of this code authorizing a person to transact business as a real estate broker or real estate salesperson;

(7) A license or certification issued under article fourteen, chapter thirty-seven of this code authorizing a person to transact business as a real estate appraiser;

(8) A license issued under article twelve, chapter thirty-three of this code authorizing a person to transact insurance business as an agent, broker or solicitor;

(9) A registration made under article two, chapter thirty-two of this code authorizing a person to transact securities business as a broker-dealer, agent or investment advisor;

(10) A license issued under article twenty-two, chapter twenty-nine of this code authorizing a person to transact business as a lottery sales agent;

(11) A license issued under article thirty-two or thirty-four, chapter sixteen of this code authorizing persons to pursue a trade or vocation in asbestos abatement or radon mitigation;
(12) A license issued under article eleven, chapter twenty-one of this code authorizing a person to act as a contractor;

(13) A license issued under article two-c, chapter nineteen of this code authorizing a person to act as an auctioneer; and

(14) A license, permit or certificate issued under chapter nineteen of this code authorizing a person to sell, market or distribute agricultural products or livestock.

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.

§48-17-101. Creation of Support Enforcement Commission; number of members.

§48-17-102. Appointment of members of Support Enforcement Commission; qualifications and eligibility.

§48-17-103. Terms of commission members; conditions of membership.

§48-17-105. Commission chairman.

§48-17-106. Compensation of members; reimbursement for expenses.

§48-17-107. Meeting requirements.

§48-17-109. General duties of support enforcement commission.

§48-17-101. Creation of Support Enforcement Commission; number of members.

The West Virginia Support Enforcement Commission, consisting of nine members, is hereby created in the Department of Health and Human Resources and may use the administrative support and services of that department. The commission is not subject to control, supervision or direction by the Department of Health and Human Resources, but is an independent, self-sustaining commission that shall have the powers and duties specified in this chapter.

The commission is a part-time commission whose members perform such duties as specified in this chapter. The ministerial duties of the commission shall be
administered and carried out by the Commissioner of the Bureau for Child Support Enforcement, with the assistance of such staff of the Department of Health and Human Resources as the secretary may assign.

Each member of the commission shall devote the time necessary to carry out the duties and obligations of the office and the seven members appointed by the Governor may pursue and engage in another business, occupation or gainful employment that is not in conflict with the duties of the commission.

While the commission is self-sustaining and independent, it, its members, its employees and the commissioner are subject to article nine-a, chapter six of this code, chapter six-b of this code, chapter twenty-nine-a of this code and chapter twenty-nine-b of this code.

§48-17-102. Appointment of members of Support Enforcement Commission; qualifications and eligibility.

(a) Of the nine members of the commission, seven members are to be appointed by the Governor: Provided, That no more than five members of the commission may belong to the same political party.

(1) One member is to be a lawyer licensed by, and in good standing with, the West Virginia State Bar, with at least five years of professional experience in domestic relations law and the establishment and enforcement of support obligations;

(2) One member is to be a person experienced as a public administrator in the supervision and regulation of a governmental agency;
§48-17-103. Terms of commission members; conditions of membership.

(a) Beginning the first day of June, two thousand eight, and every four years thereafter, the Governor shall convene the commission to review the child support guidelines, in accordance with the Code of Federal Regulations, Part 45, Section 302.56(C)(3)(e).

(b) The Governor shall make appointments by the first day of June, two thousand eight, and on the first day of June every four years thereafter.
(c) The commissioner shall report the commission’s findings and recommendations to the Legislative Oversight Commission on Health and Human Resources Accountability by the first day of July, two thousand nine, and by the first day of July every four years thereafter.

(d) The commissioners’ terms shall expire on the first day of July in the year in which they submit the required report to the Legislature as set forth in subsection (c) of this section.

§48-17-105. Commission chairman.

The Commissioner of the Bureau for Child Support Enforcement shall serve as the chair of the commission.

§48-17-106. Compensation of members; reimbursement for expenses.

(a) Each voting member of the commission shall receive one hundred dollars for each day or portion thereof spent in the discharge of his or her official duties.

(b) Each member of the commission shall be reimbursed for all actual and necessary expenses and disbursements involved in the execution of official duties.

§48-17-107. Meeting requirements.

(a) The commission shall meet at least twice during the one-year term for the sole purpose of reviewing the child support guidelines set forth in article thirteen of this chapter. The commission may determine if it needs to convene more frequently to effectively study the guidelines, but shall not meet more than eight times during the one-year term.
(b) Four voting members of the commission are a quorum for the transaction of any business and for the performance of any duty.

(c) A majority vote of the voting members present is required for any final determination by the commission.

(d) The commission may elect to meet in executive session after an affirmative vote of a majority of its members present according to section four, article nine-a, chapter six of this code.

(e) The commission shall keep a complete and accurate record of all its meetings according to section five, article nine-a, chapter six of this code.

§48-17-109. General duties of support enforcement commission.

(a) Federal law requires that each state periodically review the formula used to set child support obligations to determine appropriate awards for the support of children. States are required to consider current research and data on the costs of and expenditures necessary for rearing children. A process for review of the guidelines should be established to ensure the integrity of the formula and reviews undertaken to comply with federal law.

(b) The commission shall review and analyze:

(1) The current child support guidelines;

(2) Relevant research and data regarding the cost of child rearing;

(3) Research and data on the application of, and deviations from, the child support guidelines;
15 (4) Current law, administrative rules and practices regarding child support; and

17 (5) Any other data the commission deems relevant to the review of the current child support guidelines.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-102. Appointment of commissioner; duties; compensation.

§48-18-118. Obtaining support from state income tax refunds.

§48-18-118a. Obtaining refunds of overpaid support from state income tax refunds.

§48-18-120. Statements of account.


§48-18-205. Bureau action on request of recalculation and presentation of proposed order.


§48-18-102. Appointment of commissioner; duties; compensation.

1 (a) There is hereby created the position of commissioner. The commissioner shall:

3 (1) Be appointed by the secretary;

4 (2) Serve at the will and pleasure of the secretary;

5 (3) Serve on a full-time basis and shall not engage in any other profession or occupation, including the holding of a political office in the state either by election or appointment, while serving as commissioner;

9 (4) Be a lawyer licensed by, and in good standing with, the West Virginia State Bar; and

11 (5) Have responsible administrative experience, possess management skills and have knowledge of the law as it relates to domestic relations and the establishment and enforcement of support obligations.
Before entering upon the discharge of the duties as commissioner, the commissioner shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution of West Virginia.

(b) The duties of the commissioner shall include the following:

(1) To direct and administer the daily operations of the Bureau for Child Support Enforcement;

(2) To administer the Child Support Enforcement Fund created pursuant to section one hundred seven of this article;

(3) To chair the commission set forth in article seventeen of this chapter for the purpose of conducting the federally required review of the child support formula every four years and make a report to the Legislative Oversight Commission on Health and Human Resources Accountability of the commission's findings;

(4) To keep the records and papers of the commission, including a record of each proceeding; and

(5) To prepare, issue and submit reports of the commission.

(c) All payments to the commissioner as compensation shall be made from the Child Support Enforcement Fund. The commissioner is entitled to:

(1) A reasonable and competitive compensation package to be established by the secretary; and

(2) Reimbursement for expenses under the standard state travel regulations.
§48-18-118. Obtaining support from state income tax refunds.

(a) The Tax Commissioner shall establish procedures necessary for the Bureau for Child Support Enforcement to obtain payment of past-due support from state income tax refunds from overpayment made to the Tax Commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.

(b) The Commissioner for the Bureau for Child Support Enforcement shall establish procedures necessary to enforce a support order through a notice to the Tax Commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) The procedures shall, at a minimum, prescribe:

(A) The time or times at which the Bureau for Child Support Enforcement shall serve on the obligor or submit to the Tax Commissioner notices of past-due support;

(B) The manner in which such notices shall be served on the obligor or submitted to the Tax Commissioner;

(C) The necessary information which shall be contained in or accompany the notices;

(D) The amount of the fee to be paid to the Tax Commissioner for the full cost of applying the procedure whereby past-due support is obtained from state income tax refunds; and

(E) Circumstances when the Bureau for Child Support Enforcement may deduct a twenty-five dollar fee from the obligor's state income tax refund. This procedure may not require a deduction from the state income tax refund of an
applicant who is a recipient of assistance from the Bureau for Children and Families in the form of temporary assistance for needy families.

(2) Withholding from state income tax refunds may not be pursued unless the Bureau for Child Support Enforcement has examined the obligor's pattern of payment of support and the obligee's likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past-due support which will be owed, at the time the withholding is to be made, will be one hundred dollars or more. In determining whether the amount of past-due support will be one hundred dollars or more, the Bureau for Child Support Enforcement shall consider the amount of all unpaid past-due support, including that which may have accrued prior to the time that the Bureau for Child Support Enforcement first agreed to enforce the support order.

(c) The Commissioner of the Bureau for Child Support Enforcement shall enter into agreements with the Secretary of the Treasury and the Tax Commissioner, and other appropriate governmental agencies, to secure information relating to the Social Security number or numbers and the address or addresses of any obligor, and the name or names and address or addresses of any employer or employers, in order to provide notice between such agencies to aid the Bureau for Child Support Enforcement in requesting state income tax deductions and to aid the Tax Commissioner in enforcing such deductions. In each such case, the Tax Commissioner, in processing the state income tax deduction, shall notify the Bureau for Child Support Enforcement of the obligor's home address and Social Security number or numbers. The Bureau for Child Support Enforcement shall provide this information to any other state involved in processing the support order;
(d) For the purposes of this section, "past-due support" means the amount of unpaid past-due support owed under the terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is living; regardless of whether the amount has been reduced to a judgment or not.

(e) The Bureau for Child Support Enforcement may, under the provisions of this section, enforce the collection of past-due support on behalf of a child who has reached the age of majority.

(f) The procedure shall, at a minimum, provide that prior to notifying the Tax Commissioner of past-due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

1. Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

2. Instruct the obligor of the steps which may be taken to contest the determination of the Bureau for Child Support Enforcement that past-due support is owed or the amount of the past-due support; and

3. Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the Bureau for Child Support Enforcement is notified by the Tax Commissioner that the refund from which withholding is proposed to be made is based upon a joint return, and if the past-due support which is involved has not been assigned to the Department of Health and Human Resources, the Bureau for Child Support Enforcement may delay distribution of the amount withheld until such time as the Tax Commissioner notifies the Bureau for Child Support
Enforcement that the other person filing the joint return has received his or her proper share of the refund, but such delay shall not exceed six months.

(h) In any case in which an amount is withheld by the Tax Commissioner under the provisions of this section and paid to the Bureau for Child Support Enforcement, if the Bureau for Child Support Enforcement subsequently determines that the amount certified as past due was in excess of the amount actually owed at the time the amount withheld is to be distributed, the agency shall pay the excess amount withheld to the obligor thought to have owed the past due support or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing the return.

(i) The amounts received by the Bureau for Child Support Enforcement shall be distributed in accordance with the provisions for distribution set forth in 42 U. S. C.§657.

§48-18-118a. Obtaining refunds of overpaid support from state income tax refunds.

(a) Definitions.

(1) "Obligee" means the same as that term is defined in section two hundred thirty-four, article one of this chapter.

(2) "Obligor" means the same as that term is defined in section two hundred thirty-five, article one of this chapter.

(3) "Overpaid support" means the same as that term is defined in section two hundred thirty-five, article one of this chapter.

(b) The Tax Commissioner shall cooperate with the Commissioner of the Bureau for Child Support Enforcement in establishing and implementing procedures for the
collection of overpaid child support from state income tax refunds that are payable to obligees. The Tax Commissioner shall collect the refunds and send the amounts to the Bureau for Child Support Enforcement for distribution to obligors who made the overpayment.

§48-18-120. Statements of account.

The Bureau for Child Support enforcement shall provide monthly statements of their account to each obligor and obligee without charge. The commissioner shall establish procedures whereby an obligor or obligee can contest or correct a statement of account.


(a) To make a request for assistance under this article, a party shall submit the request in writing to the Bureau for Child Support Enforcement on a form provided by the bureau. The written request form shall include all of the requesting party’s information known to the party that is relevant to determine the child support amount. The request shall be accompanied by:

(1) A copy of the order being modified or, in the discretion of the bureau, information sufficient to permit the bureau to retrieve or identify the order;

(2) A form containing a statement of all of the requesting party’s information known to the party that is relevant to determining the amount of child support, including a general statement or argument advancing the reason the request is being made;

(3) Copies of documentation reasonably available to the requesting party setting forth all of the requesting party’s
information that is relevant to determine the amount of child support;

(4) A statement setting forth the relevant information pertaining to the responding party's earnings and child support that is known or believed to be true by the requesting party;

(5) Copies of any relevant documentation which the requesting party may have in its possession which would be relevant to determining the responding party's child support obligations; and

(6) A statement of all other known proceedings, pending court proceedings or other pending requests for assistance involving the parties or related to the child or children whose support is being reevaluated.

(b) Upon receipt of notification that an obligor is incarcerated in a regional jail or a state or federal correctional facility, the Bureau for Child Support Enforcement shall determine whether the expected incarceration will exceed six months. If the incarceration will exceed six months, the bureau shall file a petition to modify child support.

§48-18-205. Bureau action on request of recalculation and presentation of proposed order.

(a) If the bureau determines that no credible information exists to establish finding of a substantial change in circumstances as required by section one hundred five, article eleven of this chapter or section one hundred six, article fourteen of this chapter, the Bureau for Child Support Enforcement shall notify the parties of that fact and notify the parties that the Bureau for Child Support Enforcement will not be preparing a petition of proposed order seeking modification of the parties' child support obligation. Under
those circumstances, if the parties disagree with the Bureau for Child Support Enforcement's assessment and wish to independently file a petition for modification, the parties may still seek modification of child support by filing a petition for modification of an order for support with the family court under the provisions of section one hundred five or one hundred six, article eleven of this chapter or under the provisions of section one hundred six, article fourteen of this chapter.

(b) If the Bureau for Child Support Enforcement determines that there has been a substantial change of circumstances as required by section one hundred five, article eleven of this chapter or by section one hundred six, article fourteen of this chapter, then the Bureau for Child Support Enforcement shall prepare a petition and proposed order modifying the child support order to be filed with the clerk of the family court.

(c) Any such petition filed by the Bureau for Child Support Enforcement filed pursuant to this article shall include the following:

1. A copy of the proposed order;

2. A print-out of the child support guidelines calculations;

3. A notice of the bureau's action;

4. The documents and statements relied upon;

5. Any statement of findings or justification the bureau is required or determines to include; and
(6) A form and instructions for filing an objection to the proposed order, should a party wish to do so, which form shall require a statement of the ground or grounds for filing the objection.

(d) The Bureau for Child Support Enforcement's proposed order shall be based on the child support guidelines: Provided, That the bureau may disregard the child support guidelines or adjust the amount as allowed by section seven hundred two, article thirteen of this chapter in the following instances:

(1) When the previous child support order disregarded the child support guidelines, the grounds for the disregarding or adjusting the guidelines are stated in the worksheet or previous order or are agreed upon by the parties, or are otherwise clear, and those grounds continue to exist and can be applied to the current circumstances; or

(2) If new grounds for the disregard or adjustment are fully explained in the proposed order.

(e) Within six months of the time that a child support obligation becomes one thousand dollars in arrears the Bureau for Child Support Enforcement shall notify the obligor that he or she may be in violation of section twenty-nine, article five, chapter sixty-one of this code, felony nonsupport, should the arrearage increase to eight thousand dollars. The notice shall also advise the obligor of the availability of child support modification, the amnesty program established in section three hundred two, article one of this chapter and the possibility of establishing a payment plan with the bureau: Provided, That where the monthly child support obligation is greater than one thousand dollars, the notice shall be sent when the arrearage equals to or greater than three months child support obligation.
(1) If the obligor fails to respond within thirty days, the Bureau for Child Support Enforcement shall file a petition for contempt pursuant to section five hundred three, article fourteen of this chapter.

(2) If the obligor responds within thirty days, the Bureau for Child Support Enforcement shall review the response and file appropriate pleadings which may include a motion for modification of child support.

(3) The Bureau for Child Support Enforcement will have one year from the amendment and reenactment of this section during the two thousand eight legislative session to notify obligors who currently owe one thousand dollars or more in child support arrearages or, where the monthly child support obligation is greater than one thousand dollars, the arrearage is equal to or greater than three months child support obligation, of the child support modification options available to them.


(a) Upon receipt of petition for modification and proposed order prepared by the Bureau for Child Support Enforcement in accordance with the provisions of this article, the circuit clerk shall serve a copy of the petition and the proposed order upon all parties to the proceeding by personal service or by United States certified mail, return receipt requested, and direct the parties to file any objections to the proposed modified child support order within twenty days of the date of receiving such notice.
(b) Within five days of the filing of a petition for modification and proposed order, the circuit clerk shall notify the family court.

(c) If no party files timely objection to the proposed order or timely requests a hearing on the petition after receiving such notice, then the family court shall proceed to review the petition and proposed order sua sponte, and shall issue the proposed order. If the family court receives no objection, but the family court concludes that the proposed order should not be entered or should be changed, it shall set the matter for hearing.

(d) If the family court receives an objection to the petition or proposed order, the family court shall set a date and time for hearing.

(e) At any hearing on the proposed order, the family court shall treat the proposed order as a motion for modification made by the party requesting the bureau to initiate the modification. The actions of the family court at a hearing shall be de novo and shall not be an appeal from the bureau’s recommended order. The family court shall notify the parties of the hearing and of the parties’ rights and the procedures to be followed.

(f) The fees to be assessed for filing and service of the petition and the disbursement of the fee for petitions filed pursuant to this section shall be the same as the fee charged by the clerk for petitioning for an expedited modification of a child support order, as set forth in section eleven, article one, chapter fifty-nine of this code.
AN ACT to amend and reenact §9-6-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6A-9 of said code, all relating to personal immunity from civil liability for adult protective services workers and child protective services workers performing employment-related duties and responsibilities within their official capacity.

Be it enacted by the Legislature of West Virginia:

That §9-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6A-9 of said code be amended and reenacted, all to read as follows:

Chapter


CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.
§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

(a) There is hereby established and continued within the Department of Health and Human Resources the system of adult protective services heretofore existing.

(b) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the organization and duties of the adult protective services system and the procedures to be used by the department to effectuate the purposes of this article. The rules may be amended and supplemented from time to time.

(c) The secretary shall design and arrange such rules to attain, or move toward the attainment, of the following goals to the extent that the secretary believes feasible under the provisions of this article within the state appropriations and other funds available:

(1) Assisting adults who are abused, neglected or incapacitated in achieving or maintaining self-sufficiency and self-support and preventing, reducing and eliminating their dependency on the state;

(2) Preventing, reducing and eliminating neglect and abuse of adults who are unable to protect their own interests;

(3) Preventing and reducing institutional care of adults by providing less intensive forms of care, preferably in the home;

(4) Referring and admitting abused, neglected or incapacitated adults to institutional care only where other available services are inappropriate;
(5) Providing services and monitoring to adults in institutions designed to assist adults in returning to community settings;

(6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility residents through the joint efforts of the various agencies of the Department of Health and Human Resources, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities and county prosecutors;

(7) Preventing, reducing and eliminating abuse and neglect of residents in nursing homes or facilities; and

(8) Coordinating investigation activities for complaints of abuse and neglect of incapacitated adults and facility residents among the various agencies of the Department of Health and Human Resources, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, if necessary, and other state or federal agencies or officials, as appropriate.

(d) No adult protective services caseworker may be held personally liable for any professional decision or action thereupon arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon: Provided, That nothing in this subsection protects any adult protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional misconduct.

(e) The rules proposed by the secretary shall provide for the means by which the department shall cooperate with federal, state and other agencies to fulfill the objectives of the system of adult protective services.
CHAPTER 49. CHILD WELFARE.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-9. Establishment of child protective services; general duties and powers; immunity from civil liability; cooperation of other state agencies.

1 (a) The state department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.

(b) The local child protective services office shall investigate all reports of child abuse or neglect: Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective services office shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families: Provided, however, That under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

Each local child protective services office shall:

(1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all such reports under the names of the children, the family and any person substantiated as being an abuser or neglecter by
(2) Provide or arrange for emergency children's services to be available at all times;

(3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within fourteen days there shall be a face-to-face interview with the child or children and the development of a protection plan, if necessary for the safety or health of the child, which may involve law-enforcement officers or the court;

(4) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within seventy-two hours there shall be a face-to-face interview with the child or children and the development of a protection plan, which may involve law-enforcement officers or the court; and

(5) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family law master may refer allegations of child abuse and neglect to the local child protective services office for investigation of the allegations as defined by this chapter and require the local child protective services office to submit a written report of the investigation to the referring circuit court or family law master within the time frames set forth by the circuit court or family law master.

(c) In those cases in which the local child protective services office determines that the best interests of the child require court action, the local child protective services office shall initiate the appropriate legal proceeding.
(d) The local child protective services office shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care.

(e) To carry out the purposes of this article, all departments, boards, bureaus and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective services plan shall, upon request, provide to the local child protective services office such assistance and information as will enable it to fulfill its responsibilities.

(f)(1) In order to obtain information regarding the location of a child who is the subject of an allegation of abuse or neglect, the Secretary of the Department of Health and Human Resources may serve, by certified mail or personal service, an administrative subpoena on any corporation, partnership, business or organization for the production of information leading to determining the location of the child.

(2) In case of disobedience to the subpoena, in compelling the production of documents, the secretary may invoke the aid of: (A) The circuit court with jurisdiction over the served party if the person served is a resident; or (B) the circuit court of the county in which the local child protective services office conducting the investigation is located if the person served is a nonresident.

(3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The investigation is one the Division of Child Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the inquiry is not too broad or indefinite; (D) the information sought is not
already in the possession of the Division of Child Protective Services; and (E) any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

(g) No child protective services caseworker may be held personally liable for any professional decision or action thereupon: arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon: Provided, That nothing in this subsection protects any child protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional misconduct.

CHAPTER 28

(H.B. 4490 - By Delegates Stalnaker, Tucker, Craig, Manchin, Anderson and Evans)

[Passed March 5, 2008; in effect from passage.]
[Approved by the Governor on March 12, 2008.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.
Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Division of Corrections to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Court of Claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Court of Claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Court of Claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Correctional Medical Services . . . . . . . $439,922.81

(2) Monongalia General Hospital . . . . . . . $80,299.30
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 Attorney General; Department of Administration; Department of Education; Division of Corrections; Division of Highways; Division of Motor Vehicles; Insurance Commission; Marshall University; Public Service Commission; Regional Jail and Correctional Facility Authority; West Virginia State Police and West Virginia University to be moral obligations of the state and directing payment thereof.
The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the state and agencies thereof and in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the Auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Attorney General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Christopher C. McClung .... $ 1,858.20

(b) Claims against the Department of Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) CAS Structural Engineering, Inc. ........ $ 38,326.03

(2) Stefaney A. Williams ....... $ 64.80

(c) Claims against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Adelphoi Village, Inc. ..... $ 31,270.00

(2) Pomeroy IT Solutions Sales Company ....... $ 38,541.00
### Claims against the Division of Corrections:

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<td>Jessica Townsend</td>
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(87) Trustees of the Saulsville Baptist Church .......... $ 81,800.00
(88) Donald Lee Underwood and Vicki Lynn Underwood .. $ 867.00
(89) John Wagner and Jeanine Wagner .......... $ 500.00
(90) Janet Marie Walker .......... $ 272.76
(91) Eugene Wilfong and Dreama Wilfong ........ $ 4,000.00
(92) Kimberly Wilson ........ $ 200.54
(93) L. Marie Wolfe ........ $ 167.48
(94) Lora J. Woomer and Bobby Woomer ........ $ 1,742.00
(95) Samuel Zavatsky ........ $ 124.00
(f) Claims against the Division of Motor Vehicles:
   (TO BE PAID FROM STATE ROAD FUND)
   (1) Donna E. Graziani .......... $ 162.50
   (2) Lucy Rutherford ........ $ 90.00
(g) Claim against the Insurance Commission:
   (TO BE PAID FROM SPECIAL REVENUE FUND)
   (1) Morris Square Associates, LP . $ 4,634.00
(h) Claim against Marshall University:
(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Manpower ................ $ 20,000.00

(i) Claim against the Public Service Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Pomeroy IT Solutions Sales Company Inc. .......... $ 373.30

(j) Claims against Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Medhanic C. Berhanc .......... $ 83.44

(2) Andy Ryan Boggess .......... $ 625.39

(3) Michael P. Burns .......... $ 892.00

(4) David Jeffrey Edwards .......... $ 374.95

(5) Robert England .......... $ 120.00

(6) Charles W. Hall .......... $ 659.05

(7) David Huffman .......... $ 31.31

(8) Billy E. Hughes, Jr. .......... $ 15.00

(9) Stephen Hutchins .......... $ 130.00

(10) Keith Wesley Johnson .......... $ 179.00

(11) Dayton S. Lister .......... $ 20.06
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<td><strong>Claim against the WV State Police:</strong></td>
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<td>208</td>
<td><strong>(TO BE PAID FROM GENERAL REVENUE FUND)</strong></td>
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<td><strong>Claim against West Virginia University:</strong></td>
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<td>(1) American Vending Company, Inc.</td>
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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.
AN ACT to amend and reenact §22A-1-4 of the Code of West Virginia, 1931, as amended, clarifying and affirming the practice of the Office of Miners’ Health, Safety and Training to charge reasonable fees for providing certain tests, certificates and publications.

Be it enacted by the Legislature of West Virginia:

That §22A-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.


(a) The Director of the Office of Miners' Health, Safety and Training is hereby empowered and it is his or her duty to administer and enforce such provisions of this chapter relating to health and safety inspections and enforcement and training in surface and underground coal mines, underground
clay mines, open pit mines, cement manufacturing plants and
underground limestone and sandstone mines.

(b) The Director of the Office of Miners' Health, Safety
and Training has full charge of the division. The director has
the power and duty to:

(1) Supervise and direct the execution and enforcement
of the provisions of this article.

(2) Employ such assistants, clerks, stenographers and
other employees as may be necessary to fully and effectively
carry out his or her responsibilities and fix their
compensation, except as otherwise provided in this article.

(3) Assign mine inspectors to divisions or districts in
accordance with the provisions of section eight of this article
as may be necessary to fully and effectively carry out the
provisions of this law, including the training of inspectors for
the specialized requirements of surface mining, shaft and
slope sinking and surface installations and to supervise and
direct such mine inspectors in the performance of their duties.

(4) Suspend, for good cause, any such mine inspector
without compensation for a period not exceeding thirty days
in any calendar year.

(5) Prepare report forms to be used by mine inspectors in
making their findings, orders and notices, upon inspections
made in accordance with this article.

(6) Hear and determine applications made by mine
operators for the annulment or revision of orders made by
mine inspectors, and to make inspections of mines, in
accordance with the provisions of this article.
(7) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(8) Make annually a full and complete written report of the administration of the office to the Governor and the Legislature of the state for the year ending the thirtieth day of June. The report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of individuals employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the office from all sources identifying each source of such funds, the expenditures of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the office, the number of inspections made by each inspector, the number and type of violations found by each inspector: Provided, That no inspector is identified by name in this report. Such reports shall be filed with the Governor and the Legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(9) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records or other documents relevant or material to any hearing, investigation or examination of any
mine permitted by this chapter. Any witness so called or subpoenaed shall receive forty dollars per diem and shall receive mileage at the rate of fifteen cents for each mile actually traveled, which shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by such witness.

(10) Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or the operator's agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his or her representative.

(11) Perform all other duties which are expressly imposed upon him or her by the provisions of this chapter.

(12) Impose reasonable fees upon applicants taking tests administered pursuant to the requirements of this chapter.

(13) Impose reasonable fees for the issuance of certifications required under this chapter.

(14) Prepare study guides and other forms of publications relating to mine safety and charge a reasonable fee for the sale of the publications.

(15) Make all records of the office open for inspection of interested persons and the public.
AN ACT to amend and reenact §22A-2-6 and §22A-2-55 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-12 and §61-3-29 of said code, all relating generally to coal mine health and safety; clarifying currency of rules and policies relating to transportation of miners and supplies; directing the West Virginia Mine Safety Task Force study possible improvements in transportation of miners and supplies in underground coal mines; eliminating requirement that strobe lights be affixed to caches of self-contained self-rescue devices; expanding criminal penalties for theft of certain coal mine equipment; establishing criminal penalties for illegal entry into underground coal mines; creating a criminal penalty for damage or destruction of coal mine equipment and property; and creating a criminal penalty for damage or destruction of coal mine equipment and property when a serious bodily injury results.

Be it enacted by the Legislature of West Virginia:

That §22A-2-6 and §22A-2-55 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3-12 and §61-3-29 of said code be amended and reenacted, all to read as follows:

Chapter
22A. Miner’s Health, Safety and Training.
61. Crimes and Their Punishment.
CHAPTER 22A. MINERS’ HEALTH, SAFETY AND TRAINING.

ARTICLE 2. UNDERGROUND MINES.


(a) Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel under the supervision of a certified foreman. When equipment is being transported or trammed, no person shall be permitted to be inby the equipment in the ventilating split that is passing over such equipment. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

(b) The task force shall, upon the effective date of the amendments to this section made during the two-thousand eight Regular Session of the West Virginia Legislature, undertake a study of methods and technologies available related to transporting miners, mining equipment and supplies in underground mines.

(c) Upon completion of the study directed by the provisions of subsection (b) of this section, the task force may present recommendations to the West Virginia Board of Coal Mine Health and Safety designed to improve the safety and efficiency of underground mines transportation systems. The board may upon the consideration of any such task force recommendations, promulgate rules governing the movement of mining equipment within coal mines in the State of West Virginia.

(d) The current legislative rule 36CSR4, effective the nineteenth day of July, one thousand nine hundred seventy-nine, relating to “Rules and Regulations Governing the Movement of Mining Equipment within Coal Mines in the State of West Virginia”, is hereby limited and qualified as to its force and
effect and shall only be read to be effective to the extent provided as follows:

To the extent that the rule permits the movement of major pieces of heavy mining equipment with men inby the equipment in the ventilating split that is passing over such equipment, to-wit, Section 4: applying the prohibition only to "transporting" and only "where energized D.C. powered trolley or feeder wires are present"; Sections 5.1, 9.1, 10.1, 12.1 and 13.1 to the extent that they involve transporting or tramming such equipment with men inby; Sections 6.1 and 6.2 only to the extent that such equipment is not designed by the manufacturer to operate on track; Section 7.1 only to the extent that such equipment exceeds the length or width of the mine car; and Section 11.1 only to the extent that such equipment in said section exceeds the length, width or cargo carrying capacity of the unit being used to transport such equipment. Construction work and rehabilitation work are not prohibited except to the extent that such would involve the movement of major pieces of heavy mining equipment into the precise area where such work is to be performed, with men inby.

(e) The provisions of subsection (d) of this section, as enforced upon the first day of February, two thousand eight, shall remain in full force and effect until modified by any rules promulgated pursuant to subsection (c) of this section.

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntletted cuffs shall not be worn around moving equipment.
(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: Provided, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f)(1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of such device and refresher training courses for all underground employees shall be held during each calendar year.

(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at twenty-five foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.

(3) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to
remove any self-contained self-rescue device or lifeline cord
from the mine or mine site with the intent to permanently
deprieve the operator of the device or lifeline cord or knowingly
tampers with or attempts to tamper with such device or lifeline
cord shall be guilty of a felony and, upon conviction thereof,
shall be imprisoned in a state correctional facility for not less
than one year nor more than ten years or fined not less than ten
thousand dollars nor more than one hundred thousand dollars,
or both.

(g)(1) A wireless emergency communication device
approved by the director and provided by the operator shall be
worn by each person underground. The wireless emergency
communication device shall, at a minimum, be capable of
receiving emergency communications from the surface at any
location throughout the mine. Each operator shall train each
miner in the use of the device and provide refresher training
courses for all underground employees during each calendar
year. The operator shall install in or around the mine any and
all equipment necessary to transmit emergency communications
from the surface to each wireless emergency communication
device at any location throughout the mine.

(2) Any person that, without the authorization of the operator
or the director, knowingly removes or attempts to remove any
wireless emergency communication device or related equipment,
from the mine or mine site with the intent to permanently deprive
the operator of the device or equipment or knowingly tampers with
or attempts to tamper with the device or equipment shall be guilty
of a felony and, upon conviction thereof, shall be imprisoned in a
state correctional facility for not less than one year nor more than
ten years or fined not less than ten thousand dollars nor more than
one hundred thousand dollars, or both.

(h)(1) A wireless tracking device approved by the director
and provided by the operator shall be worn by each person
underground. In the event of an accident or other emergency,
the tracking device shall, at a minimum, be capable of providing
real-time monitoring of the physical location of each person
Provided, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.
If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, underground coal mine, storehouse, warehouse, banking house, or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, or any railroad or traction car, propelled by steam, electricity or otherwise, or any steamboat or other boat or vessel, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony, and, upon conviction, shall be confined in a state correctional facility not less than one nor more than ten years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar or bus, with like intent, within the jurisdiction of any county in this state, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than twelve months and be fined not exceeding one hundred dollars.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this and the preceding section.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

(a) Any person who knowingly and willfully damages or destroys any real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas,
coal, water, wastewater, stormwater, telecommunications or
cable service, is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not more than two thousand
dollars, or confined in jail not more than one year, or both.

(b) Any person who knowingly and willfully: (1)
damages or destroys any real or personal property owned by
a railroad company, or public utility company, or any real or
personal property used for producing, generating,
transmitting, distributing, treating or collecting electricity,
natural gas, coal, water, wastewater, stormwater,
telecommunications or cable service; and, (2) causes serious
bodily injury to another is guilty of a felony and, upon
conviction thereof, shall be fined not less than five thousand
dollars nor more than fifty thousand dollars, or confined in a
state correctional facility not less than one nor more than five
years, or both.

c) Nothing in this section may be construed to limit or
restrict the ability of an entity referred to in subsection (a) or
(b) of this section or a property owner or other person who
has been damaged or injured as a result of a violation of this
section from seeking recovery for damages arising from
violation of this section.

CHAPTER 32

(S.B. 237 - By Senators Kessler, Hunter, White and Plymale)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to repeal §7-7-17 of the Code of West Virginia, 1931, as
amended, relating to requiring county officers to file annual
reports of certain expenditures.
Be it enacted by the Legislature of West Virginia:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§1. Repeal of section relating to requiring county officers to file annual reports for expenditures for assistants, deputies and employees.

Section seventeen, article seven, chapter seven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 33

(S.B. 257 - By Senators Love, Hunter, White, McKenzie and Minard)

[Passed February 15, 2008; in effect ninety days from passage.]
[Approved by the Governor on February 27, 2008.]
Sections two, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty and twenty-one, article five, chapter twenty-eight of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.

CHAPTER 34

(S.B. 258 - By Senators Love, Hunter, White, McKenzie and Minard)

[Passed February 14, 2008; in effect ninety days from passage.]
[Approved by the Governor on February 27, 2008.]
AN ACT to repeal §26-6-1 and §26-6-2 of the Code of West Virginia, 1931, as amended, relating to Denmar State Hospital.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to Denmar State Hospital.

Sections one and two, article six, chapter twenty-six of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-10, §31-15C-11, §31-15C-12, §31-15C-13 and §31-15C-14, all relating to the
deployment of broadband to the remaining unserved areas of the state; setting forth legislative findings and purpose; providing definitions; establishing the Broadband Deployment Council; establishing procedures for the council, and providing for administrative support; prescribing the powers, duties and responsibilities of the council generally; creating the Broadband Development Fund; categorizing areas of the state according to broadband access; authorizing the retention of an outside expert consultant or consultants to assist in categorization and other functions; providing for the stimulation of demand through public outreach and education; providing funding guidelines; granting emergency rulemaking authority; establishing project requirements for funding assistance; describing the procedures for submitting applications and reviewing applications; requiring public notice; requiring the submission of written reports by certain state agencies or officers; placing limits on liability for membership or participation in the council; protecting confidentiality of trade secrets and proprietary business information; creating the misdemeanor offense of making any unauthorized disclosure of confidential information and establishing the penalties therefor; and providing for the expiration of the council.

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 §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-10, §31-15C-11, §31-15C-12, §31-15C-13 and §31-15C-14, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-1. Legislative findings and purpose.
§31-15C-2. Definitions.
§31-15C-3. Broadband Deployment Council established; members of council; administrative support.
§31-15C-1. Legislative findings and purpose.

1 The Legislature finds as follows:

2 (1) That it is a primary goal of the Governor, the
3 Legislature and the citizens of this state, by the year two
4 thousand ten, to make every municipality, community, and
5 rural area in this state, border to border, accessible to internet
6 communications through the expansion, extension and
7 general availability of broadband services and technology.

8 (2) That although market-driven deployment has
9 extended broadband access to most of West Virginia's cities,
10 towns, and other concentrated population areas, some areas
11 of the state, mostly rural, remain unserved.

12 (3) That based upon the same network principles that
13 providers of telephony services have faced since the
14 inception of the telecommunications industry, rising fixed
15 costs and technological limitations prohibit broadband
16 networks from being extended into rural areas where the
17 level of demand in sparsely populated areas may not justify
18 the required costs of construction.

19 (4) That the unique topography and demography of this
20 state that hinders the provision of broadband access to rural
21 areas of the state specifically disadvantages the elderly and
low-income households that are the least likely to own computers or subscribe to internet service. In light of these topographical and demographic challenges, any attempt to fill the gaps in West Virginia's broadband availability must be organized according to the levels of demand in the various unserved areas to which service is sought to be extended.

(5) That, in particular, fair and equitable access to twenty-first century technology that will maximize the functionality of educational resources and educational facilities that are conducive to enabling our children to be exposed to and to receive the best of future teaching and learning is absolutely essential to this state. A quality educational system of the twenty-first century should have access to the best technology tools and processes. Administrators should have, among other things, the electronic resources to monitor student performance, to manage data, and to communicate effectively. In the classroom, every teacher in every school should be provided with online access to educational technology resources and the ability to deliver content standard and objectives to the students of West Virginia. Schools of the twenty-first century require facilities that accommodate changing technologies and twenty-first century instructional processes.

(6) Accordingly, it is the purpose of the Legislature to provide for the development of plans, processes and procedures to be employed and dedicated to extending broadband access to West Virginians, and to their families, by stimulating demand for those services and for encouraging and facilitating the construction of the necessary infrastructure to meet their needs and demands.

(7) In implementing this initiative, progress by market forces and industry is to be respected, and the Legislature intends that governmental assistance and funding is to be used only in those areas without broadband service and not to duplicate or displace broadband service in areas already
57 served or where industry feasibly can be expected to offer
58 services in the reasonably foreseeable future.

§31-15C-2. Definitions.

1 (a) For the purposes of this article,

2 (1) "Broadband" or "broadband service" means any
3 service providing advanced telecommunications capability
4 with either a downstream data rate or upstream data rate of at
5 least 200 kilobits per second, that does not require the end-
6 user to dial up a connection that has the capacity to always be
7 on, and for which the transmission speeds are based on
8 regular available bandwidth rates, not sporadic or burstable
9 rates, with a minimum downstream-to-upstream data ratio of
10 10:1 for services with a downstream data rate of up to five
11 megabits per second, and with a minimum upstream data rate
12 of 500 kilobits per second for services with a downstream
13 data rate of five megabits per second or greater.

14 (2) "Broadband deployment project" means either (A) a
15 project to provide broadband services to a type 2 and/or type
16 3 unserved area, as defined in section six of this article; or
17 (B) a project to undertake activities to promote demand for
18 broadband services and broadband applications.

19 (3) "Downstream data rate" means the transmission speed
20 from the service provider source to the end-user.

21 (4) "Upstream data rate" means the transmission speed
22 from the end-user to the service provider source.

23 (5) "Unserved area" means a community that has no
24 access to broadband service.

25 (b) The definition of the term "broadband," the
26 designation of areas that are "unserved", and the level of
27 service required to qualify for funding of state programs and
projects, are based on the Federal Communications Commission's current definition of broadband, which is stated in terms of the number of Kilobits (Kbps) per second, either upstream or downstream. It is the intention of the Legislature that the definition of broadband in this article and the level of service requirements for state funding be promptly updated by future Legislatures to conform with any revisions enacted by Congress or any rule or regulation promulgated by the Federal Communications Commission or other federal agencies involved with deploying and enhancing broadband services.

§31-15C-3. Broadband Deployment Council established; members of council; administrative support.

(a) The Broadband Deployment Council is hereby established. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council is created under the Department of Commerce for administrative, personnel and technical support services only.

(b) The council shall consist of eleven voting members, designated as follows:

(1) The Governor or his or her designee;

(2) The Secretary of Commerce or his or her designee;

(3) The Secretary of Administration or his or her designee;

(4) The Director of Homeland Security and Emergency Management or his or her designee; and
(5) Seven public members that serve at the will and
pleasure of the Governor and are appointed by the Governor
with the advice and consent of the Senate, as follows:

(i) One member representing employees of
communications and cable providers, who shall be a member
or representative of a union representing communications
workers;

(ii) One member representing telecommunications
providers who provide broadband services in this state;

(iii) One member representing cable operators who
provide broadband services in this state;

(iv) One member representing broadband equipment or
device manufacturers;

(v) One member representing higher education or
secondary education; and

(vi) Two members representing the general public who
are residents of the state: Provided, That one member
represent rural communities: Provided, however. That both
members may not reside in the same congressional district.

(6) In addition to the eleven voting members of the
council, the President of the Senate shall name two senators
from the West Virginia Senate and the Speaker of the House
shall name two delegates from the West Virginia House of
Delegates, each to serve in the capacity of an ex officio, non-
voting advisory member of the council.

(c) The Governor or his or her designee shall chair the
council and appoint one of the other council members to
serve as vice chair. In the absence of the Governor or his or
her designee, the vice chair shall serve as chair. The council
shall appoint a secretary-treasurer who need not be a member
of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(d) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.

(e) Six voting members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council.

(f) The council is part-time. Public members appointed by the Governor may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in, or otherwise associated with a broadband deployment project, project sponsor or project participant may serve as a council member and shall not be disqualified from serving as a council member because of a conflict of interest prohibited under section five, article two, chapter six-b of this code and shall not be subject to prosecution for violation of said section when the violation is created solely as a result of his or her relationship with the broadband deployment project, project sponsor or project participant: Provided, That the member recuses himself or herself from board participation regarding the conflicting issue in the manner set forth in legislative rules promulgated by the West Virginia Ethics Commission.

(g) No member of the council who serves by virtue of his or her office shall receive any compensation or reimbursement of expenses for serving as a member. The public members and members of any committees or subcommittees are entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of his or her official duties in a
manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

§31-15C-4. Powers and duties of the council generally.

(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;

(2) To make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state, categorization of areas within the state, and evaluation of project applications: Provided, That the provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article;

(3) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article:

(4) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and

(5) Perform any and all other activities in furtherance of its purpose.
(b) The council shall exercise its powers and authority to bring broadband service to unserved areas. The council may not duplicate or displace broadband service in areas already served or where private industry feasibly can be expected to offer services in the reasonably foreseeable future.

§31-15C-5. Creation of the Broadband Deployment Fund.

All moneys collected by the council, which may, in addition to appropriations, include gifts, bequests or donations, shall be deposited in a special revenue account in the State Treasury known as the Broadband Deployment Fund. The fund shall be administered by and under the control of the council. 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 nine, expenditures are authorized from collections rather than pursuant to appropriations by the Legislature.

§31-15C-6. Categorization of areas within state for broadband deployment purposes.

Based on its analysis of mapping, broadband demand, and other relevant data, the council shall designate unserved areas of the state as being one of three distinct types. These types are as follows:

(1) Type 1 unserved area: an area in which broadband may be deployed by service providers in an economically feasible manner;

(2) Type 2 unserved area: an unserved area in which broadband may be deployed by broadband service providers
and other entities in an economically feasible manner, provided some form of public moneys is made available; and

(3) Type 3 unserved area: an unserved area in which, at present, cable or wireline broadband cannot be deployed in an economically feasible manner and an intermodal approach employing other technologies, such as satellite and wireless, is required to provide that area with high-speed internet access.

§31-15C-7. Retention of outside expert consultant.

In order to assist the council with the highly technical task of categorizing the areas of the state and evaluating and prioritizing projects, the council may retain an outside expert consultant or consultants qualified to map the state on the basis of broadband availability, to evaluate, categorize and prioritize projects, to assist in public outreach and education in order to stimulate demand, to advise the council on the granting or denying of funding to projects, and to provide other support and assistance as necessary to accomplish the purposes of this article. The provisions of article three, chapter five-a of this code, shall not apply to the retention of an outside expert consultant pursuant to this section: Provided, That the council shall select the expert or experts by a competitive selection process.

§31-15C-8. Stimulation of demand through public outreach and education.

In order to implement and carry out the intent of this article, the council may take such actions as it deems necessary or advisable in order to stimulate demand through public outreach and education in unserved areas. The council shall consider the views, if offered, of affected members of the public, including private industry.
§31-15C-9. Development of guidelines and application for funding assistance; emergency rule-making authority.

(a) In order to implement and carry out the intent of this article in type 2 and type 3 unserved areas, the council shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a broadband deployment project in a type 2 or type 3 unserved area. The guidelines shall include the following factors: (1) The cost-effectiveness of the project; (2) the economic development benefits of the project; (3) the availability of alternative sources of funding that could help finance the project, including, but not limited to, private grants or federal funding and the efforts undertaken to obtain such funding; (4) if the project requires the construction of a network, the applicant's ability to operate and maintain such network; (5) the degree to which the project advances statewide broadband access and other state broadband planning goals; (6) the proposed technologies, bandwidths, upstream data rates and downstream data rates; (7) the estimated date the project would commence and be completed; (8) how the proposed project compares to alternative proposals for the same unserved area with regard to the number of people served, the amount of financial assistance sought, and the long-term viability of the proposed project; and (9) any other consideration the council deems pertinent.

(b) Under no circumstances may the council's guidelines allow for the approval of any project for broadband service that does not include a minimum downstream transmission rate of 600 kilobits per second (Kbps) and a minimum downstream-to-upstream ratio of 8.5:1 for services with a
downstream rate of up to five megabits per second (Mbps). In those cases where a project's broadband service's downstream rate is five Mbps or greater, the council's guidelines must require a minimum upstream data rate of 588 Kbps and allow information applications and market demands to dictate acceptable downstream-to-upstream data ratios.

(c) The council shall create an application form that shall be used by all project sponsors requesting funding assistance from the council to plan, acquire, construct, improve or otherwise develop broadband deployment projects in type 2 or type 3 unserved areas. The application form shall contain all information required by all state agencies that will be required to issue permits and certificates regarding the project. The application shall require the project sponsor to set forth the proposed location of the project; the type(s) of unserved area(s) the project proposes to address, the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the project; information demonstrating the need for the project; that the proposed funding of the project is the most economically feasible and viable alternative to completing the project; and such other information as the council considers necessary.

§31-15C-10. Requirements for project funding assistance; review of project application by council; competitive applications.

(a) Once the council has categorized unserved areas pursuant to section six of this article, project sponsors may submit applications for funding assistance for projects in those unserved areas. Upon receiving its first completed application for a categorized unserved area, the council shall post notice of such application with the Secretary of State for
sixty days so as to allow for competing applications to be submitted to the council. Within thirty days of the close of the aforementioned sixty-day notice period, the council shall review all applications timely received during the sixty-day period and either: (i) Approve funding for one or more projects after determining that the funding would constitute an appropriate investment of public funds, or (ii) if the council determines that the application does not contain all of the required information or otherwise is incomplete, or that a proposed project is not eligible for funding assistance, or that the proposed project is otherwise not an appropriate or prudent investment of state funds, the council shall deny the project funding request. Prior to approving or denying any funding request, the council may seek the advice of any expert consultant retained pursuant to section seven of this article, but the council is not bound by that advice. The council shall also consider the views, if offered, of affected members of the public, including private industry.

(b) To apply for or receive any funding assistance for a broadband deployment project from the council pursuant to subsection (a) of this section, the project sponsor seeking the funding assistance shall submit a completed application to the council on the form prepared for such purpose by the council pursuant to section nine of this article.

(c) In reviewing each application, the council may use the engineering, financial and technical expertise of outside consultants in addition to the respective staffs of the government agencies and private-sector entities represented on the council or other government agencies.

(d) Notwithstanding any provision of article fifteen-a, chapter thirty-one or any other provision of this code, broadband deployment project proposals submitted to the council for its consideration pursuant to this article and the council's decisions with regard to such projects shall not be
subject to review by the West Virginia Infrastructure and Jobs Development Council.

§31-15C-11. Required reporting by state entities.

(a) The Secretary of Administration shall submit a written report to the council by the thirty-first day of October of each year describing in detail the existing broadband infrastructure owned, leased, used, or operated by the state; broadband infrastructure purchased by the state; the demand for the infrastructure in the state; and whether or not that infrastructure is available to the public. If significant changes to any of the information submitted to the council occur, the secretary of administration shall submit a written update to the council within sixty days of the change or in the next report, whichever date is sooner.

(b) The Secretary of Administration shall submit a written report to the council by the thirty-first day of October of each year describing in detail the state portal, any state services or programs that are available to the public on the state portal; the amount of usage of the portal; and efforts to create demand for the portal. If significant changes to any of the information submitted to the council occur, the secretary of administration shall submit a written update to the council within sixty days of the change or in the next report, whichever date is sooner.

(c) The chancellor of the higher education policy commission shall submit a written report to the council by the thirty-first day of October of each year describing in detail the existing broadband infrastructure owned, leased, used, operated, or purchased by all public baccalaureate and graduate institutions in the state; all programs or initiatives designed to increase the usage of broadband and broadband based educational applications in the public baccalaureate
and graduate institutions; and all training provided to
instructors in the use of broadband and broadband based
educational applications. If significant changes to any of the
information submitted to the council occur, the chancellor of
the higher education policy commission shall submit a
written update to the council within sixty days of the change
or in the next report, whichever date is sooner.

(d) The chancellor of the West Virginia Council for
Community and Technical College Education shall submit a
written report to the council by the thirty-first day of October
of each year describing in detail the existing broadband
infrastructure owned, leased, used, operated, or purchased by
all public baccalaureate and graduate institutions in the state;
all programs or initiatives designed to increase the usage of
broadband and broadband based educational applications in
the public baccalaureate and graduate institutions; and all
training provided to instructors in the use of broadband and
broadband based educational applications. If significant
changes to any of the information submitted to the council
occur, the chancellor of the West Virginia Council for
Community and Technical College Education shall submit a
written update the council within sixty days of the change or
in the next report, whichever date is sooner.

(e) The State Superintendent of schools shall submit a
written report to the council by the thirty-first day of October
of each year describing in detail the existing broadband
infrastructure owned, leased, used, operated, or purchased by
all state schools; all programs or initiatives designed to
increase the usage of broadband and broadband based
educational applications in the schools and in Pre-K and early
childhood education programs; all training provided to
teachers in the use of broadband and broadband based
educational applications; the availability of an access to
broadband in homes and families with children aged four
years to eight years; estimates of the number of families with
children aged four years to eight years who are using
broadband in the homes; estimates of the ownership of
computers in families with children aged four years to eight
years; and any unmet demand for broadband infrastructure in
state schools. If significant changes to any of the information
submitted to the council occur, the state superintendent of
schools shall submit a written update to the council within
sixty days of the change or in the next report, whichever date
is sooner.

(f) The chair of the West Virginia healthcare authority
shall submit a written report to the council by the thirty-first
day of October of each year describing in detail the existing
broadband infrastructure owned, leased, used, operated, or
purchased by all hospitals, medical facilities, clinics, or
healthcare providers; all programs, initiatives, or applications
utilizing broadband that are promoted by hospitals, medical
facilities, clinics, or healthcare providers; and any unmet
demand for broadband by hospitals, medical facilities,
clinics, or healthcare providers.

§31-15C-12. Limitation of liability.

No person is subject to antitrust or unfair competition
liability based on membership or participation in the council,
which provides an essential governmental function and
enjoys state action immunity.


(a) Broadband deployment information provided to the
council or its consultants and other agents, including, but not
limited to, physical plant locations, subscriber levels, and
market penetration data, constitutes proprietary business
information and, along with any other information that
(b) Trade secrets or proprietary business information obtained by the council from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual or agency other than officials or authorized employees of the state. Any person who makes any unauthorized disclosure of such confidential information or data is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than five thousand dollars or confined in a correctional facility for not more than one year, or both.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the council is the Secretary of Administration, who is authorized to establish and administer appropriate security measures. The council chair shall designate two additional persons to share the responsibility of securing trade secrets or proprietary information. No person will be allowed access to trade secrets or proprietary information without written approval of a minimum of two of the three authorized persons specified above.

§31-15C-14. Expiration of council.

The council shall continue to exist until the thirty-first day of December, two thousand eleven, unless sooner terminated, continued or reestablished pursuant to an Act of the Legislature.
Chapter 37

(Com. Sub. for S.B. 340 - By Senators Kessler, Chafin, Oliverio, Barnes, White, Foster, Hunter, Green, Minard, Wells, Jenkins, Yoder, Love, Guills, Unger and McKenzie)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-2A-101, §46A-2A-102, §46A-2A-103, §46A-2A-104 and §46A-2A-105, all relating to the unauthorized access or acquisition of certain computerized data which compromises the security, confidentiality or integrity of personal information; requiring notification of a breach of the security of a system compromising personal information; permitting internal notification procedures; noncompliance; enforcement by the Attorney General; civil penalties; violations by a licensed financial institutions; and applicability.

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-2A-101, §46A-2A-102, §46A-2A-103, §46A-2A-104 and §46A-2A-105, all to read as follows:

ARTICLE 2A. BREACH OF SECURITY OF CONSUMER INFORMATION.

§46A-2A-103. Procedures deemed in compliance with security breach notice requirements.

As used in this article:

(1) "Breach of the security of a system" means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal information maintained by an individual or entity as part of a database of personal information regarding multiple individuals and that causes the individual or entity to reasonably believe that the breach of security has caused or will cause identity theft or other fraud to any resident of this state. Good faith acquisition of personal information by an employee or agent of an individual or entity for the purposes of the individual or the entity is not a breach of the security of the system, provided that the personal information is not used for a purpose other than a lawful purpose of the individual or entity or subject to further unauthorized disclosure.

(2) "Entity" includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies or instrumentalities, or any other legal entity, whether for profit or not for profit.

(3) "Encrypted" means transformation of data through the use of an algorithmic process to into a form in which there is a low probability of assigning meaning without use of a confidential process or key or securing the information by another method that renders the data elements unreadable or unusable.
(4) "Financial institution" has the meaning given that term in Section 6809(3), United States Code Title 15, as amended.

(5) "Individual" means a natural person.

(6) "Personal information" means the first name or first initial and last name linked to any one or more of the following data elements that relate to a resident of this state, when the data elements are neither encrypted nor redacted:

(A) Social security number;

(B) Driver's license number or state identification card number issued in lieu of a driver's license; or

(C) Financial account number, or credit card, or debit card number in combination with any required security code, access code or password that would permit access to a resident's financial accounts.

The term does not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

(7) "Notice" means:

(A) Written notice to the postal address in the records of the individual or entity;

(B) Telephonic notice;

(C) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures, set forth in Section 7001, United States Code Title

(a) An individual or entity that owns or licenses computerized data that includes personal information shall give notice of any breach of the security of the system following discovery or notification of the breach of the security of the system to any resident of this state whose unencrypted and unredacted personal information was or is
reasonably believed to have been accessed and acquired by
an unauthorized person and that causes, or the individual or
entity reasonably believes has caused or will cause, identity
theft or other fraud to any resident of this state. Except as
provided in subsection (e) of this section or in order to take
any measures necessary to determine the scope of the breach
and to restore the reasonable integrity of the system, the
notice shall be made without unreasonable delay.

(b) An individual or entity must give notice of the breach
of the security of the system if encrypted information is
accessed and acquired in an unencrypted form or if the
security breach involves a person with access to the
encryption key and the individual or entity reasonably
believes that such breach has caused or will cause identity
theft or other fraud to any resident of this state.

(c) An individual or entity that maintains computerized
data that includes personal information that the individual or
entity does not own or license shall give notice to the owner
or licensee of the information of any breach of the security of
the system as soon as practicable following discovery, if the
personal information was or the entity reasonably believes
was accessed and acquired by an unauthorized person.

(d) The notice shall include:

(1) To the extent possible, a description of the categories
of information that were reasonably believed to have been
accessed or acquired by an unauthorized person, including
social security numbers, driver’s licenses or state
identification numbers and financial data;

(2) A telephone number or website address that the
individual may use to contact the entity or the agent of the
entity and from whom the individual may learn:
(A) What types of information the entity maintained about that individual or about individuals in general; and

(B) Whether or not the entity maintained information about that individual.

(3) The toll-free contact telephone numbers and addresses for the major credit reporting agencies and information on how to place a fraud alert or security freeze.

e) Notice required by this section may be delayed if a law-enforcement agency determines and advises the individual or entity that the notice will impede a criminal or civil investigation or homeland or national security. Notice required by this section must be made without unreasonable delay after the law-enforcement agency determines that notification will no longer impede the investigation or jeopardize national or homeland security.

(f) If an entity is required to notify more than one thousand persons of a breach of security pursuant to this article, the entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on a nationwide basis, as defined by 15 U. S. C. §1681a (p), of the timing, distribution and content of the notices. Nothing in this subsection shall be construed to require the entity to provide to the consumer reporting agency the names or other personal identifying information of breach notice recipients. This subsection shall not apply to an entity who is subject to Title V of the Gramm Leach Bliley Act, 15 U. S. C. 6801, et seq.

(g) The notice required by this section shall not be considered a debt communication as defined by the Fair Debt Collection Practice Act in 15 U. S. C. §1692a.
§46A-2A-103. Procedures deemed in compliance with security breach notice requirements.

(a) An entity that maintains its own notification procedures as part of an information privacy or security policy for the treatment of personal information and that are consistent with the timing requirements of this article shall be deemed to be in compliance with the notification requirements of this article if it notifies residents of this state in accordance with its procedures in the event of a breach of security of the system.

(b) A financial institution that responds in accordance with the notification guidelines prescribed by the Federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice is deemed to be in compliance with this article.

(c) An entity that complies with the notification requirements or procedures pursuant to the rules, regulation, procedures or guidelines established by the entity's primary or functional regulator shall be in compliance with this article.

§46-2A-104. Violations.

(a) Except as provided by subsection (c) of this section, failure to comply with the notice provisions of this article constitutes an unfair or deceptive act of practice in violation of section one hundred four, article six, chapter forty-six-a of this code, which may be enforced by the Attorney General pursuant to the enforcement provisions of this chapter.

(b) Except as provided by subsection (c) of this section, the Attorney General shall have exclusive authority to bring action. No civil penalty may be assessed in an action unless
the court finds that the defendant has engaged in a course of
repeated and willful violations of this article. No civil
penalty shall exceed one hundred fifty thousand dollars per
breach of security of the system or series of breaches of a
similar nature that are discovered in a single investigation.

(c) A violation of this article by a licensed financial
institution shall be enforceable exclusively by the financial
institution's primary functional regulator.


This article shall apply to the discovery or notification of
a breach of the security of the system that occurs on or after
the effective date of this article.

CHAPTER 38

(Com. Sub. for S.B. 622 - By Senators McCabe,
Foster, Hunter, Kessler, Barnes and Oliverio)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §5B-2G-1,
§5B-2G-2, §5B-2G-3, §5B-2G-4, §5B-2G-5, §5B-2G-6,
§5B-2G-7, §5B-2G-8 and §5B-2G-9; and to amend and reenact
§59-1-10 of said code, all relating generally to the Voluntary
Rural and Outdoor Heritage Conservation Act; establishing
Outdoor Heritage Conservation Fund; board of trustees created;
findings; definitions; duties; authorizing issuance of bonds;
increasing certain recording fees; and dedicating a portion of
the increase to the Outdoor Heritage Conservation Fund.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-2G-1, §5B-2G-2, §5B-2G-3, §5B-2G-4, §5B-2G-5, §5B-2G-6, §5B-2G-7, §5B-2G-8 and §5B-2G-9; and that §59-1-10 of said code be amended and reenacted, all to read as follows:

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2G. LAND CONSERVATION.

§5B-2G-1. Short title.
§5B-2G-2. Legislative findings and purpose.
§5B-2G-4. West Virginia Outdoor Heritage Conservation Fund - Board of trustees.
§5B-2G-5. West Virginia Outdoor Heritage Conservation Fund - Powers.
§5B-2G-6. West Virginia Outdoor Heritage Conservation Fund - Duties.
§5B-2G-7. Definitions.
§5B-2G-8. Funding of land conservation; issuance of revenue bonds.
§5B-2G-9. Grants for land conservation; application; criteria.

§5B-2G-1. Short title.

1 This article shall be known as the Voluntary Rural and Outdoor Heritage Conservation Act.

§5B-2G-2. Legislative findings and purpose.

1 Legislative findings and purpose:
2 (a) The Legislature hereby finds and declares that:
3 (1) The State of West Virginia's rural character, natural wonders, scenic beauty and recreational opportunities combine to create an exceptional quality of life for its citizens;
(2) West Virginia's landscapes serve as an economic engine supporting vibrant forest products, agricultural, hunting and fishing and tourism industries;

(3) West Virginia's unique and important lands are key to attracting new businesses and knowledge workers who are mobile and capable of doing business anywhere and critical to diversifying the economy of the State of West Virginia;

(4) West Virginia's unique and important lands provide all West Virginians hunting, fishing, rafting, hiking and other recreational opportunities important to their health and well-being;

(5) West Virginia's unique and important lands are critical to the continued health of the state's wildlife habitats and West Virginia's Wildlife Conservation Action Plan, mandated by the United States Congress, recognizes that habitat loss is a key issue confronting conservation of the state's valuable fish and wildlife resources;

(6) The conversion of rural land to developed land in West Virginia doubled between 1982 and 1997;

(7) There is a critical need to invest in the conservation of unique and important wildlife habitat, natural areas, forest lands, farmland and lands for hunting, fishing and recreation; and

(8) It is critical to encourage cooperation and innovative public partnerships among landowners, state agencies, nonprofit organizations and others which must work together in order to conserve West Virginia's most important unique and rural lands.

(b) It is the intent of the Legislature to provide persons and other entities an opportunity to voluntarily conserve land.

(c) Further, it is the intent of the Legislature to establish a West Virginia Outdoor Heritage Conservation Fund, hereinafter
"fund", to establish an ongoing funding source to conserve unique and important wildlife habitat, natural areas, forests, working lands, lands for hunting, fishing and recreation and other lands important to West Virginians.

(d) The Legislature finds that an ongoing funding source to conserve unique and important lands will help to ensure that present and future generations of West Virginians are able to enjoy the economic, quality of life, health, recreational, scenic and other benefits of conserved lands.


The West Virginia Outdoor Heritage Conservation Fund is established within the Department of Commerce. The fund has the powers and duties provided in this article.

§5B-2G-4. West Virginia Outdoor Heritage Conservation Fund - Board of trustees.

(a) Composition; chairman; quorum; qualifications. -- The fund shall be governed and administered by a board of trustees composed of the Director of the Division of Natural Resources and the Director of the Division of Forestry, who shall serve as voting ex officio members, and nine voting members to be appointed by the Governor, by and with the advice and consent of the Senate. The ex officio members may appoint designees to serve on the board of trustees. One of the appointed members shall be a representative of the West Virginia Agricultural Land Protection Authority; one of the appointed members shall be a registered forester; three of the appointed members shall be representatives of independent IRC 501(c)(3) land trusts; two of the appointed members shall be recognized professional experts in biology or ecology nominated by the West Virginia Academy of Sciences; one of the appointed members shall have demonstrated expertise in public health or public recreation; and one of the appointed members shall be a representative of
sportsmen and sportswomen. A concerted effort shall be made to appoint members who represent a cross-section of the state.

The board shall elect the chair and other officers as necessary from among the nine appointed members. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

If any of the entities to be represented on the board under this section ceases to exist, the Governor shall appoint a representative with similar expertise from an entity with a similar mission.

(b) Terms. --

(1) The Governor, with the advice and consent of the Senate, shall appoint the nine members for the following terms:

(A) Three for a term of four years;

(B) Three for a term of three years; and

(C) Three for a term of two years.

(2) Successors to appointed members whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. An appointed member may not serve more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

(c) Oath. --

Appointed members shall take the oath of office as prescribed by law.

(d) Recusal. --

A board member shall recuse himself or herself from any vote in which he or she has a conflict of interest. The provisions
of this subsection is in addition to any other provisions of law or applicable rules relating to the ethics of public officers or employees.

(e) **Compensation and expenses.** --

Members shall not receive compensation. Each member of the board shall receive expense reimbursement from the fund for actual reasonable and necessary expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid for similar reimbursement to members of the Legislature.


The board has the following general powers on behalf of the fund:

(a) **Power to sue.** -- To sue and be sued in contractual matters in its own name.

(b) **Power to contract.** -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes.

(c) **Power to conserve land.** -- To acquire interests in real property for conservation purposes.

(d) **Power to transfer.** -- To transfer interests in real property for conservation purposes.

(e) **Power to disburse grants.** -- To act as a granting authority to award grants to eligible grant recipients in accordance with section nine of this article.

(f) **Power to seek funding.** -- To apply for and receive funding from any and all state, federal and private sources to be used as provided in this chapter.
(g) Power to authorize bond issuance. -- To direct the Economic Development Authority to issue revenue bonds payable from the portion of the recording fee imposed in section ten, article one, chapter fifty-nine of this code to be allocated to the fund and any other special revenue made against to the fund for this purpose in accordance with section eight of this article or other provisions of this code.

§5B-2G-6. West Virginia Outdoor Heritage Conservation Fund - Duties.

The board shall, on behalf of the fund:

(a) Disseminate information regarding land conservation and promote the conservation of land.

(b) Develop and implement additional guidelines and procedures, consistent with the purposes of this chapter, as necessary to implement this chapter.

(c) Seek and apply for funds from federal, state and private sources to carry out its purpose as provided in this chapter.

(d) From moneys received from the recording fee in accordance with section ten, article one, chapter fifty-nine of this code, to:

(1) Make available to the West Virginia Division of Natural Resources fifty percent of the moneys so received by the fund, for the division to acquire interests in real property for conservation purposes in perpetuity in keeping with the West Virginia Wildlife Conservation Action Plan or other conservation plans developed by the division, provided that the board approves any acquisitions. The division may agree to permit the fund to retain any or all of this fifty percent to remain in the fund to be used as payment of debt service and other costs associated with revenue bonds on the fund’s behalf by the Economic Development Authority in accordance with the provisions of this article;
(2) Ensure that the remaining fifty percent of the moneys so received by the fund are used for competitive grants in accordance with this article or used as payment of debt service and other costs associated with revenue bonds on the fund's behalf by the Economic Development Authority in accordance with the provisions of this article, the proceeds of which shall also be used for competitive grants.

(e) Prepare and file electronically with the Governor's office and with the Legislature by the thirty-first day of August of each year a report that accounts for fund receipts and disbursements and sets forth a list and description of all grants approved and all acquisitions of interests in real property obtained with moneys from the fund during the current year, including the recipients of the grants, the amounts and the public benefits of the interests in real property acquired.

(f) Propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out its purposes and programs, to include specifically the qualifications and procedures relating to its awarding of grants.

§5B-2G-7. Definitions.

For purposes of this article, the following terms have the meanings set forth in this section.

(a) "Board" means the board of trustees established in section three of this article.

(b) "Conservation easement" means a nonpossessory interest in real property as defined in section three, article twelve, chapter twenty of this code, except that a conservation easement acquired pursuant to this article shall be held in perpetuity.

(c) "Conservation purposes" means the conservation of land for outdoor recreation by the public, for conservation of natural plant and wildlife habitat or similar ecosystem, for conservation
of forestland and other open spaces, for conservation of land of
historical or cultural significance or as further defined under
conservation criteria developed in this article.

(d) "Eligible grant recipient" means:

(1) The following state agencies:

(A) Division of Natural Resources;

(B) Division of Forestry; or

(2) A charitable corporation, charitable association or
charitable trust registered with the Secretary of State and exempt
from taxation pursuant to Section 501(c)(3) of the Internal
§501(c)(3)] or other federal or state statutes or rules, the
purposes or powers of which include retaining or protecting the
natural, scenic, agricultural or open-space values of real
property; assuring the availability of real property for
agricultural, forest, recreational or open-space use; protecting
natural resources and wildlife; maintaining or enhancing land,
air or water quality; or preserving the historical, architectural,
archaological or cultural aspects of real property, as defined in
section three, article twelve, chapter twenty of this code, and
that has a primary part of its mission to acquire interests in real
property for conservation purposes.

(e) "Fund" means the West Virginia Outdoor Heritage
Conservation Fund established in this article.

(f) "Land conservation" means acquisition of interests in
real property from willing sellers for conservation purposes.

(g) "Stewardship" means the necessary monitoring,
maintenance and enforcement of interests in real property for
conservation purposes.
§5B-2G-8. Funding of land conservation; issuance of revenue bonds.

1. (a) Fund. --

2. (1) Created. -- The West Virginia Outdoor Heritage Conservation Fund is created for the purposes specified in this article.

3. (2) Sources. -- The West Virginia Outdoor Heritage Conservation Fund is comprised of:

4. (A) Any money made available to the fund by general or special fund appropriations;

5. (B) Any money made available to the fund by grants or transfers from governmental or private sources;

6. (C) Any money realized by investments, interest, dividends or distributions; and

7. (D) Any money received from the issuance of revenue bonds in accordance with the provisions of this article; and

8. (3) Disbursements. -- The Treasurer may not disburse any money from the fund other than:

9. (A) For costs associated with the staffing, administration and technical and legal duties of the fund;

10. (B) For reasonable and necessary expenses incurred by the members of the board of trustees of the fund in the performance of official duties;

11. (C) For costs associated with the acquisition of interests in real property for conservation purposes and for costs associated with stewardship authorized by this article;
(D) For grants to be awarded in accordance with section nine of this article;

(E) For payment of debt service and other costs associated with revenue bonds issued on the fund’s behalf by the Economic Development Authority; and

(F) Of revenue received, directly or indirectly, from the recording fee under section ten, article one, chapter fifty-nine of this code and not used for the payment of revenue bonds and expenses associated therewith, for purposes consistent with the duties of the fund set forth in this article.

(4) Money remaining at end of fiscal year. -- Any money remaining in the fund at the end of a fiscal year shall not revert to the General Revenue Fund of the state, but shall remain in the fund to be used for the purposes specified in this article.

(5) Budget. -- The estimated budget of the fund for the next fiscal year shall be included with the budget of the West Virginia Department of Commerce.

(6) Audit. -- The fund shall be audited annually.

(b) Bonds. --

The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for land conservation as provided in this article.

(i) The West Virginia Economic Development Authority created and provided in article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code and upon direction of the board of the Outdoor Heritage
Conservation Fund, issue revenue bonds of the Economic Development Authority to pay for all or a portion of the cost of the acquisition of interests in real property for conservation purposes authorized under this article or to refund the bonds at the discretion of the fund. The revenue bonds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable from the moneys deposited in the fund pursuant to section ten, article one, chapter fifty-nine of this code or from other sources identified by the board of the fund.

(2) There is established in the State Treasury a special revenue fund named the Outdoor Heritage Conservation Fund into which shall be deposited on and after the first day of July, two thousand eight, the amounts to be deposited in the fund as specified in this article. The Outdoor Heritage Conservation Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund pursuant to section ten, article one, chapter fifty-nine of this code shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance thereof. The West Virginia Economic Development Authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the Outdoor Heritage Conservation Fund pursuant to section ten, article one, chapter fifty-nine of this code as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article.
(3) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia; and that the bondholders' remedies are limited in all respects to the special revenue fund established in this subsection for the liquidation of the bonds.

(4) The West Virginia Economic Development Authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for projects as certified by the board of the fund under the provisions of this article as serving a public purpose and meeting the criteria established by this article.

(5) If any proceeds from sale of bonds remain after paying costs and making grants as provided in this subsection, the surplus may be used as elsewhere provided in this article.

§5B-2G-9. Grants for land conservation; application; criteria.

(a) An eligible grant recipient may apply for a grant from the fund to acquire interests in real property for conservation purposes or for stewardship. An application may not be submitted to the fund without the written consent of the owner of the interest in real property identified in the application.

(b) Before applying for a grant, the eligible grant recipient shall notify the owner that is the subject of the grant of the following in writing:

(1) That interests in real property acquired with a grant from the fund result in a permanent conveyance of such interests in real property from the owner to the eligible grant recipient or its assigns; and

(2) That it may be in the owner's interest to retain independent legal counsel, appraisals and other professional advice.
The application shall contain an affirmation that the notice requirement of this subsection has been met.

(e) Grants from the fund shall be awarded based upon the conservation criteria and financial criteria contained in this section. In each application, the eligible grant recipient shall provide information regarding how the proposal meets one or more of these criteria and advances the purposes of this article.

(d) For purposes of this article, conservation criteria include:

(1) Unique or important wildlife habitat as specified in the State Wildlife Conservation Action Plan;

(2) Habitat for rare, threatened or endangered species;

(3) A relatively undisturbed or outstanding example of an ecosystem or natural community indigenous to West Virginia;

(4) An important area for public hunting, fishing or other outdoor recreational uses;

(5) Important recreation lands or important habitats identified in county comprehensive plans;

(6) Riparian habitats, wetlands, water quality, watersheds of significant ecological value or critical aquifer recharge areas;

(7) Forest land or working land that has strategic economic significance;

(8) A larger area containing conserved lands or as a connection between conserved lands;

(9) Land of unique cultural, historical or archaeological significance;

(10) Degree of threat to land; and
(11) The number of acres of land to be conserved.

(e) For purposes of this article, financial criteria include:

(1) The degree to which the proposal leverages grants from the fund by including funding or in-kind assets or services from other governmental sources; and

(2) The degree to which the proposal leverages grants from the fund by including funding or in-kind assets or services from private or nonprofit sources or charitable donations, including bargain sales of interests in real property for conservation purposes;

(f) The board of the fund shall evaluate each proposal according to the conservation criteria and financial criteria set forth in this section, and shall award grants on the basis of how well proposals meet these two criteria.

(g) If an eligible grant recipient entity is dissolved or ceases to exist as an entity, or if any interests in real property obtained with a grant from the fund are not being utilized strictly for conservation purposes, the real property interest shall vest in the fund upon recording of a notice signed by the chair of the fund and filed with the clerk of the appropriate county and the fund may transfer the interest to an appropriate eligible grant recipient.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

For the purpose of this section, the word "page" is defined as being a paper or electronic writing of not more than legal size, 8 ½" x 14".
The clerk of the county commission shall charge and collect the following fees:

(a) When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk's certificate of recordation thereon and indexing in a proper index, where the writing is a:

(1) Deed of conveyance (with or without a plat), trust deed, fixture filing or security agreement concerning real estate lease, fifteen dollars.

(2) Financing, continuation, termination or other statement or writing permitted to be filed under chapter forty-six of this code, ten dollars.

(3) Plat or map (with no deed of conveyance), ten dollars.

(4) Service discharge record, no charge.

(5) Any document or writing other than those referenced in subdivisions (1), (2), (3) and (4) of this subsection, ten dollars.

(6) If any document or writing contains more than five pages, for each additional page, one dollar.

For any of the documents admitted to record pursuant to this subsection, if the clerk of the county commission has the technology available to receive these documents in electronic form or other media, the clerk shall set a reasonable fee to record these writings not to exceed the cost for filing paper documents.

(7) Eleven dollars of each recording fee received pursuant to subdivision (1) of this subsection shall be retained by the county clerk for the operation of that office and four dollars of each of the aforesaid recording fees together with five dollars of the recording fee collected pursuant to subdivision (5) of this section, shall be paid by the county clerk into the State
Treasurer and deposited in equal amounts for deposit into the Farmland Protection Fund created in article twelve, chapter eight-a of this code for the benefit of the West Virginia Agricultural Land Protection Authority and into the Outdoor Heritage Conservation Fund created in article two-g, chapter five-b of this code: Provided, That the funds deposited pursuant to this subdivision may only be used for costs, excluding personnel costs, associated with purpose of land conservation, as defined in subsection (f), section seven, article two-g, chapter five-b of this code.

(b) For administering any oath other than oaths by officers and employees of the state, political subdivisions of the state or a public or quasi-public entity of the state or a political subdivision of the state, taken in his or her official capacity, five dollars.

c) For issuance of marriage license and other duties pertaining to the marriage license (including preparation of the application, administrating the oath, registering and recording the license, mailing acknowledgment of minister’s return to one of the licensees and notification to a licensee after sixty days of the nonreceipt of the minister’s return), thirty-five dollars.

(1) One dollar of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury as a state registration fee in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury for the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(3) Ten dollars of the marriage license fee received pursuant to this subsection shall be deposited in the Courthouse Facilities
(d) (1) For a copy of any writing or document, if it is not otherwise provided for, one dollar fifty cents.

(2) If the copy of the writing or document contains more than two pages, for each additional page, one dollar.

(3) For annexing the seal of the commission or clerk to any paper, one dollar.

(4) For a certified copy of a birth certificate, death certificate or marriage license, five dollars.

(e) For copies of any record in electronic form or a medium other than paper, a reasonable fee set by the clerk of the county commission not to exceed the costs associated with document search and duplication.

CHAPTER 39

(Com. Sub. for H.B. 4613 - By Delegates Webster, Walters, Kessler, Caputo, Fleischauer, Ellem, Brown, Manchin, Shook and Hamilton)

AN ACT to amend and reenact §46A-6H-3 of the Code of West Virginia, 1931, as amended, relating to requiring court approval for certain structured settlement transfers; requiring appointment of guardian ad litem; payment of guardian ad litem, attorneys’ fees and costs; required findings; and standard of proof.
Be it enacted by the Legislature of West Virginia:

That §46A-6H-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§46A-6H-3. Requirement of court approval for certain structured settlement transfers.

(a) In addition to the requirements of this article, all transfer agreements must be approved by the circuit court of the county wherein the consumer resides or where the structured settlement agreement was executed when the structured settlement payment rights arise from a personal injury or other claim.

(b) The transferee shall commence the action by filing a petition with the court seeking approval of the transfer and providing to the court the disclosure statement required by subsection (a), section two of this article.

(c) The circuit court shall set a time and date for a hearing on the matter within twenty-one days of the date of the filing of the petition. The transferee shall notify the consumer and all interested parties of the date and time of the hearing and provide them with a copy of the petition.

(d) The court may appoint a guardian ad litem for the consumer in all cases, and shall appoint a guardian ad litem for the consumer in any case where the structured settlement payment rights belong to an infant, an incompetent person or a ward of the court. The guardian ad litem shall review the requisite disclosures and make an independent inquiry to determine whether the proposed transfer is fair, reasonable and in the best interests of the consumer and any dependents of the consumer as well and determine if transfer has been attempted or accomplished before. The information shall be reported to the court during the hearing on the matter.
(e) An interested party has the right to appear and contest the proposed transfer at the time of the hearing. If, after proper notice, the interested party does not make an appearance, then the interested party shall be bound by the court's ruling.

(f) After a hearing or upon its own motion, the court may approve the transfer if the court finds that:

(1) The consumer has clearly demonstrated that: (A) He or she, or his or her family is facing a financial hardship that the transfer would alleviate and that the transfer would not subject the consumer or the consumer's family to undue financial hardship in the future; or (B) the transfer is in the best interest of the consumer: Provided, That the judge shall inquire of the guardian ad litem and the transferee as to possible adverse tax consequence to the consumer and inform the consumer of the result of said inquiry;

(2) The transferee is in compliance with the provisions of section two of this article; and

(3) The transfer agreement does not contravene the terms of the structured settlement agreement, including any restrictions on the right of the consumer to transfer his or her structured settlement payment rights, unless the annuity issuer and structured settlement obligor have consented to the transfer. However, the approval of the annuity issuer and the structured settlement obligor shall not be required if, at the time the consumer and the transferee entered into the transfer agreement, a favorable tax determination was in effect.

(g) The court shall award the guardian ad litem reasonable fees for representing the consumer. Attorneys' fees and costs shall be paid by the transferee.
(h) A consumer may request court approval for a transfer that does not mandate court approval under this section. Such voluntary petition by the consumer shall then become subject to the provisions of this section. The transferee shall be responsible for filing the action pursuant to subsection (b) of this section and shall be responsible for attorney's fees or guardian ad litem fees.

CHAPTER 40

(S.B. 263 - By Senators Love, Green, Hunter, McKenzie, White and Minard)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §25-1-3, §25-1-3b, §25-1-11a and §25-1-11c of the Code of West Virginia, 1931, as amended; and to amend and reenact §25-4-4 of said code, all relating generally to the Division of Corrections; updating the statutory list of correctional facilities over which the commissioner has control; providing that the commissioner is authorized to contract with the McDowell County Commission to house and incarcerate inmates at the Stevens Correctional Center; removing the commissioner's authority to serve on the Commission for Distribution of Surplus Food; providing that when a commissary in a division facility is operated by a vendor, the negotiated commission paid by the vendor is to be deposited into the facility's inmate benefit fund; clarifying that wardens and administrators of correctional facilities are subject to the direction of the commissioner; specifying that all employees of the Division of Corrections are responsible for enforcing rules and laws necessary for the control and management of correctional units; modifying duties of those employees designated as correctional peace officers; and
providing that wardens of centers for housing young adult offenders have the same powers and duties as other wardens of correctional facilities.

Be it enacted by the Legislature of West Virginia:

That §25-1-3, §25-1-3b, §25-1-11a and §25-1-11c of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §25-4-4 of said code be amended and reenacted, all to read as follows:

Article
1. Organization, Institutions and Corrections Management.
4. Centers for Housing Young Adult Offenders.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units.

§25-1-3b. Inmate benefit funds.
§25-1-11a. Duties of wardens and administrators; bond; residence.
§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units.

1 The Commissioner of Corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his or her jurisdiction or control:

5 Mount Olive Correctional Complex;
6 Huttonsville Correctional Center;
7 Anthony Correctional Center;
8 Denmar Correctional Center;
Pruntytown Correctional Center;
Northern West Virginia Correctional Center;
St. Marys Correctional Center;
Lakin Correctional Center;
Ohio County Correctional Center;
Beckley Correctional Center; and
Martinsburg Correctional Center.

The Commissioner of Corrections is authorized to contract with the county commission of McDowell County to house and incarcerate inmates at the Stevens Correctional Center consistent with all requirements and standards governing the Division of Corrections.

Jurisdiction of and title to the West Virginia Children's Home at Elkins are hereby transferred to the Department of Health and Human Resources, which is the custodian of all deeds and other muniments of title to the property and shall record those that are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, the West Virginia Children's Home shall be managed and controlled by a superintendent appointed by the Commissioner of the Division of Human Services.

The commissioner is authorized to establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. The work and study release units may be coeducational and shall be managed, directed and controlled as provided in this article.

Any person employed by the Office of Public Institutions who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six, chapter twenty-nine of this code, remain in the civil service system as a covered employee.
§25-1-3b. Inmate benefit funds.

(a) The Commissioner of Corrections shall establish an inmate benefit fund for each of the institutions under his or her jurisdiction. The inmate benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated in state correctional facilities and for the benefit of victims.

(b) There is continued a special revenue account in the State Treasury for each inmate benefit fund established by the commissioner. Moneys received by an institution for deposit in an inmate benefit fund shall be deposited with the State Treasurer to be credited to the special revenue account created for the institution's inmate benefit fund. Moneys in a special revenue account established for an inmate benefit fund may be expended by the institution for the purposes set forth in this section. Moneys to be deposited into an inmate benefit fund consist of:

(1) All profit from the exchange or commissary operation and if the commissary is operated by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the Division of Corrections by the vendor;

(2) All net proceeds from vending machines used for inmate visitation;

(3) All proceeds from contracted inmate telephone commissions;

(4) Any funds that may be assigned by inmates or donated to the institution by the general public or an inmate service organization on behalf of all inmates;

(5) Any funds confiscated considered contraband; and

(6) Any unexpended balances in individual inmate trustee funds if designated by the inmate upon his or her discharge from the institution.

(c) The inmate benefit fund may only be used for the following purposes at correctional facilities:
(a) The warden or administrator of the correctional institutions or units shall, in the manner provided in section eleven of this article, hire all assistants and employees required for the management of the correctional institutions or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates, to prevent escapes and to remove all persons convicted and sentenced to the custody of the Division of Corrections, from the place confined to a correctional institution, all of whom shall be under the control of the warden. The commissioner may issue a certificate authorizing any correctional employee who has successfully completed the division's training program for firearms certification, which shall be the equivalent of that required of deputy sheriffs, to carry firearms and concealed weapons while on duty. Any correctional employee authorized by the commissioner has the right, without a state license, to carry firearms and concealed weapons while on duty. Each correctional employee, authorized by the commissioner, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon when performing his or her official duties as a correctional employee, bearing the official signature of the commissioner and warden or administrator. The right is extended to a correctional employee during the time the employee travels from place to place within the state for the purpose of removing prisoners from jails to a correctional institution of the Division of Corrections, during the time the employee is pursuing and apprehending escaped inmates and during any other time the employee is performing official duties as a correctional employee. No correctional employee has the right to carry a firearm or concealed weapon for any other purpose or during any other time, including when traveling to and from the employee's residence and a correctional institution, unless the employee has obtained a state license in the manner prescribed in article seven, chapter sixty-one of this code.

(b) All employees of the Division of Corrections are responsible for enforcing rules and laws necessary for the control and management of correctional units and the
maintenance of public safety that is within the scope of responsibilities of the Division of Corrections.

(c) The Commissioner of Corrections may designate correctional employees as correctional peace officers who have the authority:

(1) To detain persons for violations of state law committed on the property of any state correctional institution;

(2) To conduct investigations regarding criminal activity occurring within a correctional facility; and

(3) To execute criminal process or other process in furtherance of these duties.

ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-4. Warden.

Each center shall be under the direction of a warden who shall have the minimum qualification of a college degree with a major in criminal justice or a related field and the powers and duties as described in sections eleven and eleven-a, article one of this chapter. The warden shall be paid an annual salary to be fixed by the Commissioner of Corrections. The warden, subject to the authority of the commissioner, has the responsibility for the overall operation of the center.

At each center the warden shall administer programming which shall include the following components:

(1) A work program;

(2) An educational program in accordance with section thirteen-f, article two, chapter eighteen of this code;

(3) A recreational program; and

(4) A counseling program with an emphasis on substance abuse and life skills.
AN ACT to amend and reenact §31-20-27a of the Code of West Virginia, 1931, as amended, relating to authorizing regional jail employees to carry a firearm after receiving appropriate certification; and expanding their arrest authority.

Be it enacted by the Legislature of West Virginia:

That §31-20-27a 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.

§31-20-27a. Regional jail employees right to carry firearm; arrest authority of correctional officers.

1 (a) The executive director may issue a certificate authorizing any regional jail employee who has successfully completed the authority’s training program for firearms certification, which shall be the equivalent of that required of deputy sheriffs, to carry firearms and concealed weapons while on duty. Any regional jail employee authorized by the executive director has the right, without a state license, to carry firearms and concealed weapons while on duty, pursuant to the provisions and limitations of this section.
Each employee authorized by the executive director shall carry with him or her a certificate, authorizing him or her to carry a firearm or concealed weapon when performing his or her official duties as a regional jail employee, bearing the official signature of the executive director and administrator. The right is extended to a regional jail employee during the time the employee travels from place to place within the state for the purpose of transporting inmates, and during the time the employee is pursuing and apprehending escaped inmates, and during any other time the employee is performing official duties as a regional jail employee. The regional jail employee's carrying of a firearm or concealed weapon while on regional jail property must also comply with rules and procedures established by the Regional Jail Authority. No regional jail employee has the right to carry a firearm or concealed weapon for any other purpose or during any other time, including when traveling to and from the employee's residence and a regional jail, unless the employee has obtained a state license in the manner prescribed in article seven, chapter sixty-one of this code.

(b) Persons employed by the Regional Jail Authority as correctional officers are hereby authorized and empowered to make arrests of persons already charged with a violation of law who surrender themselves to such correctional officer, to arrest persons already in the custody of the Regional Jail Authority for violations of law occurring in the officer's presence, to detain persons for violations of state law committed on the property of any regional jail, and to conduct investigations, pursue and apprehend escapees from the custody of regional jail.

(c) Nothing in this section shall be construed as to make a correctional officer employed by the Regional Jail Authority a law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code.
CHAPTER 42

(S.B. 784 - By Senators Tomblin, Mr. President, Bowman, Chafin, Helmick, Kessler, Prezioso, Caruth, Boley and McKenzie)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §7-1-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-1-1a, all relating to reforming, altering or modifying county government as authorized in section thirteen, article IX of the West Virginia Constitution; establishing requirements for reforming, altering or modifying county commission; and providing for alternative forms of county government.

Be it enacted by the Legislature of West Virginia:

That §7-1-1 of the Code of West Virginia, 1931, as amended, be amended and re-enacted; and that said code be amended by adding thereto a new section, designated §7-1-1a, all to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-1. County commissions corporations; how constituted; election of president.

§7-1-1a. Requirements for reforming, altering or modifying county commission; alternative forms of county government.

§7-1-1. County commissions corporations; how constituted; election of president.

(a) The county commission, formerly the county court, tribunal or county council in lieu thereof, of every county
within the State of West Virginia shall be a corporation by
the name of "The County Commission of .................... County”, or “The County Council of ................. County” by
which name it may sue and be sued, plead and be impleaded
and contract and be contracted with.

(b) A county commission shall consist of three
commissioners as provided in section nine, article IX of the
Constitution of the State of West Virginia, any two of whom
shall constitute a quorum for the transaction of business.

(c) A county council, created on or after the first day of
July, two thousand eight, as an alternative to a county
commission pursuant to section thirteen, article IX of the
Constitution of West Virginia, shall consist of four or more
members, a majority of whom shall constitute a quorum for
the transaction of business.

(d) Unless provided otherwise in an alternative form of
government, each county commission or council shall
annually, at its first session in each year, or as soon thereafter
as practicable, elect one of its commissioners or council
members as president of the county commission or council.

(e) Throughout this chapter and the code, the term
“county commission” or any reference to a county
commission shall include all county councils created in lieu
of the county commission.

§7-1-la. Requirements for reforming, altering or modifying a
county commission; alternative forms of county
government.

(a) A county government may be reformed, altered or
modified as follows:

(1) The county commission or county council of the
county may pass a resolution making application to the
Legislature to reform, alter or modify an existing form of county government in accordance with the requirements of the West Virginia Constitution and this section; or

(2) Ten percent of the registered voters of the county may sign a petition requesting reformation, alteration or modification of the existing form of county government in accordance with the requirements of the West Virginia Constitution and this section.

(b) A county commission or county council seeking to make application to reform, alter or modify its county government pursuant to the provisions of section thirteen, article IX of the West Virginia Constitution shall adopt a resolution containing the following information:

(1) The reasons for the reformation, alteration or modification of the county commission or county government;

(2) The form of the proposed county government selected from the alternatives authorized by this section;

(3) The proposed name of the county government;

(4) When the question of reformation, alteration or modification of the county government will be on the ballot;

(5) How and when the officers of the proposed county government will be elected or appointed, taking into consideration the following:

(A) When the election on the question of reformation, alteration or modification of the county government will be held;

(B) The normal election cycles for county officials; and

(C) The time frames for early and absentee voting provided in article three, chapter three of this code; and
(6) When the new county government will become effective.

(c) Prior to the adoption of a resolution seeking to reform, alter or modify a county commission or county council, the governing body of the county shall publish by a Class II legal advertisement in one or more newspapers of general circulation throughout the county, in compliance with the provisions of article three, chapter fifty-nine of this code, notice of the proposed changes to the current form of county government. The publication area shall be the entire county. The notice shall summarize the proposed changes to the county government and include the date, time and place for the meeting or meetings in which the resolution will be considered.

(d) After the publication and adoption of the resolution, the following information shall be submitted by the county to the Clerk of the Senate and to the Clerk of the House of Delegates no later than the tenth day of a regular legislative session in which the request for reforming, altering or modifying a county commission or county government is to be considered by the Legislature:

(1) A certified copy of the adopted resolution;

(2) A copy of the required public notice;

(3) The vote on the adoption of the resolution; and

(4) The date the resolution was adopted.

(e) Registered voters of a county seeking to reform, alter or modify the county commission or county council pursuant to section thirteen, article IX of the West Virginia Constitution shall submit a petition, signed by ten percent of
the registered voters in the county, to the county commission
or county council, setting forth the information required in
subsection (b) of this section. Upon receipt of the petition,
the county commission or county council shall verify that the
signatures on the petition are: (1) Legally registered voters of
the county; and (2) equal to ten percent of the registered
voters of the county.

(f) The county commission or county council shall,
within thirty days of receipt of a constitutionally defective
petition, return it to the petitioners with a written statement as
to why the petition is defective. The petitioners may, within
ninety days of receipt of the written statement from the
county commission or council and after making the necessary
changes, resubmit the petition to the county commission or
county council.

(g) After verifying that the signatures on the petition meet
the constitutional requirements, the county commission or
council shall forward the petition to the Clerk of the Senate
and to the Clerk of the House of Delegates no later than the
tenth day of a regular legislative session in which the request
for reforming, altering or modifying a county commission or
county government is to be considered by the Legislature.

(h) After receipt of a certified resolution or verified
petition by the Clerk of the Senate and the Clerk of the House
of Delegates, the Legislature shall determine whether all
constitutional and statutory requirements have been met. If
such requirements have not been met, the certified resolution
or verified petition shall be returned with a written statement
of the deficiencies. A certified resolution or verified petition
may be revised following the procedures set forth in this
section for an original submission and then may be
resubmitted to the Clerk of the Senate and the Clerk of the
House of Delegates for consideration by the Legislature. The
requirement that the petition be submitted prior to the tenth
day of the legislative session shall not apply to resubmitted resolutions or petitions.

(i) Following passage of an act by the Legislature authorizing an election on the question of reforming, altering or modifying a county commission or council, the question shall be placed on the ballot of the county at the next general election following such passage or, at the expense of the county, a special election.

(j) Following approval of the reformation, alteration or modification of the county commission or council by a majority of the county's registered voters, nomination of the county commission or council members and, where authorized, the chief executive, shall be held in the next primary election or the primary election set forth in the resolution or petition to reform, alter or modify the county commission or council. Election of the county commissioners or council members and, where authorized, the chief executive shall be held in the next general election or the general election set forth in the resolution or petition to change the form of the county commission.

(k) All elections required by this section shall be held in accordance with the provisions of chapter three of this code.

(l) The following are guidelines for forms of county government:

(1) "Chief executive - county commission plan". -- Under this plan:

(A) There shall be a chief executive elected by the registered voters of the county at large and three county commissioners that shall be elected at large;

(B) The commission shall be the governing body;
(C) The chief executive shall have the exclusive authority
to supervise, direct and control the administration of the
county government. The chief executive shall carry out,
execute and enforce all ordinances, policies, rules and
regulations of the commission;

(D) The salary of the chief executive shall be set by the
Legislature;

(E) Other nonelected officers and employees shall be
appointed by the chief executive subject to the approval of
the county commission; and

(F) The chief executive shall not be a member of the
county commission nor shall he or she hold any other elective
office.

(2) “County manager - county commission plan”. --
Under this plan:

(A) There shall be a county manager appointed by the
county commission and three county commissioners that may
be elected at large;

(B) The commission shall be the governing body;

(C) The county manager shall have the exclusive
authority to supervise, direct and control the administration
of the county government. The county manager shall carry
out, execute and enforce all ordinances, policies, rules and
regulations of the commission;

(D) The salary of the county manager shall be set by the
county commission;

(E) Other nonelected officers and employees shall be
appointed by the county manager subject to the approval of
the commission; and
F The county manager shall not be a member of the county commission nor shall he or she hold any other elective office.

(3) “County administrator - county commission plan”. -- Under this plan:

(A) There shall be a county administrator appointed by the county commission and three county commissioners that shall be elected at large;

(B) The commission shall be the governing body;

(C) The county administrator shall have the authority to direct the administration of the county government under the supervision of the county commission. The county administrator shall carry out, execute and enforce all ordinances, policies, rules and regulations of the commission;

(D) The salary of the county administrator shall be set by the county commission;

(E) The county administrator shall appoint or employ all subordinates and employees for whose duties or work he or she is responsible to the commission; and

(F) The county administrator shall not be a member of the county commission nor shall he or she hold any other elective office.

(4) A county council consisting of four or more members that shall be elected at large.

(5) Any form of county government adopted pursuant to section thirteen, article IX of the West Virginia Constitution and this section may, by the methods set forth in this section,
return to the traditional county commission or change to another form of county government, as set out in this section.

(m) The purpose of this section is to establish the basic requirements for reforming, altering or modifying a county commission or county council pursuant to section thirteen, article IX of the West Virginia Constitution. The structure and organization of a county government may be specified in greater detail by resolution or ordinance so long as such provisions do not conflict with the purposes and provisions set forth in this section, chapter seven-a of this code or the constitution.

CHAPTER 43

(Com. Sub. for H.B. 4028 - By Delegates Fleischauer, Marshall, Beach and Shook)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-300; and to amend said code by adding thereto a new section, designated §8-12-5e, all relating to authorizing counties and municipalities to enter into energy-savings contracts.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-300; and that said code be amended by adding thereto a new section, designated §8-12-5e, all to read as follows:

Chapter
7. County Commissions and Officers.
§7-1-300. Authority to enter into energy-savings contracts.

(a) As used in this section:

(1) "Energy-conservation measures" means goods or services, or both, to reduce energy consumption operating costs of county facilities. They include, but are not limited to, installation of one or more of the following:

(A) Insulation of a building structure and systems within a building;

(B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door modifications that reduce energy consumption;

(C) Automatic energy control systems;

(D) Heating, ventilating or air conditioning systems, including modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase energy efficiency;

(F) Energy recovery systems;

(G) Cogeneration systems that produce steam or another form of energy for use by any agency in a building or complex of buildings owned by the county; or
(H) Energy-conservation maintenance measures that provide long-term operating cost reductions of the building's present cost of operation.

(2) "Energy-savings contract" means a performance-based contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more energy-conservation measures.

(3) "Qualified provider" means a person, firm or corporation experienced in the design, implementation and installation of energy-conservation measures.

(b) Counties are authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of county owned buildings, subject to the requirements of this section.

(c) Before entering into a contract or before the installation of equipment, modifications or remodeling to be furnished under a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. A proposal must contain estimates of all costs of installation, modifications or remodeling, including the costs of design, engineering, installation, maintenance, repairs or debt service, as well as estimates of the amounts by which energy operating costs will be reduced. If the county finds, after receiving the proposal, that the proposal includes one or more energy-conservation measures, the installation of which is guaranteed to result in a net savings of a minimum of five percent of the then current energy operating costs which savings will, at a minimum, satisfy any debt service required, the county may enter into a contract with the provider pursuant to this section.
An energy-savings contract must include the following:

1. A guarantee of a specific minimum net percentage amount of at least five percent of energy operating costs each year over the term of the contract that the county will save;

2. A statement of all costs of energy-conservation measures, including the costs of design, engineering, installation, maintenance, repairs and operations; and

3. A provision that payments, except obligations upon termination of the contract before its expiration, are to be made over time.

A county may supplement its payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

Any energy-savings contract entered into for the purpose of achieving one or more energy-conservation measures, as authorized by this section, shall be considered a "public improvement" within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code. As such, energy-savings contracts entered into pursuant to this section are subject to competitive bidding requirements and other requirements of section twenty-two, article twenty of this chapter.

An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: Provided, That such a contract may not exceed a fifteen-year term: Provided, however, That the long-term contract will be void unless the agreement provides that the county shall have the option during each fiscal year of the contract to terminate the agreement.
(h) Counties may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions contained in subsection (g) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(i) The county may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5e. Authority to enter into energy-savings contracts.

(a) As used in this section:

(1) "Energy-conservation measures" means goods or services, or both, to reduce energy consumption operating costs of municipality facilities. They include, but are not limited to, installation of one or more of the following:

(A) Insulation of a building structure and systems within a building;

(B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door modifications that reduce energy consumption;
(C) Automatic energy control systems;

(D) Heating, ventilating or air conditioning systems, including modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase energy efficiency;

(F) Energy recovery systems;

(G) Cogeneration systems that produce steam or another form of energy for use by any agency in a building or complex of buildings owned by the municipality; or

(H) Energy-conservation maintenance measures that provide long-term operating cost reductions of the building's present cost of operation.

(2) "Energy-savings contract" means a performance-based contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more energy-conservation measures.

(3) "Qualified provider" means a person, firm or corporation experienced in the design, implementation and installation of energy-conservation measures.

(b) Municipalities are authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of municipality buildings, subject to the requirements of this section.

(c) Before entering into a contract or before the installation of equipment, modifications or remodeling to be furnished under a contract, the qualified provider shall first
issue a proposal summarizing the scope of work to be performed. A proposal must contain estimates of all costs of installation, modifications or remodeling, including the costs of design, engineering, installation, maintenance, repairs or debt service, as well as estimates of the amounts by which energy operating costs will be reduced. If the municipality finds, after receiving the proposal, that the proposal includes one or more energy-conservation measures, the installation of which is guaranteed to result in a net savings of a minimum of five percent of the then current energy operating costs which savings will, at a minimum, satisfy any debt service required, the municipality may enter into a contract with the provider pursuant to this section.

(d) An energy-savings contract must include the following:

(1) A guarantee of a specific minimum net percentage amount of at least five percent of energy operating costs each year over the term of the contract that the municipality will save;

(2) A statement of all costs of energy-conservation measures, including the costs of design, engineering, installation, maintenance, repairs and operations; and

(3) A provision that payments, except obligations upon termination of the contract before its expiration, are to be made over time.

(e) A municipality may supplement its payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(f) Any energy-savings contract entered into for the purpose of achieving one or more energy-conservation measures, as authorized by this section, shall be subject to a competitive bidding process as provided by municipal
ordinance enacted pursuant to section ten-b, article twelve of this chapter.

(g) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: Provided, that such a contract may not exceed a fifteen-year term: Provided, however, that the long-term contract will be void unless the agreement provides that the municipality shall have the option during each fiscal year of the contract to terminate the agreement.

(h) Municipalities may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions contained in subsection (f) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(i) The municipality may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.

CHAPTER 44

(S.B. 570 - By Senator Caruth)

[Passed March 6, 2008; in effect ninety days from passage.] [Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §7-12-9b of the Code of West Virginia, 1931, as amended, relating to county commissions' ability to coordinate joint development efforts.
Be it enacted by the Legislature of West Virginia:

That §7-12-9b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-9b. Joint development entities.

(a) The Legislature hereby finds and declares that the citizens of this state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county governing bodies, municipal governing bodies and county and municipal development authorities should be authorized to organize and jointly own all of the partnership, ownership and membership interests in a partnership, corporation or limited liability company for the sole purpose of undertaking jointly through their joint ownership of or membership in the partnership, corporation or limited liability company any project or projects that an authority established pursuant to this article would be permitted to undertake.

(b) Any combination of two or more county governing bodies, municipal governing bodies, municipal development authorities or county development authorities may jointly form and hold all of the partnership, ownership or membership interests in a partnership, corporation or limited liability company, the sole purpose of which is to develop and own one or more joint economic development projects (for purposes of this section, a “joint development entity”). No person or entity other than a county governing body, municipal governing body, municipal development authority or county development authority may own any ownership or membership interest in a joint development entity. Any
existing partnership, corporation or limited liability company
is a joint development entity on and after the effective date of
this section if: (I) It was organized for the purposes described
in this subsection prior to the effective date of this section;
and (ii) the partnership, ownership or membership interests
in it meet the requirements of this subsection on and after the
effective date of this section.

(c) To the extent consistent with and not prohibited by or
in conflict with the restrictions and limitations on, or the
rights and attributes of, a joint development entity set forth in
this section, the applicable general law governing
partnerships, corporations or limited liability companies
govern the organization, existence, duration, powers,
governance and dissolution of a joint development entity and
the rights and responsibilities of the partners, owners or
members of a joint development entity.

(d) A joint development entity is a public corporation and
a political subdivision and instrumentality of its partners,
owners or members and has the powers, rights and privileges
of an authority set forth in sections seven, eight, nine, ten,
eleven, twelve and fourteen of this article in addition to those
granted to partnerships, corporations and limited liability
companies under applicable general law.

(e) For West Virginia tax purposes, a joint development
entity is a political subdivision of the State of West Virginia
and is exempt from all state and local taxation and all real
and personal property owned by a joint development entity,
or which the joint development entity may acquire to be
leased, sold or otherwise disposed of, is exempt from taxation
by the state or any county, municipality or other levying body
as public property.
CHAPTER 45

(Com. Sub. for H.B. 4607 - By Delegate White)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to repeal §8-13B-1, §8-13B-2, §8-13B-3, §8-13B-4, §8-13B-5, §8-13B-6, §8-13B-7, §8-13B-8, §8-13B-9, §8-13B-10, §8-13B-11, §8-13B-12, §8-13B-13, §8-13B-14, §8-13B-15, §8-13B-16, §8-13B-17, §8-13B-18, §8-13B-19 and §8-13B-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-22-12 of said code; and to amend and reenact §8-38-12 of said code, all relating to special district excise taxes authorized for counties and municipalities; clarifying the rates of the tax; authorizing the Tax Commissioner to require the electronic filing of returns and electronic payment of the tax; providing for the sharing of tax information; and providing confidentiality requirements of shared information.

Be it enacted by the Legislature of West Virginia:

That §8-13B-1, §8-13B-2, §8-13B-3, §8-13B-4, §8-13B-5, §8-13B-6, §8-13B-7, §8-13B-8, §8-13B-9, §8-13B-10, §8-13B-11, §8-13B-12, §8-13B-13, §8-13B-14, §8-13B-15, §8-13B-16, §8-13B-17, §8-13B-18, §8-13B-19 and §8-13B-20 of the Code of West Virginia, 1931, as amended, be repealed; that §7-22-12 of said code be amended and reenacted; and that §8-38-12 of said code be amended and reenacted, all to read as follows:

Chapter
7. County Commissions and Officers.
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-12. Special district excise tax authorized.

(a) General. -- The county commission of a county, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by order entered of record, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. -- The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district. Sales of gasoline and special fuel are not subject to special district excise tax but remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the exemption provided in section nine-f of said article, all exemptions and exceptions from the consumers sales and service tax shall also apply to the special district excise tax.

(c) Tax rate. -- The rate or rates of a special district excise tax levied pursuant to this section shall be identical to the rate or rates of the consumer sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district authorized by this section.

(d) Collection by Tax Commissioner. -- The order of the county commission imposing a special district excise tax
shall provide for the tax to be collected by the Tax Commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(1) The Tax Commissioner may require the electronic filing of returns related to the special district excise tax imposed pursuant to this section, and also may require the electronic payment of the special district excise tax imposed pursuant to this section. The Tax Commissioner may prescribe by rules promulgated pursuant to article three, chapter twenty-nine-a of this code, administrative notices, and forms and instructions, the procedures and criteria to be followed to electronically file returns and to electronically pay the special district excise tax imposed pursuant to this section.

(2) Any rules filed by the State Tax Commissioner relating to the special district excise tax imposed pursuant to this section shall set forth the following:

(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(C) What type of electronic payment method or methods a particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable, and alternative methods of payment that may be used for any exceptions;

(E) Procedures for making voluntary or mandatory electronic payments or both;

(F) Any other provisions necessary to ensure the timely electronic filing of returns related to the special district excise
tax and the making of payments electronically of the special
district excise tax imposed pursuant to this section.

(3)(A) Notwithstanding the provisions of section five-d,
article ten, chapter eleven of this code: (i) So long as bonds
are outstanding pursuant to this article, the Tax
Commissioner shall provide on a monthly basis to the trustee
for bonds issued pursuant to this article information on
returns submitted pursuant to this article; and (ii) the trustee
may share the information so obtained with the county
commission that established the economic opportunity
development district that issued the bonds pursuant to this
article and with the bondholders and with bond counsel for
bonds issued pursuant to this article. The Tax Commissioner
and the trustee may enter into a written agreement in order to
accomplish the exchange of information.

(B) Any confidential information provided pursuant to
this subdivision shall be used solely for the protection and
enforcement of the rights and remedies of the bondholders of
bonds issued pursuant to this article. Any person or entity
that is in possession of information disclosed by the Tax
Commissioner or shared by the trustee pursuant to
subdivision (a) of this subsection is subject to the provisions
of section five-d, article ten, chapter eleven of this code as if
that person or entity that is in possession of the tax
information is an officer, employee, agent or representative
of this state or of a local or municipal governmental entity or
other governmental subdivision.

(e) Deposit of net tax collected. --

(1) The order of the county commission imposing a
special district excise tax shall provide that the Tax
Commissioner deposit the net amount of tax collected in the
Special Economic Opportunity Development District Fund to
the credit of the county commission's subaccount therein for
the economic opportunity development district and that the
money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The State Treasurer shall withhold from the county commission's subaccount in the Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the development office pursuant to section seven of this article.

(f) Effective date of special district excise tax. -- Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins sixty days after the date of adoption of an order entered of record imposing the tax or the first day of any later calendar month expressly designated in the order.

(g) Copies of order. -- Upon entry of an order levying a special district excise tax, a certified copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

*§8-38-12. Special district excise tax authorized.

(a) General. -- The council of a municipality, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district,

*Clerk's Note: This section was also amended by S.B. 280 (Chapter 46), which passed subsequent to this act.
may, by ordinance, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) \textit{Tax base.} -- The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district. Sales of gasoline and special fuel are not subject to special district excise tax but remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the exemption provided in section nine-f of article fifteen, chapter eleven of this code, all exemptions and exceptions from the consumers sales and service tax shall also apply to the special district excise tax.

(c) \textit{Tax rate.} -- The rate or rates of a special district excise tax levied pursuant to this section shall be stated in an ordinance enacted by the municipality and identical to the rate or rates of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales rendered within the boundaries of the district authorized by this section.

(d) \textit{Collection by Tax Commissioner.} -- The ordinance of the municipality imposing a special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(1) The Tax Commissioner may require the electronic filing of returns related to the special district excise tax imposed pursuant to this section, and may require the electronic payment of the special district excise tax imposed pursuant to this section. The Tax Commissioner may prescribe by rules promulgated pursuant to article three,
chapter twenty-nine-a of this code, administrative notices, and forms and instructions, the procedures and criteria to be followed to electronically file returns and to electronically pay the special district excise tax imposed pursuant to this section.

(2) Any rules filed by the Tax Commissioner relating to the special district excise tax imposed pursuant to this section shall set forth the following:

(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(C) What type of electronic payment method or methods a particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable, and alternative methods of payment that may be used for any exceptions;

(E) Procedures for making voluntary or mandatory electronic payments or both;

(F) Any other provisions necessary to ensure the timely electronic filing of returns related to the special district excise tax and the making of payments electronically of the special district excise tax imposed pursuant to this section.

(3) (A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on returns submitted pursuant to this article; and (ii) the trustee may share the information so obtained with the county commission that established the economic opportunity
development district that issued the bonds pursuant to this article and with the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish the exchange of information.

(B) Any confidential information provided pursuant to this subdivision shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person or entity that is in possession of the tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision.

(e) Deposit of net tax collected. --

(1) The ordinance of the municipality imposing a special district excise tax shall provide that the Tax Commissioner deposit the net amount of tax collected in the Special Economic Opportunity Development District Fund to the credit of the municipality's subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The State Treasurer shall withhold from the municipality's subaccount in the Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the
(f) Effective date of special district excise tax. -- Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins at least sixty days after the date of enactment of the ordinance imposing the tax or at any later date expressly designated in the ordinance that begins on the first day of a calendar month.

(g) Copies of ordinance. -- Upon enactment of an ordinance levying a special district excise tax, a certified copy of the ordinance shall be mailed to the State Auditor, as ex officio the chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.

AN ACT to amend and reenact §8-38-3, §8-38-5, §8-38-7, §8-38-12 and §8-38-16 of the Code of West Virginia, 1931, as amended, all relating to the Municipal Economic Opportunity Development District Act generally; adding certain remediation projects to those for which special district excise taxes may be authorized upon meeting certain requirements; clarifying the rates of the tax; authorizing the Tax Commissioner to require the electronic filing of returns and electronic payment of the tax; providing for the sharing of tax information and
confidentiality of such information; and requiring additional deposits of the tax into the general revenue fund in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §8-38-3, §8-38-5, §8-38-7, §8-38-12 and §8-38-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.


1 For purposes of this article, the term:

2 (1) “Development expenditures” means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

(2) “District” means an economic opportunity development district created pursuant to this article;

(3) “District board” means a district board created pursuant to section ten of this article;

(4) “Eligible property” means any taxable or exempt real property located in a district established pursuant to this article;
(5) “Municipality” is a word of art and shall mean, for the purposes of this article, only Class I and Class II cities as classified in section three, article one of this chapter;

(6) “Remediation” means measures undertaken to bring about the reconditioning or restoration of property located within the boundaries of an economic opportunity development district project that has been affected by exploration, industrial operations or solid waste disposal and which measures, when undertaken, will eliminate or ameliorate the existing state of the property and enable the property to be commercially developed.


Any municipality that has established an economic opportunity development district under this article may make, or authorize to be made by a district board and other public or private parties, development expenditures as will promote the economic vitality of the district and the general welfare of the municipality, including, but not limited to, expenditures for the following purposes:

(1) Beautification of the district by means such as landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(2) Provision of special or additional public services such as sanitation, security for persons and property and the construction and maintenance of public facilities, including, but not limited to, sidewalks, parking lots, parking garages and other public areas;

(3) Making payments for principal, interest, issuance costs, any of the costs described in section twenty of this article and appropriate reserves for bonds and other
instruments and arrangements issued or entered into by the municipality for financing the expenditures of the district described in this section and to otherwise implement the purposes of this article;

(4) Providing financial support for public transportation and vehicle parking facilities open to the general public, whether physically situate within the district’s boundaries or on adjacent land;

(5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district’s boundaries: Provided, That the expenditure directly benefits the district;

(6) Developing plans for the architectural design of the district and portions thereof and developing plans and programs for the future development of the district;

(7) Developing, promoting and supporting community events and activities open to the general public that benefit the district;

(8) Providing the administrative costs for a district management program;

(9) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as are commercially reasonable and necessary to sustain its economic viability on a permanent basis;

(10) Providing any other services that the municipality or district board is authorized to perform and which the
municipality does not also perform to the same extent on a countywide basis;

(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;

(12) Acquiring an interest in any entity or entities that own any portion of the real property situate in the district and contributing capital to any entity or entities;

(13) Remediation of publicly or privately owned landfills, solid waste facilities or hazardous waste sites to facilitate commercial development which would not otherwise be economically feasible; and

(14) To do any and all things necessary, desirable or appropriate to carry out and accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

§8-38-7. Application to development office for community and economic development for approval of an economic opportunity development district project.

(a) General. -- The development office shall receive and act on applications filed with it by municipalities pursuant to section six of this article. Each application must include:

(1) A true copy of the notice described in section six of this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months needed to complete the project;
9 (4) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

13 (5) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development or redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves shall not exceed the amounts that would be required by ordinary commercial capital market considerations;

21 (6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

26 (7) A description of the financial contribution of the municipality to the funding of development expenditures;

28 (8) Identification of any businesses that the municipality expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated “relocated entities”;

34 (9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the municipality expects to continue doing business there after the district is created;

38 (10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to
the Tax Commissioner by all business locations identified as
provided in subdivisions (8) and (9) of this subsection with
respect to their sales made and services rendered from their
then current business locations that will be relocated from, or
to, or remain in the district for the twelve full calendar
months next preceding the date of the application: Provided,
That for purposes of this article, the aggregate amount is
designated as “the base tax revenue amount”;

(11) A good faith estimate of the gross annual district tax
revenue amount;

(12) The proposed application of any surplus from all
funding sources to further the objectives of this article;

(13) The Tax Commissioner’s certification of: (i) The
amount of consumers sales and service taxes collected from
businesses located in the economic opportunity district
during the twelve calendar months preceding the calendar
quarter during which the application will be submitted to the
development office; (ii) the estimated amount of economic
opportunity district excise tax that will be collected during
the first twelve months after the month in which the Tax
Commissioner would first begin to collect that tax; and (iii)
the estimated amount of economic opportunity district excise
tax that will be collected during the first thirty-six months
after the month in which the Tax Commissioner would first
begin to collect that tax; and

(14) Any additional information the development office
may require.

(b) Review of applications. -- The development office
shall review all project proposals for conformance to
statutory and regulatory requirements, the reasonableness of
the project’s budget and timetable for completion and the
following criteria:
(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;

(4) Whether the economic opportunity development district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;

(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;
(9) Whether the municipality has a strategy for economic development in the municipality and whether the project is consistent with that strategy;

(10) Whether the project helps to diversify the local economy;

(11) Whether the project is consistent with the goals of this article;

(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(13)(A) The ability of the municipality and the project developer or project team to carry out the project: Provided, That no project may be approved by the development office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than fifty million dollars in the district and the municipality submits clear and convincing information, to the satisfaction of the development office, that such investment will be made if the development office approves the project and the Legislature authorizes the municipality to levy an excise tax on sales of goods and services made within the economic opportunity development district as provided in this article.

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no project involving remediation may be approved by the development office unless the amount of all development expenditures proposed to be made in the first forty-eight months following the creation of the district results in capital investment of more than fifty million dollars in the district. In addition to the remaining provisions of paragraph (A) of this subdivision the development office may not approve a project involving
remediation authorized under section five of this article unless the municipality submits clear and convincing information, to the satisfaction of the development office, that the proposed remediation expenditures to be financed by the issuance of bonds or notes pursuant to section sixteen of this article do not constitute more than twenty-five percent of the total redevelopment expenditures associated with the project.

(c) Additional criteria. -- The development office may establish other criteria for consideration when approving the applications.

(d) Action on the application. -- The Executive Director of the Development Office shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the development office, whichever is the later.

(e) Certification of project. -- If the Executive Director of the Development Office approves a municipality's economic opportunity district project application, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the Tax Commissioner and the Tax Commissioner provides to the development office:
Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. -- If the Executive Director of the Development Office approves a municipality's economic opportunity district project application to expand the geographic boundaries of a previously certified district, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the Tax Commissioner and the Tax Commissioner provides to the development office:

Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner, but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.
200 (g) **Promulgation of rules.** -- The executive director of the
development office may promulgate rules to implement the
economic opportunity development district project
application approval process and to describe the criteria and
procedures it has established in connection therewith. These
rules are not subject to the provisions of chapter
twenty-nine-a of this code but shall be filed with the
Secretary of State.

*§8-38-12. Special district excise tax authorized.*

1 (a) **General.** -- The council of a municipality, authorized
by the Legislature to levy a special district excise tax for the
benefit of an economic opportunity development district,
may, by ordinance, impose that tax on the privilege of selling
tangible personal property and rendering select services in the
district in accordance with this section.

7 (b) **Tax base.** -- The base of a special district excise tax
imposed pursuant to this section shall be identical to the base
of the consumers sales and service tax imposed pursuant to
article fifteen, chapter eleven of this code on sales made and
services rendered within the boundaries of the district. Sales
of gasoline and special fuel are not subject to special district
excise tax, but remain subject to the tax levied by article
fifteen, chapter eleven of this code. Except for the exemption
provided in section nine-f of article fifteen, chapter eleven of
this code, all exemptions and exceptions from the consumers
sales and service tax shall also apply to the special district
excise tax.

19 (c) **Tax rate.** -- The rate or rates of a special district
excise tax levied pursuant to this section shall be stated in an

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*CLERK'S NOTE: This section was also amended by H.B. 4607 (Chapter 45),
which passed prior to this act.*
ordinance enacted by the municipality and identical to the
rate or rates of the consumers sales and service tax imposed
pursuant to article fifteen, chapter eleven of this code on sales
rendered within the boundaries of the district authorized by
this section.

(d) Collection by Tax Commissioner. -- The ordinance of
the municipality imposing a special district excise tax shall
provide for the tax to be collected by the Tax Commissioner
in the same manner as the tax levied by section three, article
fifteen, chapter eleven of this code is administered, assessed,
collected and enforced.

(1) The State Tax Commissioner may require the
electronic filing of returns related to the special district excise
tax imposed pursuant to this section and may require the
electronic payment of the special district excise tax imposed
pursuant to this section. The State Tax Commissioner may
prescribe by rules promulgated pursuant to article three,
chapter twenty-nine-a of this code, administrative notices,
and forms and instructions, the procedures and criteria to be
followed to electronically file such returns and to
electronically pay the special district excise tax imposed
pursuant to this section.

(2) Any rules filed by the State Tax Commissioner
relating to the special district excise tax imposed pursuant to
this section shall set forth the following:

(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a
particular type of taxpayer may or may not use;

(C) What type of electronic payment method or methods
a particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable and alternative
methods of payment that may be used for any exceptions;
(E) Procedures for making voluntary or mandatory electronic payments or both;

(F) Any other provisions necessary to ensure the timely electronic filing of returns related to the special district excise tax and the making of payments electronically of the special district excise tax imposed pursuant to this section.

(3) (A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on returns submitted pursuant to this article; and (ii) the trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article and with the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish such exchange of information.

(B) Any confidential information provided pursuant to this subdivision shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject to the provisions of section five-d, article ten, chapter eleven of this code as if such person or entity that is in possession of such tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision.

(e) Deposit of net tax collected. --

(1) The ordinance of the municipality imposing a special district excise tax shall provide that the Tax Commissioner
deposit the net amount of tax collected in the special Economic Opportunity Development District Fund to the credit of the municipality’s subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2)(A) The State Treasurer shall withhold from the municipality’s subaccount in the Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the development office pursuant to section seven of this article.

(B) In addition to the amounts described in paragraph (A) of this subdivision, the Tax Commissioner shall deposit in the General Revenue Fund of this state on the dates specified in paragraph (A) not less than twenty percent nor more than fifty percent of the excess of the special district excise taxes collected during the preceding month above one twelfth of the base tax revenue, said percentage to be fixed by the development office in conjunction with its approval of an application in accordance with section seven of this article based on the amount of state funds, if any, to be expended in conjunction with the respective economic opportunity development district project for items including, but not limited to, the acquisition, construction, reconstruction, improvement, enlargement or extension of roadways, rights-of-way, sidewalks, traffic signals, water or sewer lines and other public infrastructure and such other expenditures of state funds identified by the development office.

(f) Effective date of special district excise tax. -- Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins at least sixty days after the date of enactment of the ordinance.
imposing the tax or at any later date expressly designated in
the ordinance that begins on the first day of a calendar month.

(g) Copies of ordinance. -- Upon enactment of an
ordinance levying a special district excise tax, a certified
copy of the ordinance shall be mailed to the State Auditor, as
ex officio the chief inspector and supervisor of public offices,
the State Treasurer and the Tax Commissioner.

§8-38-16. Bonds issued to finance economic opportunity
development district projects.

(a) General. -- The municipality that established the
economic opportunity development district may issue bonds
or notes for the purpose of financing development
expenditures, as described in section five of this article, with
respect to one or more projects within the economic
opportunity development district.

(b) Limited obligations. -- All bonds and notes issued by
a municipality under the authority of this article are limited
obligations of the municipality.

(c) Term of obligations. -- No municipality may issue
notes, bonds or other instruments for funding district projects
or improvements that exceed a repayment schedule of thirty
years: Provided, That the maximum repayment schedule of
bonds issued to finance remediation authorized under section
five of this article may not exceed twenty years.

(d) Debt service. -- The principal and interest on the bonds
shall be payable out of the funds on deposit in the subaccount
established for the economic opportunity development district
pursuant to section eight of this article, including, without
limitation, any funds derived from the special district excise tax
imposed by section twelve of this article or other revenues
derived from the economic opportunity development district to
the extent pledged for the purpose by the municipality in the
resolution authorizing the bonds.
(e) **Surplus funds.** — To the extent that the average daily amount on deposit in the subaccount established for a district pursuant to section eight of this article exceeds, for more than six consecutive calendar months, the sum of: (1) One hundred thousand dollars; plus (2) the amount required to be kept on deposit pursuant to the documents authorizing, securing or otherwise relating to the bonds or notes issued under this section, then the excess shall be used by the district either to redeem the bonds or notes previously issued or remitted to the general fund of this state.

(f) **Debt not general obligation of municipality.** — Neither the notes or bonds and any interest coupons issued under the authority of this article shall ever constitute an indebtedness of the municipality issuing the notes or bonds within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the municipality issuing the notes or bonds.

(g) **Debt not a charge general credit or taxing powers of municipality.** — Neither the bonds or notes, nor interest thereon, is a charge against the general credit or taxing powers of the municipality and that fact shall be plainly stated on the face of each bond or note.

(h) **Issuance of bonds or notes.** —

(1) Bonds or notes allowed under this section may be executed, issued and delivered at any time and, from time to time, may be in a form and denomination, may be of a tenor, must be negotiable but may be registered as to the principal thereof or as to the principal and interest thereof, may be payable in any amounts and at any time or times, may be payable at any place or places, may bear interest at any rate or rates payable at any place or places and evidenced in any manner and may contain any provisions therein not inconsistent herewith, all as provided in the ordinance of the
municipality whereunder the bonds or notes are authorized to be issued.

(2) The bonds may be sold by the municipality at public or private sale at, above or below par as the municipality authorizes.

(3) Bonds and notes issued pursuant to this article shall be signed by the authorized representative of the municipality and attested by the municipal recorder and be under the seal of the municipality.

(4) Any coupons attached to the bonds shall bear the facsimile signature of the authorized representative of the municipality. In case any of the officials whose signatures appear on the bonds, notes or coupons cease to be officers before the delivery of the bonds or notes, their signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the delivery.

(i) Additional bonds or notes. — If the proceeds of the bonds or notes, by error of calculation or otherwise, are less than the cost of the economic opportunity development district project, or if additional real or personal property is to be added to the district project or if it is determined that financing is needed for additional development or redevelopment expenditures, additional bonds or notes may, in like manner, be issued to provide the amount of the deficiency or to defray the cost of acquiring or financing any additional real or personal property or development or redevelopment expenditures and, unless otherwise provided in the trust agreement, mortgage or deed of trust, are considered to be of the same issue and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.
AN ACT to amend and reenact §8A-4-1 and §8A-4-2 of the Code of West Virginia, 1931, as amended, all relating to subdivision and land development ordinances; and providing an option to counties and municipalities to regulate subdivisions and land development.

Be it enacted by the Legislature of West Virginia:

That §8A-4-1 and §8A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8A-4-1. Subdivision and land development ordinances authorized.

§8A-4-2. Contents of subdivision and land development ordinance.

§8A-4-1. Subdivision and land development ordinances authorized.

(a) The governing body of a municipality or a county may regulate subdivisions and land development within its jurisdiction by:

1. Adopting a comprehensive plan and enacting a subdivision and land development ordinance; or
6  (2) Establishing a planning commission, enacting a subdivision and land development ordinance, and adopting a comprehensive plan for the area included in the subdivision and land development ordinance within three years of the enactment of the subdivision and land development ordinance.

12  (b) A municipality may adopt, by reference, the subdivision and land development ordinance of the county in which it is located.

15  (c) With the prior approval of the county planning commission, a municipality may, by ordinance, designate the county planning commission as the planning commission for the municipality to review and approve subdivision or land development plans and plats.

§8A-4-2. Contents of subdivision and land development ordinance.

1  (a) A subdivision and land development ordinance shall include the following provisions:

3  (1) A minor subdivision or land development process, including criteria, requirements and a definition of minor subdivision;

6  (2) The authority of the planning commission and its staff to approve a minor subdivision or land development;

8  (3) A major subdivision or land development process, including criteria and requirements;

10  (4) The authority of the planning commission to approve a major subdivision or land development;

12  (5) The standards for setback requirements, lot sizes, streets, sidewalks, walkways, parking, easements, rights-of-way, drainage, utilities, infrastructure, curbs, gutters, street
(6) Standards for flood-prone or subsidence areas;

(7) A review process for subdivision or land development plans and plats by the planning commission;

(8) An approval process for subdivision or land development plans and plats by the planning commission, including the authority to approve subdivision or land development plans and plats with conditions;

(9) A process to amend final approved subdivision or land development plans and plats;

(10) A requirement that before development of the land is commenced, subdivision and land development plans and plats must be approved by the applicable planning commission, in accordance with the comprehensive plan, if a comprehensive plan has been adopted;

(11) A requirement that after approval of the subdivision or land development plat by the planning commission and before the subdivision or development of the land is commenced, the subdivision and land development plat shall be recorded in the office of the clerk of the county commission where a majority of the land to be developed lies;

(12) A schedule of fees to be charged which are proportioned to the cost of checking and verifying proposed plats;

(13) The process for granting waivers from the minimum standards of the subdivision and land development ordinance;

(14) Improvement location permit process, including a requirement that a structure or development of land is prohibited without an improvement location permit;
(15) The acceptable methods of payment to cover the cost of the water and sewer service infrastructure, which can include, but are not limited to, bonds, impact fees, escrow fees and proffers;

(16) The process for cooperating and coordinating with other governmental agencies affected by the subdivision and land development and use; and

(17) Penalties for violating the subdivision and land development ordinance.

(b) A subdivision and land development ordinance may include the following provisions:

(1) Establishing a board of subdivision and land development appeals with the same powers, duties and appeals process as set out for the board of zoning appeals under the provisions of article eight of this chapter;

(2) Requirements for green space, common areas, public grounds, walking and cycling paths, recreational trails, parks, playgrounds and recreational areas;

(3) Encourage the use of renewable energy systems and energy-conserving building design;

(4) Vested property right, including requirements;

(5) Exemptions of certain types of land development from the subdivision and land development ordinance requirements, including, but not limited to, single-family residential structures and farm structures; and

(6) Any other provisions consistent with the comprehensive plan the governing body considers necessary.
AN ACT to amend and reenact §14-2-8 of the Code of West Virginia, 1931, as amended, relating to increasing the compensation of the judges of the Court of Claims.

Be it enacted by the Legislature of West Virginia:

That §14-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.


1 Each judge of the court shall receive two hundred ten dollars for each day actually served and expenses incurred in the performance of his or her duties paid at the same per diem rate as members of the Legislature: Provided, That the presiding judge shall receive an additional fifty dollars for each day actually served. In addition to the expense per diem, each judge may, when using his or her own vehicle, be reimbursed for mileage at the mileage rate equal to the amount paid by the travel management office of the department of administration. The number of days served by each judge shall not exceed one hundred in any fiscal year, except by authority of the Joint Committee on Government and Finance: Provided, That in computing the number of
days served, days utilized solely for the exercise of duties assigned to judges and commissioners by the provisions of article two-a of this chapter shall be disregarded. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions and in necessary travel.

CHAPTER 49

(S.B. 238 - By Senator Kessler)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §50-4-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-2-2 of said code, all relating to increasing the monetary jurisdictional requirement for circuit courts; increasing the monetary jurisdictional amount for removal of a civil suit from magistrate court to circuit court; increasing the monetary jurisdictional amount to file a civil suit in circuit court; and clarifying original and general jurisdiction of circuit courts.

Be it enacted by the Legislature of West Virginia:

That §50-4-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §51-2-2 of said code be amended and reenacted, all to read as follows:

Chapter
50. Magistrate Courts.
51. Courts and Their Officers.
CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-8. Removal to circuit court.

1 At any time before trial in a civil action involving less than two thousand five hundred dollars the action may be removed to circuit court upon the concurrence of all parties and upon the payment of the circuit court filing fee. At any time before trial in a civil action involving two thousand five hundred dollars or more, any party may, upon payment of the circuit court filing fee, cause such action to be removed to the circuit court. All appropriate documents shall then be forwarded along with such fee to the clerk of the circuit court. The matter shall then be heard by the circuit court.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-2. Jurisdiction.

1 (a) The circuit court shall have supervision and control of all proceedings before magistrates, by mandamus, prohibition and certiorari.

4 (b) Except in cases confined exclusively by the constitution to some other tribunal, the circuit court shall have original and general jurisdiction of all matters at law where the amount in controversy, excluding interest, exceeds
two thousand five hundred dollars: Provided, That the jurisdictional limit on amounts in controversy does not apply to real estate installment sales contracts.

(c) The circuit court shall have original and general jurisdiction in all of the following matters:

(1) Habeas corpus;

(2) Mandamus;

(3) Quo warranto;

(4) Prohibition;

(5) Crimes; and

(6) Misdemeanors.

(d) The circuit court shall have original and general jurisdiction in all cases in equity, including jurisdiction in equity to remove any cloud on the title to real property, or any part of a cloud, or any estate, right or interest in the real property, and to determine questions of title with respect to the real property without requiring allegations or proof of actual possession of the real property.

(e) The circuit court shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error or supersedeas may be allowed to the judgment or proceedings of any inferior tribunal.

(f) The circuit court shall also have any other jurisdiction, whether supervisory, original, appellate or concurrent, as is or may be prescribed by law.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §50-5-14a, relating to authorizing magistrate courts to accept unsigned copies of citations with payments for same.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended and reenacted by adding thereto a new section, designated §50-5-14a, to read as follows:

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-14a. Disposition without court appearance.

1 Tender of payment by a person charged by citation of the assessed fine and costs shall constitute a plea of no contest to such citation and signing of the citation by the person charged shall not be required for entry of a judgment of conviction.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-1-21, relating to authorizing the West Virginia Supreme Court of Appeals to maintain a domestic violence database.

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 §51-1-21, to read as follows:

ARTICLE 1. WEST VIRGINIA SUPREME COURT OF APPEALS.

§ 51-1-21. Authority to maintain domestic violence database.

(a) The West Virginia Supreme Court of Appeals is hereby authorized to maintain a domestic violence database containing certified copies of protective orders entered by the courts of this state and granted pursuant to the provisions of article twenty-seven, chapter forty-eight of this code. Further, the domestic violence database shall also include, whenever possible, protective orders issued by other jurisdictions pursuant to its law.
(b) A petitioner who obtains a protective order pursuant to article twenty-seven, chapter forty-eight of this code, or a protective order from another jurisdiction pursuant to its law, may register that order with the West Virginia Supreme Court of Appeals.

c) Nothing in this section precludes the enforcement of an order in a county other than the county or jurisdiction in which the order was issued if the petitioner has not registered the order with the West Virginia Supreme Court of Appeals.

CHAPTER 52

(Com. Sub. for S.B. 291 - By Senators Helmick and Yoder)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended, relating to authorizing an additional circuit court judge to each of the ninth, twenty-second and twenty-fourth judicial circuits.

Be it enacted by the Legislature of West Virginia:

That §51-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.
(a) The state shall be divided into the following judicial circuits with the following number of judges:

1. The counties of Brooke, Hancock and Ohio shall constitute the first circuit and shall have four judges;

2. The counties of Marshall, Tyler and Wetzel shall constitute the second circuit and shall have two judges;

3. The counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit and shall have one judge;

4. The counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges;

5. The counties of Calhoun, Jackson, Mason and Roane shall constitute the fifth circuit and shall have two judges;

6. The county of Cabell shall constitute the sixth circuit and shall have four judges;

7. The county of Logan shall constitute the seventh circuit and shall have two judges;

8. The county of McDowell shall constitute the eighth circuit and shall have two judges;

9. The county of Mercer shall constitute the ninth circuit and shall have two judges: Provided, That effective the first day of September, two thousand eight, said circuit shall have three judges;

10. The county of Raleigh shall constitute the tenth circuit and shall have three judges;

11. The counties of Greenbrier and Pocahontas shall constitute the eleventh circuit and shall have two judges;
27 (12) The county of Fayette shall constitute the twelfth circuit and shall have two judges;

29 (13) The county of Kanawha shall constitute the thirteenth circuit and shall have seven judges;

31 (14) The counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit and shall have two judges;

34 (15) The county of Harrison shall constitute the fifteenth circuit and shall have three judges;

36 (16) The county of Marion shall constitute the sixteenth circuit and shall have two judges;

38 (17) The county of Monongalia shall constitute the seventeenth circuit and shall have two judges;

40 (18) The county of Preston shall constitute the eighteenth circuit and shall have one judge;

42 (19) The counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have one judge;

44 (20) The county of Randolph shall constitute the twentieth circuit and shall have one judge;

46 (21) The counties of Grant, Mineral and Tucker shall constitute the twenty-first circuit and shall have two judges;

48 (22) The counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit and shall have one judge: Provided, That effective the first day of September, two thousand eight, said circuit shall have two judges;

52 (23) The counties of Berkeley, Jefferson and Morgan shall constitute the twenty-third circuit and shall have five judges;
(24) The county of Wayne shall constitute the twenty-fourth circuit and shall have one judge: Provided, That effective the first day of September, two thousand eight, said circuit shall have two judges;

(25) The counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall have two judges;

(26) The counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall have one judge;

(27) The county of Wyoming shall constitute the twenty-seventh circuit and shall have one judge;

(28) The county of Nicholas shall constitute the twenty-eighth circuit and shall have one judge;

(29) The county of Putnam shall constitute the twenty-ninth circuit and shall have two judges;

(30) The county of Mingo shall constitute the thirtieth circuit and shall have one judge; and

(31) The counties of Monroe and Summers shall constitute the thirty-first circuit and shall have one judge.

(b) The Kanawha County circuit court shall be a court of concurrent jurisdiction with each single judge circuit where the sitting judge in the single judge circuit is unavailable by reason of sickness, vacation or other reason.

(c) Any judge in office on the effective date of the reenactment of this section shall continue as a judge of the circuit as constituted under prior enactments of this section, unless sooner removed or retired as provided by law, until the thirty-first day of December, two thousand eight.

(d) The term of office of all circuit court judges shall be for eight years. The term of office for all circuit court judges
electors during the general election conducted in the year two
thousand eight shall commence on the first day of January,
thousand nine, and end on the thirty-first day of
December, two thousand sixteen.

(e) For election purposes, in every judicial circuit having
two or more judges there shall be numbered divisions
(corresponding to the number of circuit judges in each circuit.
Each judge shall be elected at large from the entire circuit. In
each numbered division of a judicial circuit, the candidates
for nomination or election shall be voted upon and the votes
cast for the candidates in each division shall be tallied
separately from the votes cast for candidates in other
numbered divisions within the circuit. The candidate
receiving the highest number of the votes cast within a
numbered division shall be nominated or elected, as the case
may be.

(f) Judges serving a judicial circuit comprised of four or
more counties with two or more judges shall not be residents
of the same county.

(g) The Supreme Court of Appeals shall, by rule,
establish the terms of court of circuit judges.

CHAPTER 53

(Com. Sub. for H.B. 4296 - By Delegates Canterbury,
Campbell and Crosier)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §53-4A-7 of the Code of West
Virginia, 1931, as amended, relating to the rights of crime
victims; requiring that prosecuting attorneys provide notice to
victims of crimes of violence or next of kin in homicides when
a habeas corpus proceeding vacates a conviction or sentence
and the victim or next of kin previously provides names and
addresses.

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

That §53-4A-7 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

**ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.**

§53-4A-7. Denial of relief; hearings; evidence; record;
judgment.

1 (a) If the petition, affidavits, exhibits, records and other
documentary evidence attached thereto, or the return or other
pleadings, or the record in the proceedings which resulted in
the conviction and sentence, or the record or records in a
proceeding or proceedings on a prior petition or petitions
filed under the provisions of this article, or the record or
records in any other proceeding or proceedings instituted by
the petitioner to secure relief from his conviction or sentence,
show to the satisfaction of the court that the petitioner is
entitled to no relief, or that the contention or contentions and
grounds (in fact or law) advanced have been previously and
finally adjudicated or waived, the court shall enter an order
denying the relief sought. If it appears to the court from said
petition, affidavits, exhibits, records and other documentary
evidence attached thereto, or the return or other pleadings, or
any such record or records referred to above, that there is
probable cause to believe that the petitioner may be entitled
to some relief and that the contention or contentions and
grounds (in fact or law) advanced have not been previously
and finally adjudicated or waived, the court shall promptly
hold a hearing and/or take evidence on the contention or
contentions and grounds (in fact or law) advanced, and the
court shall pass upon all issues of fact without a jury. The
court may also provide for one or more hearings to be held
and/or evidence to be taken in any other county or counties
in the state.

(b) A record of all proceedings under this article and all
hearings and evidence shall be made and kept. The
evidentiary depositions of witnesses taken by either the
petitioner or the state, on reasonable notice to the other, may
be read as evidence. The court may receive proof by proper
oral testimony or other proper evidence. All of the evidence
shall be made a part of the record. When a hearing is held
and/or evidence is taken by a judge of a circuit court or
statutory court in vacation, a transcript of the proceedings
shall be signed by the judge and certified to the clerk of the
court in which the judgment is to be rendered, and be entered
by him among the records of that court. A record of all
proceedings in the Supreme Court of Appeals shall be
entered among the records of such court.

(c) When the court determines to deny or grant relief, as
the case may be, the court shall enter an appropriate order
with respect to the conviction or sentence in the former
criminal proceedings and such supplementary matters as are
deemed necessary and proper to the findings in the case,
including, but not limited to, remand, the vacating or setting
aside of the plea, conviction and sentence, rearraignment,
retrial, custody, bail, discharge, correction of sentence and
resentencing, or other matters which may be necessary and
proper. In any order entered in accordance with the
provisions of this section, the court shall make specific
findings of fact and conclusions of law relating to each
contention or contentions and grounds (in fact or law)
advanced, shall clearly state the grounds upon which the
matter was determined, and shall state whether a federal
and/or state right was presented and decided. Any order
entered in accordance with the provisions of this section shall constitute a final judgment, and, unless reversed, shall be conclusive.

(d) Notwithstanding any provision of law to the contrary, whenever a conviction from a crime of violence is reversed or a sentence of incarceration for such an offence is vacated pursuant to the provisions of this article, the prosecuting attorney of the county of prosecution shall, prior to a retrial or entering into any plea negotiations or sentence negotiations to resolve the matter, notify the victim or if the offence was a homicide, the next of kin of the victim, by United States mail sent to the last known address of said person, if his or her name and address has previously been provided to the prosecuting attorney.

CHAPTER 54

(S.B. 659 - By Senators Tomblin, Mr. President, Plymale and Kessler)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, all relating to crime victims’ compensation; increasing the allowable expense for funerals, cremations and burials; and increasing the compensation to all claimants because of the death of the victim.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; all to read as follows:
ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


1. As used in this article, the term:

2. (a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

3. (1) A victim: Provided, That the term "victim" does not include a nonresident of this state where the criminally injurious act did not occur in this state;

4. (2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

5. (3) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

6. (4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source, including, but not limited to, assignees, persons holding power of attorney or other persons who hold authority to make or submit claims in place of or on behalf of a victim, a dependent or third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor; and
(5) A person who is a secondary victim in need of mental health counseling due to the person’s exposure to the crime committed. An award to a secondary victim may not exceed one thousand dollars.

(6) A person who owns real property damaged by the operation of a methamphetamine laboratory without the knowledge or consent of the owner of the real property.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him or her, from any of the following sources:

(1) The offender, including any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him or her on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions or an instrumentality of two or more states;

(3) Social Security, Medicare and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance; other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability; and
55 (9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

58 (c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state or in any state not having a victim compensation program which by its nature poses a substantial threat of personal injury or death and is punishable by fine or imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct also includes an act of terrorism, as defined in 18 U. S. C.§2331, committed outside of the United States against a resident of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, reckless driving or when the person leaves the scene of the accident.

76 (d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of determining whether an individual received over half of his or her support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself or herself supplied. The term "support" includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term "dependent" includes a child of the victim born after his or her death.

88 (e) "Economic loss" means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct
causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term "economic loss" includes a lost scholarship as defined in this section.

(f)(1) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, mental health counseling, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

(2) Allowable expense includes a total charge not in excess of seven thousand dollars for expenses in any way related to funerals, cremations and burials. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(3) Allowable expense also includes:

(A) A charge, not to exceed five thousand dollars, for cleanup of real property damaged by a methamphetamine laboratory or a charge, not to exceed one thousand dollars, for any other crime scene cleanup;

(B) Victim relocation costs, not to exceed one thousand dollars; and

(C) Reasonable travel expenses, not to exceed one thousand dollars, for a claimant to attend court proceedings that are conducted for the prosecution of the offender.
(D) Reasonable travel expenses for a claimant to return a person who is a minor or incapacitated adult who has been unlawfully removed from this state to another state or country, if such removal constitutes a crime under the laws of this state. Reasonable travel expenses to another state for such purpose may not exceed two thousand dollars and reasonable travel expenses for such purpose to another county may not exceed three thousand dollars.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. "Work loss" also includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.

(i) "Dependent's economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(j) "Dependent's replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in
liew of those the victim would have performed for their
benefit if he or she had not suffered the fatal injury, less
expenses of the dependents avoided by reason of the victim's
death and not subtracted in calculating dependent's economic
loss.

(k) "Victim" means a person who suffers personal injury
or death as a result of any one of the following: (1)
Criminally injurious conduct; (2) the good faith effort of the
person to prevent criminally injurious conduct; or (3) the
good faith effort of the person to apprehend a person that the
injured person has observed engaging in criminally injurious
conduct or who the injured person has reasonable cause to
believe has engaged in criminally injurious conduct
immediately prior to the attempted apprehension. “Victim”
shall also include the owner of real property damaged by the
operation of a methamphetamine laboratory.

(l) "Contributory misconduct" means any conduct of the
claimant, or of the victim through whom the claimant claims
an award, that is unlawful or intentionally tortious and that,
without regard to the conduct's proximity in time or space to
the criminally injurious conduct, has causal relationship to
the criminally injurious conduct that is the basis of the claim
and shall also include the voluntary intoxication of the
claimant, either by the consumption of alcohol or the use of
any controlled substance when the intoxication has a causal
connection or relationship to the injury sustained. The
voluntary intoxication of a victim is not a defense against the
estate of a deceased victim.

(m) "Lost scholarship" means a scholarship, academic
award, stipend or other monetary scholastic assistance which
had been awarded or conferred upon a victim in conjunction
with a post-secondary school educational program and which
the victim is unable to receive or use, in whole or in part, due
to injuries received from criminally injurious conduct.
§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The judge or commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the 72-hour period.

(c) The judge or commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation or reconsider a claim already approved.

(e) A judge or commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county or regional jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the
judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the Clerk of the Court of Claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupmant of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupmament, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupmament that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) (1) Except in the case of death, or as provided in subdivision (2) of this subsection, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed twenty-five thousand dollars in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed fifty thousand dollars in the aggregate.

(2) In the event the victim’s personal injuries are so severe as to leave the victim with a disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U. S. C. §423, the court may award an additional amount, not to exceed one hundred thousand dollars, for special needs attributable to the injury.
(h) If an award of compensation of five thousand dollars or more is made to a minor, a guardian shall be appointed pursuant to the provisions of article ten, chapter forty-four of this code to manage the minor's estate.

CHAPTER 55

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-7-7 of said code; and to amend said code by adding thereto a new article, designated §61-7A-1, §61-7A-2, §61-7A-3, §61-7A-4 and §61-7A-5, all relating to clarifying mental conditions which prohibit firearms' possession and disclosure of prohibited firearm possession; disclosure of confidential information; notice of surrender of firearms under certain conditions; right to petition to regain ability to possess firearms; legislative intent; definitions; requiring state registry of persons precluded firearms' possession due to mental condition; authorizing reporting of information to national registry; limitations on use of information; and establishing a procedure for petitioning to regain right to possess a firearm.

Be it enacted by the Legislature of West Virginia:

That §27-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-7-7 of said code be amended and reenacted; and that said code be amended by adding thereto a
new article, designated §61-7A-1, §61-7A-2, §61-7A-3, §61-7A-4 and §61-7A-5, all to read as follows:

Chapter 27. Mentally Ill Persons.
61. Crimes and Their Punishment.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. Definition of confidential information; disclosure.

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient are confidential information. Such confidential information includes the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client’s or patient’s physical, mental or emotional condition, any advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient and uncoded information from which there is no possible means to identify a client or patient.

(b) Confidential information shall not be disclosed, except:

(1) In a proceeding under section four, article five of this chapter to disclose the results of an involuntary examination made pursuant to section two, three or four of said article;
(2) In a proceeding under article six-a of this chapter to disclose the results of an involuntary examination made pursuant thereto;

(3) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) To provide notice to the federal National Instant Criminal Background Check System, established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U. S. C.§922, in accordance with article seven-a, chapter sixty-one of this code;

(5) To protect against a clear and substantial danger of imminent injury by a patient or client to himself, herself or another;

(6) For treatment or internal review purposes, to staff of the mental health facility where the patient is being cared for or to other health professionals involved in treatment of the patient; and

(7) Without the patient’s consent as provided for under the Privacy Rule of the federal Health Insurance Portability and Accountability Act of 1996, 45 C. F. R. §164.506, for thirty days from the date of admission to a mental health facility if: (i) The provider makes a good faith effort to obtain consent from the patient or legal representative prior to disclosure; (ii) the minimum information necessary is released for a specifically stated purpose; and (iii) prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.
ARTICLE 7. DANGEROUS WEAPONS.

§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in section two of this article, who:

1. (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

2. (2) Is habitually addicted to alcohol;

3. (3) Is an unlawful user of or habitually addicted to any controlled substance;

4. (4) Has been adjudicated as a mental defective or who has been involuntarily committed to a mental institution pursuant to the provisions of chapter twenty-seven of this code: Provided, That once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession: Provided, however, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

5. (5) Is an alien illegally or unlawfully in the United States;
(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine of said article in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.
Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or confined in the county jail for not less than ninety days nor more than one year, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person:

(1) Who has been convicted in this state or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in sections two hundred four, two hundred five and two hundred six, article two, chapter sixty-a of this code and who possesses a firearm as such is defined in section two of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than five years or fined not more than five thousand dollars, or both. The provisions of subsection (c) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

(c) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: Provided, That a person
84 prohibited from possessing a firearm by the provisions of
85 subdivision (4), subsection (a) of this section may petition to
86 regain the ability to possess a firearm in accordance with the
87 provisions of section five, article seven-a of this chapter.

ARTICLE 7A. STATE MENTAL HEALTH REGISTRY;
REPORTING OF PERSONS
PROSCRIBED FROM FIREARM
POSSESSION DUE TO MENTAL
CONDITION TO THE NATIONAL
INSTANT CRIMINAL BACKGROUND
CHECK SYSTEM; LEGISLATIVE
FINDINGS; DEFINITIONS; REPORTING
REQUIREMENTS; REINSTATEMENT
OF RIGHTS PROCEDURES.

§61-7A-1. Legislative intent.
1 It is the intention of the Legislature in the enactment of
2 this article to clarify the persons whom it intends to proscribe
3 from the possession of firearms due to substance abuse or
4 mental illness; establish a process in reporting the names of
5 persons proscribed from possession of firearms due to mental
6 illness to the central state mental health registry; authorize
7 reporting by registry to the National Instant Criminal
8 Background Check System; and to prescribe a means for
9 reinstating one’s ability to lawfully possess a firearm.

1 As used in this article and as the terms are deemed to
2 mean in 18 U. S. C. §922(g) and section seven, article seven
of this chapter as each exists as of the thirty-first day of
January, two thousand eight:

(1) "A person adjudicated as a mental defective" means
a person who has been determined by a duly authorized
court, tribunal, board or other entity to be mentally ill to the
point where he or she has been found to be incompetent to
stand trial due to mental illness or insanity, has been found
not guilty in a criminal proceeding by reason of mental
illness or insanity or has been determined to be unable to
handle his or her own affairs due to mental illness or insanity.

(2) "Committed to a mental institution" means to have
been involuntarily committed for treatment pursuant to the
provisions of chapter twenty-seven of this code.

(3) "Mental institution" means any facility or part of a
facility used for the treatment of persons committed for
treatment of mental illness or addiction.

§61-7A-3. Persons whose names are to be supplied to the
central state mental health registry.

(a) The Superintendent of the West Virginia State Police
and the Secretary of the Department of Health and Human
Resources, or their designees, shall cooperate with the circuit
clerk of each county and Administrator of the West Virginia
Supreme Court of Appeals in compiling and maintaining a
database containing the names and identifying information of
persons who have been adjudicated to be mentally defective
or who have been committed for treatment of a mental illness
pursuant to the provisions of chapter twenty-seven of this
code. The registry shall be maintained by the Administrator
of the Supreme Court of Appeals or the Superintendent of the
West Virginia State Police.

(b) The name of any person who has been adjudicated to
be mentally defective or who has been committed for
treatment of a mental illness pursuant to the provisions of
chapter twenty-seven of this code which shall be provided to
the Superintendent of the West Virginia State Police for
inclusion in the central state mental health registry. Upon
receipt of the information being received by the central state
mental health registry it may be transmitted to the National
Instant Criminal Background Check System and to county
sheriffs;

(c) The Secretary of Department of Human Resources
and the circuit clerk of each county shall, as soon as
practicable after the effective date of this article, supply to
the Superintendent of the West Virginia State Police for
inclusion in the central state mental health registry the name
and identifying information required by the provisions of
subsection (d) of this section of all persons covered by the
provisions of this article and shall on an ongoing basis
continue to provide such information as it is developed;

(d) The central state mental health registry shall contain
the name, address at the time of commitment or adjudication,
date of birth, date of commitment or adjudication and of all
persons who have been adjudicated to be mentally defective
or who have been committed for treatment of a mental illness
pursuant to the provisions of chapter twenty-seven of this
code.

(e) The central state mental health registry shall provide
only such information about a person on the registry to
county sheriffs and the National Instant Criminal Background
Check System as is necessary to identify registrants; and

(f) On or before the first day of January, two thousand
ten, the central state mental health registry shall contain the
name, address at the time of commitment or adjudication,
date of birth, date of commitment or adjudication and any
other identifying characteristics of all persons who have been
adjudicated to be mentally defective or who have been
committed for treatment of a mental illness pursuant to the
provisions of chapter twenty-seven of this code. Under no
circumstances shall the registry contain information relating to any diagnosis or treatment provided.


(a) Notwithstanding any provision of this code to the contrary, the Superintendent of the State Police, the Secretary of the Department of Health and Human Resources and the circuit clerks and the Administrator of the Supreme Court of Appeals may provide notice to the central state mental health registry and the National Instant Criminal Background Check System established pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18 U. S. C. §922, that a person: (i) Has been involuntarily committed as provided in chapter twenty-seven of this code; (ii) has been adjudicated mentally incompetent in a proceeding under article six-a of this chapter; or (iii) has regained the ability to possess a firearm by order of a circuit court in a proceeding under section five of this article.

(b) The information contained in the central state mental health registry is to be used solely for the purpose of records checks related to firearms purchases and for eligibility for a state license or permit to possess or carry a concealed firearm.

(c) Whenever a person’s name and other identifying information has been added to the central state mental health registry, a review of the state concealed handgun registry shall be undertaken and if such review reveals that the person possesses a current concealed handgun license, the sheriff of the county issuing the concealed handgun license shall be informed of the person’s change in status.

§61-7A-5. Petition to regain right to possess firearms.

(a) Any person who is prohibited from possessing a firearm pursuant to the provisions of section seven, article seven of this chapter or by provisions of federal law by virtue
solely of having previously been adjudicated to be mentally
defective or to having a prior involuntary commitment to a
mental institution pursuant to chapter twenty-seven of this
code may petition the circuit court of the county of his or her
residence to regain the ability to lawfully possess a firearm.
If the court finds by clear and convincing evidence that the
person is competent and capable of exercising the
responsibilities concomitant with the possession of a firearm,
the court may enter an order allowing the petitioner to
possess a firearm.

(b) The circuit clerk of each county shall provide the
Superintendent of the West Virginia State Police or his or her
designee with a certified copy of any order entered pursuant
to the provisions of this section. If the order restores the
petitioner's ability to possess a firearm, petitioner's name
shall be promptly removed from the central state mental
health registry and the superintendent shall forthwith inform
the Federal Bureau of Investigation or other federal entity
operating the National Instant Criminal Background Check
System of the court action.

CHAPTER 56

(Com. Sub. for H.B. 4484 - By Delegates Webster, Mahan,
Fleischauer, Hrutkay, Guthrie, Long, Staggers, Shook,
Varner, Brown and Pino)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §61-2-9a of the Code of West
Virginia, 1931, as amended, all relating to the criminal offense
of stalking, including penalties.
Be it enacted by the Legislature of West Virginia:

That §61-2-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; harassment; penalties; definitions.

(a) Any person who repeatedly follows another knowing or having reason to know that the conduct causes the person followed to reasonably fear for his or her safety or suffer significant emotional distress, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(b) Any person who repeatedly harasses or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court or family court judge, in effect and entered pursuant to part 48-5-501, et seq., part 48-5-601, et seq. or 48-27-403 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county jail for not less than ninety days nor more than one year or fined not less than two thousand dollars nor more than five thousand dollars, or both.

(d) A second or subsequent conviction for a violation of this section occurring within five years of a prior conviction
is a felony punishable by incarceration in a state correctional facility for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order for injunctive relief is in effect pursuant to the provisions of section five hundred one, article twenty-seven, chapter forty-eight of this code who has been served with a copy of said order or section six hundred eight, article five, chapter forty-eight of this code who is convicted of a violation of the provisions of this section shall be guilty of a felony and punishable by incarceration in a state correctional facility for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(f) For the purposes of this section:

(1) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition;

(2) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

(3) "Harasses" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress;

(4) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and
(5) "Repeatedly" means on two or more occasions.

(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, including, but not limited to: Any labor or employment relations issue; demonstration at the seat of federal, state, county or municipal government; activities protected by the West Virginia constitution or the United States Constitution or any statute of this state or the United States.

(h) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended is to have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(i) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(j) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

(k) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.
The Governor’s Committee on Crime, Delinquency and Correction, after consultation with representatives of labor, licensed domestic violence programs and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to article three, chapter twenty-nine-a of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

CHAPTER 57

(Com. Sub. for S.B. 590 - By Senators Prezioso, Stollings, Jenkins, Kessler, McKenzie and Foster)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

A BILL to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to the protection of health care workers and protective services workers; establishing enhanced criminal penalties for crimes of violence against listed persons when they are engaged in official duties; and defining “health care worker” and “protective services worker”.

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, health care worker, protective services worker, 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, health care worker, protective services worker, 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, health care worker, protective services

worker, firefighter, State Fire Marshal or employee, Division

of Forestry employee, county correctional employee, 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, 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, health care worker,

protective services worker, firefighter, State Fire Marshal or

employee, Division of Forestry employee, county

correctional employee, 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, 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) “Court security personnel” means any person
employed by a circuit court, family court, magistrate court,
county commission, sheriff, the state or other political
subdivision to operate and maintain security devices,
including, but not limited to, a metal detector, X-ray
machine, video monitoring equipment and/or other security
devices, prevent or detect crime, enforce the laws of this state
or otherwise provide court security.

(2) “Division of Forestry employee” means an officer,
agent, employee or servant, whether full time or not, of the
Division of Forestry.

(3) “Employee of an urban mass transportation system”
means any person employed by an urban mass transportation
system as such is defined in section three, article
twenty-seven, chapter eight of this code or by a system that
receives federal transit administration funding under 49 U. S.
C.§5307 or §5311.

(4) “Health care worker” means any nurse, nurse
practitioner, physician, physician assistant or technician
practicing at, and all persons employed by, a hospital, county
or district health department, long-term care facility,
physician’s office, clinic or outpatient treatment facility.
(5) "Police officer" means any person employed by the State Police, any person employed by the state to perform law-enforcement duties, any person employed by a political subdivision of this state who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this state or employed as a special police officer as defined in section forty-one, article three of this chapter.

(6) "Protective services worker" means an employee of the Department of Health and Human Resources employed as, or a person contracted with the Department of Health and Human Resources as, a child or adult protective services worker.

(7) "Public Service Commission motor carrier inspector and enforcement officer" means an officer, agent or employee of the Public Service Commission charged with the enforcement of commercial motor vehicle safety and weight restriction laws of the State of West Virginia.

CHAPTER 58

(Com. Sub. for H.B. 4344 - By Delegates Webster, Overington, Pino, Schadler, Brown, Fleischauer and Shook)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating to the criminal offense of cruelty to animals; providing that animals be adequately sheltered; and prohibiting the tethering or chaining of animals in a cruel manner.
Be it enacted by the Legislature of West Virginia:

That §61-8-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

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

(a) (1) It is unlawful for any person to intentionally, knowingly or recklessly,

(A) Mistreat an animal in cruel manner;

(B) Abandon an animal;

(C) Withhold,

(i) Proper sustenance, including food or water;

(ii) Shelter that protects from the elements of weather; or

(iii) Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;

(D) Abandon an animal to die;

(E) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;

(F) Ride an animal when it is physically unfit;

(G) Bait or harass an animal for the purpose of making it perform for a person’s amusement;
(H) Cruelly chain or tether an animal; or

(I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.

(2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than two thousand dollars or confined in jail not more than six months, or both.

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

(c) A person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than two thousand dollars.

(d) Any person convicted of a violation of this section forfeits his or her interest in any animal and all interest in the animal vests in the humane society or county pound of the county in which the conviction was rendered and the person is, in addition to any fine imposed, liable for any costs
incurred or to be incurred by the humane society or county pound as a result.

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

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

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

(h) (1) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the evaluation.
(2) For any person convicted of a violation of subsection (a) or (b) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the program.

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

CHAPTER 59

(H.B. 4644 - By Delegates Varner, Hrutkay, Ellem, Schadler and D. Poling)

[Passed March 7, 2008; in effect from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §62-1C-7 of the Code of West Virginia, 1931, as amended, relating to removing the provision allowing a bail posted by someone other than the person under bail to be forfeited for failure to comply with a condition of bail, other than that to appear.

Be it enacted by the Legislature of West Virginia:
That §62-1C-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1C. BAIL.

§62-1C-7. Forfeiture of bail; basis therefor.

1. (1) Whenever a person under bail serves as his or her own surety and he or she willfully and without just cause fails to appear as and when required or violates any other term or condition of bail, the circuit court or magistrate shall declare the bail forfeited.

2. (2) Whenever a person or entity other than the person under bail serves as surety, forfeiture of bail shall be declared only when the person under bail willfully and without just cause fails to appear as and when required.

CHAPTER 60

(Com. Sub. for S.B. 142 - By Senator Kessler)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §5-1-16a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-11-26, all relating to expungement of certain criminal records generally; changing time frames for petitions for expungement after gubernatorial pardons; authorizing expungement of certain criminal convictions committed between the ages of eighteen and
twenty-six; petition for expungement fee; time frame for eligibility for expungement; contents of the petition for expungement; service, notice and publication requirements for the petition for expungement; prosecutor and state agency opposition to the petition for expungement; burden of proof; court procedure for hearing and ruling upon the petition; crimes which are not eligible for expungement; and establishing procedures for sealing and later use of expunged records.

Be it enacted by the Legislature of West Virginia:

That §5-1-16a 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 §61-11-26, 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.

61. Crimes and Their Punishment.

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.

§5-1-16a. Expungement of criminal record upon full and unconditional pardon.

(a) Any person who has received a full and unconditional pardon from the Governor, pursuant to the provisions of section eleven, article VII of the Constitution of West Virginia and section sixteen of this article may petition the circuit court in the county where the conviction was had to have the record of such conviction expunged. The petition shall be served upon the prosecuting attorney of the county
where the petition was filed. Any person petitioning the
court for an order of expungement shall publish a notice of
the time and place that such petition will be made, which
notice shall 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 for such publication
shall be the county where the petition is filed. The circuit
court, upon verification of the act of pardon and after a
hearing to determine that good cause exists, may enter an
order directing that all public record of the petitioner's
conviction be expunged.

(b) The record expunged pursuant to the provisions of
this section may not be considered in an application to any
educational institution in this state or an application for any
licensure required by any professional organization in this
state.

(c) No person shall be eligible for expungement pursuant
to this section until one year after having been pardoned.

(d) No person shall be eligible for expungement pursuant
to this section until five years after the discharge of his or her
sentence upon the conviction for which he or she was
pardoned.

(e) No person shall be eligible for expungement of a
record of conviction of first degree murder, as defined in
section one, article two, chapter sixty-one of this code;
treason, as defined in section one, article one of said chapter;
kidnapping, as defined in section fourteen-a, article two of
said chapter; or any felony defined in article eight-b of said
chapter.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING
CRIMES.
§61-11-26. Expungement of certain criminal convictions; procedures; effect.

(a) Any person convicted of a misdemeanor offense or offenses arising from the same transaction committed while he or she was between the ages of eighteen and twenty-six may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated therewith. The clerk of the circuit court shall charge and collect in advance the same fee as is charged for instituting a civil action pursuant to subdivision (1), subsection (a), section eleven, article one, chapter fifty-nine of this code for a petition for expungement.

(b) Expungement shall not be available for any conviction of an offense listed in subsection (j) of this section. The relief afforded by this subsection is only available to persons having no other prior or subsequent convictions other than minor traffic violations at the time the petition is filed: Provided, That at the time the petition is filed and during the time the petition is pending, petitioner may not be the subject of an arrest or any other pending criminal proceeding. No person shall be eligible for expungement pursuant to the provisions of subsection (a) of this section until one year after the conviction, completion of any sentence of incarceration or probation, whichever is later in time.

(c) Each petition to expunge a conviction or convictions pursuant to this section shall be verified under oath and include the following information:

(1) Petitioner’s current name and all other legal names or aliases by which petitioner has been known at any time;

(2) All of petitioner’s addresses from the date of the offense or alleged offense in connection with which an expungement order is sought to date of the petition;
(3) Petitioner’s date of birth and social security number;

(4) Petitioner’s date of arrest, the court of jurisdiction and criminal complaint, indictment, summons or case number;

(5) The statute or statutes and offense or offenses for which petitioner was charged and of which petitioner was convicted;

(6) The names of any victim or victims, or that there were no identifiable victims;

(7) Whether there is any current order for restitution, protection, restraining order or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for restitution, protection or restraining order prohibiting the petitioner from contacting the victim. If there is such a current order, petitioner shall attach a copy of that order to his or her petition;

(8) The court’s disposition of the matter and punishment imposed, if any;

(9) Why expungement is sought, such as, but not limited to, employment or licensure purposes, and why it should be granted;

(10) The steps the petitioner has taken since the time of the offenses toward personal rehabilitation, including treatment, work or other personal history that demonstrates rehabilitation;

(11) Whether petitioner has ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, any other state or by any federal court;
(12) Documentation of the notice publication required by subsection (d) of this section; and

(13) Any other supporting documents, sworn statements, affidavits or other information supporting the petition to expunge.

(d) Any person petitioning the court for an order of expungement pursuant to the provisions of subsection (a) of this section shall publish a notice that such petition is being made, which notice shall include the petitioner’s name; the time and identification of the conviction or convictions for which petitioner seeks expungement; that expungement is sought pursuant to section twenty-six, article eleven, chapter sixty-one of this code; the court in which the petition will be filed; and the right of any individual to file a notice of opposition to the petition in the circuit court within ten days of the publication of notice. The notice shall 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 for such publication shall be the county where the petition is filed.

(e) A copy of the petition, with any supporting documentation, shall be served by petitioner pursuant to the rules of the trial court upon the Superintendent of the State Police; the prosecuting attorney of the county of conviction; the chief of police or other executive head of the municipal police department wherein the offense was committed; the chief law-enforcement officer of any other law-enforcement agency which participated in the arrest of the petitioner; the superintendent or warden of any institution in which the petitioner was confined; the magistrate court or municipal court which disposed of the petitioner’s criminal charge; and all other state and local government agencies whose records would be affected by the proposed expungement. The prosecutorial office that had jurisdiction over the offense or
offenses for which expungement is sought shall serve by first
class mail the petition for expungement, accompanying
documentation and any proposed expungement order to any
identified victims.

(f) Upon receipt of a petition for expungement, or notice
pursuant to subsection (d) of this section, the Superintendent
of the State Police; the prosecuting attorney of the county of
conviction; the chief of police or other executive head of the
municipal police department wherein the offense was
committed; the chief law-enforcement officer of any other
law-enforcement agency which participated in the arrest of
the petitioner; the superintendent or warden of any institution
in which the petitioner was confined; the magistrate court or
municipal court which disposed of the petitioner's criminal
charge; all other state and local government agencies whose
records would be affected by the proposed expungement and
any other interested individual or agency that desires to
oppose the expungement shall, within thirty days of receipt
of the petition or notice of the petition pursuant to subsection
(d) of this section, file a notice of opposition with the court
with supporting documentation and sworn statements setting
forth the reasons for resisting the petition for expungement.
A copy of any notice of opposition with supporting
documentation and sworn statements shall be served upon the
petitioner in accordance with trial court rules. The petitioner
may file a reply no later than ten days after service of any
notice of opposition to the petition for expungement.

(g) The burden of proof shall be on the petitioner to prove
by clear and convincing evidence that: (1) The conviction or
convictions for which expungement is sought are the only
convictions against petitioner and that the conviction or
convictions are not excluded from expungement by
subsection (j) of this section; (2) that the requisite time period
has passed since the conviction or convictions or end of the
completion of any sentence of incarceration or probation; (3)
petitioner has no criminal charges pending against him or
her; (4) the expungement is consistent with the public welfare; (5) petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and (6) any other matter deemed appropriate or necessary by the court to make a determination regarding the petition for expungement.

(h) Within sixty days of the filing of a petition for expungement the circuit court shall:

(1) Summarily grant the petition;

(2) Set the matter for hearing; or

(3) Summarily deny the petition if the court determines that the petition is insufficient or, based upon supporting documentation and sworn statements filed in opposition to the petition, the court determines that the petitioner, as a matter of law, is not entitled to expungement.

(i) If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified. At the hearing, the court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with any law-enforcement authority, the institution of confinement, if any, and parole authority or other agency which was in any way involved with the petitioner’s arrest, conviction, sentence and post-conviction supervision, including any record of arrest or conviction in any other state or federal court. The court may hear testimony of witnesses and any other matter the court deems proper and relevant to its determination regarding the petition. The court shall enter an order reflecting its ruling on the petition for expungement with appropriate findings of fact and conclusions of law.

(j) No person shall be eligible for expungement of a conviction and the records associated therewith pursuant to
the provisions of subsection (a) of this section for any violation involving the infliction of serious physical injury; involving the provisions of article eight-b of this chapter where the petitioner was eighteen years old, or older, at the time the violation occurred and the victim was twelve years of age, or younger, at the time the violation occurred; involving the use or exhibition of a deadly weapon or dangerous instrument; of the provisions of subsection (b) or (c), section nine, article two of this chapter where the victim was a spouse, a person with whom the person seeking expungement had a child in common or with whom the person seeking expungement ever cohabitated prior to the offense; any violation of the provisions of section twenty-eight of said article; a conviction for driving under the influence of alcohol, controlled substances or a conviction for a violation of section three, article four, chapter seventeen-b of this code or section nineteen, article eight of this chapter.

(k) If the court grants the petition for expungement, it shall order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official, including law-enforcement records. Every agency with records relating to the arrest, charge or other matters arising out of the arrest or conviction that is ordered to expunge records shall certify to the court within sixty days of the entry of the expungement order that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

(I) Upon expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit or other type of application.
(m) Inspection of the sealed records in the court’s possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that the interests of justice will be served by granting a petition to inspect the sealed record, it may be granted.

CHAPTER 61

(Com. Sub. for S.B. 467 - By Senators Unger, Prezioso, Plymale, Jenkins, Foster, Stollings, Hunter and Love)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §22-14-3, §22-14-15 and §22-14-19 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §22-14-20, §22-14-21 and §22-14-22, all relating to dam safety; defining terms; providing for the establishment, administration and management of the Dam Safety Rehabilitation Revolving Fund; providing moneys for the fund; providing eligibility requirements to receive loans from the fund; providing rule-making authority; providing application requirements for loans from the fund; establishing loan agreement requirements; providing for collection of moneys due the fund; providing authority to the Department of Environmental Protection for deficient dams that are privately owned by a noncompliant dam owner; and establishing civil penalties.
Be it enacted by the Legislature of West Virginia:

That §22-14-3, §22-14-15 and §22-14-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §22-14-20, §22-14-21 and §22-14-22, all to read as follows:

ARTICLE 14. DAM CONTROL ACT.

§22-14-3. Definition of terms used in article.
§22-14-15. Civil penalties and injunctive relief.
§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.
§22-14-20. Dam Safety Rehabilitation Revolving Fund program.
§22-14-21. Collection of money due to the fund.
§22-14-22. Authority of Department of Environmental Protection for deficient dams that are privately owned by a noncompliant dam owner.

§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.
(d) "Authority" means the Water Development Authority provided in section four, article one, chapter twenty-two-c of this code.

(e) "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.

(f) (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:

(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.

(g) “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.

(h) “Department” means the Department of
Environmental Protection.

(i) "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.

(j) “Noncompliant dam owner” means an owner who has
received two or more orders to repair or remove a deficient
dam without completion of the repairs or removal within time
frames established by the secretary.

(k) "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.

(l) "Reservoir" means any basin which contains or will
contain impounded water.

(m) “Secretary” means the Secretary of the Department
of Environmental Protection.

(n) "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.

(o) "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.

(p) "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.

§22-14-15. Civil penalties and injunctive relief.

(a) Any person who violates any provision of this article,
any certificate of approval or any rule, notice or order issued
pursuant to this article is subject to a civil administrative
penalty, to be levied by the secretary, of not more than five thousand dollars for each day the violation continues, not to exceed a maximum of twenty thousand dollars. In assessing any penalty, the secretary shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by rules proposed by the secretary for legislative approval pursuant to article three, chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, notice, order or statement of the certificate of approval's terms that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the civil administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration date of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. Within thirty days following the informal hearing, the secretary shall issue and furnish to the violator a written decision, and the reasons for the decision, concerning the assessment of a civil administrative penalty. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator shall exceed twenty thousand dollars per day of each violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this subsection
is not subject to a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. Civil administrative penalties shall be levied in accordance with the rules promulgated under the authority of section four of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the dam safety fund established pursuant to section eighteen of this article. Any person adversely affected by the assessment of a civil administrative penalty has the right to appeal to the Environmental Quality Board pursuant to the provisions of article one, chapter twenty-two-b of this code.

(b) No assessment levied pursuant to subsection (a) of this section is due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(c) Any person who violates any provision of any certificate issued under or subject to the provisions of this article is subject to a civil penalty not to exceed twenty-five thousand dollars per day of the violation and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the provisions of this article is subject to a civil penalty not to exceed twenty-five thousand dollars per day of the violation. The civil penalty may be imposed and collected only by a civil action instituted by the secretary in the circuit court of Kanawha County or in the county in which the violation or noncompliance exists or is taking place.

Upon application by the secretary, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article and rules proposed in accordance with section four of this article, the terms and conditions of any certificate of approval granted under the provisions of
this article or any order of the secretary or Environmental
Quality Board and the venue of any action shall be in the
circuit court of Kanawha County or in the county in which
the violation or noncompliance exists or is taking place. The
court or the judge thereof in vacation may issue a temporary
or preliminary injunction in any case pending a decision on
the merits of any injunctive application filed. In seeking an
injunction, it is not necessary for the secretary to post bond
or to allege or prove at any stage of the proceeding that
irreparable damage will occur if the injunction is not issued
or that the remedy at law is inadequate. An application for
injunctive relief or a civil penalty action under this section
may be filed and relief granted notwithstanding the fact that
all administrative remedies provided in this article have not
been exhausted or invoked against the person or persons
against whom the relief is sought.

The judgment of the circuit court upon any application
filed or in any civil action instituted under the provisions of
this section is final unless reversed, vacated or modified on
appeal to the Supreme Court of Appeals. An appeal shall be
sought in the manner provided by law for appeals from
circuit courts in other civil cases, except that the petition
seeking review of an order in any injunction proceeding must
be filed with the Supreme Court of Appeals within ninety
days from the date of entry of the judgment of the circuit
court.

(d) Upon request of the secretary, the Attorney General
or the prosecuting attorney of the county in which the
violation occurs shall assist the secretary in any civil action
under this section.

(e) In any action brought pursuant to the provisions of
this section, the state or any agency of the state which
prevails may be awarded costs and reasonable attorney's fees.
§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 on the list of deficient dams created pursuant to section twenty of this article 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, a legislative appropriation or by the secretary pursuant to section twenty-two of this article. The fund may also be used to defray costs incurred by the department or the authority in administering the provisions of this subsection.

(c) The secretary, in consultation with the authority, 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. The secretary may initially promulgate
rules or amendments to rules as emergency rules pursuant to
the provisions of said article.

(d) The secretary and the authority may employ qualified
officers, agents, advisors and consultants and other persons
necessary to carry out the administration and management of
the fund.

(e) The authority shall propose rules for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code to govern the pledge of
loans to secure bonds of the authority.

(f) Disbursements from the fund shall be authorized for
payment in writing by the director of the authority or the
director’s designee. Moneys in the fund shall not be
commingled with other money of the authority.

§22-14-20. Dam Safety Rehabilitation Revolving Fund program.

(a) The secretary shall develop a state list of deficient
dams using a priority ranking system based on factors
designed by the secretary. Only dams on the list of deficient
dams are eligible for a loan from the Dam Safety
Rehabilitation Revolving Fund.

(b) The secretary shall develop an application, including
eligibility requirements for persons applying for loans to
correct or remove deficient dams. The eligibility
requirements shall include, at a minimum, that the:

1. Dam is on the list of deficient dams;

2. Person is in a state of readiness to proceed to
planning, design or construction and expend loan payments
in a timely manner;
(3) Person has demonstrated the ability to repay the loan; and

(4) Person is in compliance with section five of this article.

c) A person who owns an interest in a deficient dam on the list of deficient dams may apply to the department for a loan from the fund on forms designed and approved by the secretary.

d) Following approval by the secretary of the application for a loan and a determination by the secretary and the authority that moneys are available for a loan, the secretary may direct the authority to enter a loan agreement with the person submitting the approved application.

e) At the direction of the department pursuant to subsection (d) of this section, the authority shall enter into a loan agreement with a person approved for a loan. The loan agreement is binding under the laws of West Virginia and shall contain provisions as required by the secretary, including:

1. The cost of the project, the amount of the loan and the terms of repayment of the loan and the security for the loan which may include a deed of trust or other appropriate security instrument creating a lien on the project or any other collateral the secretary may require;

2. The specific purposes for which the proceeds of the loan are required to be expended, the procedures as to the disbursement of loan proceeds including an estimated monthly draw schedule and the duties and obligations imposed upon the applicant in regard to the acquisition or construction of the project;
(3) The agreement of the applicant to repay the obligations of the applicant under the loan agreement, including provisions that revenue may be pledged for the repayment of the loan together with all interest, fees and charges on the loan and all other financial obligations of the applicant under the loan agreement;

(4) If notes or other interim obligations are being issued by the applicant, the agreement of the applicant to take other repayment actions that are required of the applicant under the loan agreement;

(5) The agreement of the applicant to accept the authority's enforcement remedies pursuant to section twenty-one of this article in the event of any default under the loan; and

(6) The agreement of the applicant to comply with all applicable federal and state statutes and rules and regulations and all applicable local ordinances pertinent to the financing, acquisition, design, construction, operation, maintenance and use of the project.

(f) (1) If the secretary assumes full charge and responsibility over a dam pursuant to section twenty-two of this article, and seeks to expend money from the fund for the purpose of repairing or removing a dam or taking other remedial action, the secretary shall, prior to seeking a requisition from the fund, provide the authority with the following information:

(A) The location of the dam;

(B) The owners of the dam; and

(C) The maximum amount estimated for repairing or removing the dam or taking other remedial action.
(2) The authority shall then determine whether sufficient moneys are available to satisfy the maximum amount estimated for the dam and still meet all loan obligations of the fund.

(g) The obligation of the authority to enter into loan agreements is conditioned on the availability of moneys in the fund in amounts and on terms and conditions as, at the direction of the secretary, will enable the authority to make loans.

(h) The ability of the secretary to use moneys in the fund pursuant to section twenty-two of this article is conditioned upon the availability of moneys in the fund.

§22-14-21. 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 person, 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 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 pursuant to this article and may proceed directly to enforce and collect 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 person, all of the rights, powers and remedies of the person with respect to the project or which may be conferred upon the person by statute, rule, or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that person pursuant to this article; and
(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a person of all of the terms and conditions of the loan agreement, 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

(C) The enforcement of all rights and remedies conferred by statute, rule, regulation or judicial decision, including, but not limited to, all rights associated with a security or other interest in real or personal property with the right to foreclose upon a default under a loan agreement.

(b) 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.

§22-14-22. Authority of Department of Environmental Protection for deficient dams that are privately owned by a noncompliant dam owner.

(a) The secretary may assume full charge and responsibility over a dam and may expend money from the Dam Safety Rehabilitation Revolving Fund for the purpose of repair or removal of the dam or other remedial action, if:

(1) The dam is a deficient dam;

(2) The dam is privately owned; and

(3) The owner is a noncompliant dam owner.
(b) All costs incurred by the secretary to repair or remove the dam or take other remedial action shall be promptly repaid by the owner upon request or, if not repaid, the secretary may recover costs and damages from the owner by appropriate civil action. Moneys obtained from the civil action shall be promptly deposited in the fund.

CHAPTER 62

(Com. Sub. for S.B. 325 - By Senators Love, Bailey, Wells, Green, Facemyer and Hunter)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §5-10B-10a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-10B-12a, all relating to the deferred compensation plan for state employees; and providing the Treasurer with information needed to operate the state deferred compensation plan.

Be it enacted by the Legislature of West Virginia:

That §5-10B-10a 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 §5-10B-12a, all to read as follows:

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-10a. Matching contribution program.
§5-10B-12a. Disclosure of information to the Treasurer for operation of the plan.
§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 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
expended 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 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.

§5-10B-12a. Disclosure of information to the Treasurer for operation of the plan.

For purposes of this article, any person or entity with information pertaining to an employee participating in the state plan shall disclose to the Treasurer any payroll related information the Treasurer determines he or she needs for the operation of the state deferred compensation plan. Disclosure of the information shall begin upon enactment of this section on a schedule and under arrangements required by the Treasurer. Information disclosed pursuant to this section shall be used by the Treasurer only for the operation of the state plan. The Treasurer shall treat the information obtained as confidential and shall not disclose the information except to a vendor providing goods or services for the plan, who shall also treat the information as confidential, or as required by law.

CHAPTER 63

(Com. Sub. for H.B. 4619 - By Delegates Schoen and Webster)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §48-5A-101 and §48-5A-102, all relating to requesting the Supreme Court of Appeals to study collaborative law procedures and to present its finding to the Legislature; and providing legislative findings.
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 §48-5A-101 and §48-5A-102, all to read as follows:

ARTICLE 5A. COLLABORATIVE FAMILY LAW PROCEEDINGS.

§48-5A-101. Legislative findings.

§48-5A-102. Collaborative law generally; requesting the Supreme Court to study collaborative law procedures for possible implementation in this state.

§48-5A-101. Legislative findings.

1 The Legislature finds that parties to family law actions often have particular needs and interests that may not be addressed through traditional litigation. The Legislature also finds that in the area of family law there may be an alternative approach to dispute resolution which targets settlement from the outset and which employs cooperative negotiation and problem solving that encourages compromise and direct communication among the parties.

§48-5A-102. Collaborative law generally; requesting the Supreme Court to study collaborative law procedures for possible implementation in this state.

1 (a) Collaborative law is a procedure in which parties who are involved in family law matters and the involved attorneys agree in writing to use their best efforts and make a good-faith attempt to resolve their disputes arising from family law matters on an agreed basis without resorting to judicial intervention, except to have a court approve the settlement agreement, make the legal pronouncements and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate.
(b) Several states have passed laws adopting collaborative law procedures. The Legislature requests that the Supreme Court of Appeals study the use of collaborative law procedures in the family courts of this state and, should the court find that the procedures would be an effective alternative approach to dispute resolution in family law matters, promulgate rules for the implementation of the collaborative law procedures. The Legislature further requests that the Supreme Court of Appeals present its findings and any rules promulgated to the Legislature at the regular session of the Legislature, 2009.

CHAPTER 64

(Com. Sub. for H.B. 3065 - By Delegates Eldridge, Rodighiero, Ellis, Stemple, Williams, Perry, Beach, Shook, Argento and Reynolds)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §48-9-301a; and to amend said code by adding thereto a new section, designated §61-6-25, all relating false allegations of child abuse and/or neglect; relief from false allegations on allocation of custodial responsibility under a parenting plan; imposition of reasonable costs and reasonable attorney's fees for defending against false allegations; request for disclosure of source of allegations by Department of Health and Human Resources; investigation of allegations of child sexual abuse by family courts; and new misdemeanor offense for falsely reporting child abuse.
Be it enacted by the Legislature of West Virginia:

That §48-9-209 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 §48-9-301a; and that said code be amended by adding thereto a new section, designated §61-6-25, all to read as follows:

Chapter
  48. Domestic Relations.
  61. Crimes and Their Punishment.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 9. CUSTODY OF CHILDREN.

PART 2 – PARENTING PLANS.

§48-9-209. Parenting plan; limiting factors.

(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

(1) Has abused, neglected or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;

(3) Has committed domestic violence, as defined in section 27-202;
(4) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has repeatedly made fraudulent reports of domestic violence or child abuse.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including but not limited to:

(A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;

(B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or

(C) The allocation of exclusive custodial responsibility to one of them;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with or proximity to the other parent or the child;
(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child's parent or any person whose safety immediately affects the child's welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.
(d) If the court determines, based on the investigation described in part three of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5) of subsection (a), may move the court pursuant to subdivision (4), subsection (b), section one, article seven, chapter forty-nine of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the Department found the report to be:

(A) Substantiated;

(B) Unsubstantiated;

(C) Inconclusive; or

(D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be in camera. The court may disclose to the parties information received from the Department only if it has reason to believe a parent knowingly made a false report.

(a) If allegations of child abuse are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, deems appropriate under the circumstances to protect the child's safety until an investigation can be completed. Nothing in this subsection shall affect the applicability of sections two and nine of article six-a, chapter forty-nine of this code.

(b) If allegations of child abuse are made during a child custody proceeding, the court may request that the local child protective service conduct an investigation of the allegations pursuant to article six-a, chapter forty-nine of this code. Upon completion of the investigation, the agency shall report its findings to the court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-25. Falsely reporting child abuse.

(a) Any person who knowingly and intentionally reports or causes to be reported to a law enforcement officer, child protective service worker or judicial officer that another has committed child sexual abuse, child abuse or neglect as such are defined in section three, article one, chapter forty-nine of this code who when doing so knows or has reason to know such accusation is false and who does it with the intent to influence a child custody decision shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars, sentenced to not more than sixty hours of court-approved community service, or both.
(b) In addition to any other sanctions imposed by the provisions of this section, any person convicted of a violation of this section shall be required to attend and complete a court-approved parenting class.

CHAPTER 65

(S.B. 217 - By Senators Jenkins and Guills)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §8-10-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-3a of said code; and to amend and reenact §50-3-2a of said code, all relating to resident and nonresident drivers’ failure to pay costs, fines, forfeitures or penalties imposed upon conviction of a motor vehicle violation; and reducing the time period for nonresidents to pay costs, fines, forfeitures or penalties before the court sends notice to the Division of Motor Vehicles to suspend the nonresident offender’s driver’s privilege to drive in this state.

Be it enacted by the Legislature of West Virginia:

That §8-10-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17B-3-3a of said code be amended and reenacted; and that §50-3-2a of said code be amended and reenacted, all to read as follows:

Chapter
17B. Motor Vehicle Driver’s License.
50. Magistrate Courts.
CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2a. Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

(a) A municipal court may accept credit cards in payment of all costs, fines, forfeitures or penalties. A municipal court may collect a substantial portion of all costs, fines, forfeitures or penalties at the time such amount is imposed by the court so long as the court requires the balance to be paid within one hundred eighty days from the date of judgment and in accordance with a payment plan: Provided, That all costs, fines, forfeitures or penalties imposed by the municipal court upon a nonresident of this state by judgment entered upon a conviction for a motor vehicle violation defined in section three-a, article three, chapter seventeen-b of this code must be paid within eighty days from the date of judgment. The payment plan shall specify: (1) The number of additional payments to be made; (2) the dates on which such payments and amounts shall be made; and (3) amounts due on such dates.

(b) If costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle violations as defined in section three-a, article three, chapter seventeen-b of this code are not paid within the time limits imposed pursuant to subsection (a) of this section, or if a person fails to appear or otherwise respond in court when charged with a motor vehicle violation as defined in section three-a, article three, chapter seventeen-b of this code, the municipal court must notify the Commissioner of the Division of Motor Vehicles of such failure to pay or failure to appear.
§17B-3-3a. Suspending license for failure to pay fines or penalties imposed by magistrate court or municipal court.

(a) The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a magistrate court or municipal court of this state, pursuant to subsection (b), section two-a, article three, chapter fifty of this code or subsection (b), section two-a, article ten, chapter eight of this code, that such person has defaulted on the payment of costs, fines, forfeitures or penalties which were imposed on the person by the magistrate court or municipal court by judgment entered upon conviction of any motor vehicle violation or that such person has failed to respond or appear in court when charged with a motor vehicle violation.

(b) The magistrate court or municipal court shall notify the division upon a default of payment as follows:

(1) For a resident of this state, after one hundred eighty days following the date of judgment upon the conviction; or

(2) For a nonresident of this state, after eighty days following the date of judgment upon the conviction.

(c) For the purposes of this section, section two-a, article three, chapter fifty of this code and section two-a, article ten, chapter eight of this code, "motor vehicle violation" shall be defined as any violation designated in chapter seventeen-a, seventeen-b, seventeen-c, seventeen-d or seventeen-e of this code.
code or the violation of any municipal ordinance relating to
the operation of a motor vehicle for which the violation
thereof would result in a fine or penalty: Provided, That any
parking violation or other violation for which a citation may
be issued to an unattended vehicle shall not be considered a
motor vehicle violation for the purposes of this section,
section two-a, article three, chapter fifty of this code or
section two-a, article ten, chapter eight of this code.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment by credit card or payment plan; suspension
of licenses for failure to make payments or appear
or respond; restitution; liens.

(a) A magistrate court may accept credit cards in payment
of all costs, fines, fees, forfeitures, restitution or penalties in
accordance with rules promulgated by the supreme court of
appeals. Any charges made by the credit company shall be
paid by the person responsible for paying the cost, fine,
forfeiture or penalty.

(b) Unless otherwise required by law, a magistrate court
may collect a portion of any costs, fines, fees, forfeitures,
restitution or penalties at the time the amount is imposed by
the court so long as the court requires the balance to be paid
in accordance with a payment plan which specifies: (1) The
number of payments to be made; (2) the dates on which the
payments are due; and (3) the amounts due for each payment.
The written agreement represents the minimum payments and
the last date those payments may be made. The obligor or
the obligor’s agent may accelerate the payment schedule at
any time by paying any additional portion of any costs, fines,
fees, forfeitures, restitution or penalties.
(c) (1) If any costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court in a criminal case are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon judgment rendered on appeal, the circuit clerk shall notify the Commissioner of the Division of Motor Vehicles of the failure to pay: Provided, That in a criminal case in which a nonresident of this state is convicted of a motor vehicle violation defined in section three-a, article three, chapter seventeen-b of this code, the appropriate clerk shall notify the Division of Motor Vehicles of the failure to pay within eighty days from the date of judgment and expiration of any stay of execution. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person defaulting on payment may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles, until all costs, fines, fees, forfeitures, restitution or penalties are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code: Provided, however, That any person who has had his or her license to operate a motor vehicle in this state suspended pursuant to this subsection and his or her failure to pay is based upon inability to pay, may, if he or she is employed on a full or part-time basis, petition to the circuit court for an order authorizing him or her to operate a motor vehicle solely for employment purposes. Upon a showing satisfactory to the court of inability to pay, employment and compliance with other applicable motor vehicle laws, the court shall issue an order granting relief.

(2) In addition to the provisions of subdivision (1) of this subsection, if any costs, fines, fees, forfeitures, restitution or penalties imposed or ordered by the magistrate court for a hunting violation described in chapter twenty of this code are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the
magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution or penalties are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if any costs, fines, fees, forfeitures, restitution or penalties imposed or ordered by the magistrate court for a fishing violation described in chapter twenty of this code are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution or penalties are paid in full.

(d)(1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Commissioner of the Division of Motor Vehicles thereof within fifteen days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles, until final judgment in the
case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in chapter twenty of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within fifteen days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any fishing violation described in chapter twenty of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within fifteen days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full.
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125  (e) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

128  (f) (1) If all costs, fines, fees, forfeitures, restitution or penalties imposed by a magistrate court and ordered to be paid are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the clerk of the magistrate court shall notify the prosecuting attorney of the county of nonpayment and provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerks of the county commissions shall record and index the abstracts of judgment without charge or fee to the prosecuting attorney and when so recorded, the amount stated to be owing in the abstract shall constitute a lien against all property of the defendant.

143  (2) When all the costs, fines, fees, forfeitures, restitution or penalties described in subdivision (1) of this subsection for which an abstract of judgment has been recorded are paid in full, the clerk of the magistrate court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of section one, article twelve, chapter thirty-eight of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerks of the county commissions shall record and index the release of judgment without charge or fee to the prosecuting attorney.
AN ACT to amend and reenact §17B-2-1 of the Code of West Virginia, 1931, as amended; and to further amend said chapter by adding thereto a new article, designated §17B-2B-1, §17B-2B-2, §17B-2B-3, §17B-2B-4, §17B-2B-5, §17B-2B-6, §17B-2B-7, §17B-2B-8, §17B-2B-9, §17B-2B-10 and §17B-2B-11, all relating to licensing persons using bioptic telescopic devices to operate a motor vehicle; creating a Class G driver’s license for persons using bioptic telescopic devices who complete an approved driver training program; authorizing the Division of Rehabilitation Services to create an approved driver training program; establishing minimum eligibility requirements for acceptance into an approved driver training program and minimum curriculum requirements; establishing criteria and restrictions for a Class G instruction permit and driver’s license; specifying the duration of the Class G instruction permit and driver’s license; providing for removal of the daytime driving restriction in certain circumstances; establishing standards for licensure of restricted out-of-state drivers to obtain a West Virginia Class G instruction permit or driver’s license; providing prerequisites for renewal of a Class G driver’s license; providing for suspension, revocation and reinstatement of Class G driver’s licenses; requiring the Commissioner of the Division of the Division of
Motor Vehicles and the Director of the Division of Rehabilitation Services to propose legislative rules; and clarifying that training provisions for Class G licensees do not apply to persons already licensed in this state to operate a motor vehicle while wearing bioptic telescopic devices.

Be it enacted by the Legislature of West Virginia:

That §17B-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated §17B-2B-1, §17B-2B-2, §17B-2B-3, §17B-2B-4, §17B-2B-5, §17B-2B-6, §17B-2B-7, §17B-2B-8, §17B-2B-9, §17B-2B-10 and §17B-2B-11, all to read as follows:

Article
2. Issuance of License, Expiration and Renewal.
2B. License to Operate a Motor Vehicle with Bioptic Telescopic Device.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

*§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

(a)(1) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street used by the public generally unless the person has a valid driver's license issued pursuant to this code for the type or class of vehicle being driven.

(2) Any person licensed to operate a motor vehicle pursuant to this code may exercise the privilege thereby granted in the manner provided in this code and, except as

*CLERK'S NOTE: This section was also amended by H.B. 2503 (Chapter 116), which passed prior to this act.
(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicles the licensee may operate in accordance with this code, federal law or rule. Licenses shall be issued in different colors for those drivers under age eighteen, those drivers age eighteen to twenty-one and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups.

(c) Driver's licenses issued by the division shall be classified in the following manner:

(1) A Class A, B or C license shall be issued to those persons eighteen years of age or older with two years of driving experience who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Motor Carrier Safety and Improvement Act of 1999 and subsequent rules, and have paid the required fee.

(2) A Class D license shall be issued to those persons eighteen years and older with one year of driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purpose of regulating the operation of motor vehicles, wherever the term "chauffeur's license" is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone not required to be licensed
under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered or required to be registered as a Class A motor vehicle, as that term is defined in section one, article ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) A Class E license shall be issued to those persons who have qualified for a driver's license under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E or (G) license for any person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) A Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided by this chapter and have paid the required fee, but who do not possess a Class A, B, C, D or E driver's license.

(5) A Class G driver's license or instruction permit shall be issued to a person using bioptic telescopic lenses who has successfully completed an approved driver training program and complied with all other requirements of article two-b of this chapter.

(d) All licenses issued under this section may contain information designating the licensee as a diabetic, organ donor, as deaf or hard-of-hearing or as having any other handicap or disability, according to criteria established by the division, if the licensee requests this information on the license.
(e) No person, except those hereinafter expressly exempted, may drive any motorcycle upon a street or highway in this state or upon any subdivision street used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under section seven-b of this article for motorcycle operation or a valid motorcycle instruction permit.

(f)(1) An identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Has reached the age of two years. The division may also issue an identification card to a person under the age of two years for good cause shown;

(C) Has paid the required fee of two dollars and fifty cents per year: Provided, That the fee is not required if the applicant is sixty-five years or older or is legally blind; and

(D) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The identification card shall contain the same information as a driver's license except that the identification card shall be clearly marked as an identification card. However, the division may issue an identification card with less information to persons under the age of sixteen. An identification card may be renewed annually on application and payment of the fee required by this section.

(A) Every identification card issued to a person who has attained his or her twenty-first birthday shall expire on the licensee’s birthday in those years in which the licensee’s age
is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years or for more than seven years and expires on the licensee’s birthday in those years in which the licensee’s age is evenly divisible by five.

(B) Every identification card issued to a person who has not attained his or her twenty-first birthday shall expire thirty days after the licensee’s twenty-first birthday.

(C) Every identification card issued to persons under the age of sixteen shall be issued for a period of two years and shall expire on the last day of the month in which the applicant's birthday occurs.

(3) The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(g) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars or confined in jail not more than six months, or both.

ARTICLE 2B. LICENSE TO OPERATE A MOTOR VEHICLE WITH BIOPTIC TELESCOPIC DEVICE.

§ 17B-2B-1. Definitions.
§ 17B-2B-2. Class G instruction permit or driver's license; participation in approved driver training program; eligibility criteria; required curriculum.
§ 17B-2B-3. Class G instruction permit; eligibility criteria; restrictions; duration of permit.
§ 17B-2B-4. Class G driver's license; eligibility criteria; duration of license; surrender of current license; provisions not applicable to persons already licensed to drive with bioptic device.
§ 17B-2B-5. Restrictions on Class G driver's license; removal of daytime driving restrictions.
§17B-2B-6. Restricted out-of-state drivers; required to obtain Class G driver’s license; surrender of current license; waiver of requirement to participate in an approved driver training program.

§17B-2B-7. Renewal of license.

§17B-2B-8. Suspension, revocation and reinstatement of license.

§17B-2B-9. Commissioner and director to collect information regarding Class G licensees; report to Legislature.


§17B-2B-1. Definitions.

For purposes of this article, the following terms have the meaning indicated:

1. "Applicant" means any person applying for a Class G instruction permit or license to operate a motor vehicle in this state who must use a bioptic telescopic device to meet the commissioner’s minimum visual acuity and visual field standards for licensure.

2. "Approved driver training program" means a program that:

   A. Provides and coordinates comprehensive assessment and training of driving skills and responses;

   B. Emphasizes clinical and functional vision skills, predriver readiness skills and the physical, mental and social driving skills of an applicant;

   C. Is approved by the Division of Rehabilitation Services, after consultation with the division; and

   D. Is operated by and under the auspices of the Division of Rehabilitation Services at its headquarters at Institute, Kanawha County.

3. "Bioptic telescopic device" means a two focus optical system used to magnify distant objects by including a small...
telescope that is mounted in a spectacle lens so as to allow an unobstructed view of the horizontal visual field through normal distance corrective lenses.

(4) "Corrective lenses" means eyeglasses, contact lenses, and intraocular lenses, but does not mean a bioptic telescopic device.

(5) "Daytime driving restriction" means a limitation on the operation of a motor vehicle to:

(A) The period of time between thirty minutes after sunrise and thirty minutes before sunset; and

(B) Weather conditions that do not significantly reduce the visibility of the roadway, other traffic, and traffic control devices.

(6) "Field expander" means a device used to compensate for peripheral visual field loss.

(7) "Restricted out-of-state driver" means a person who has been issued, by another state, a valid driver's license with a restriction requiring the driver to use a bioptic telescopic device.

(8) "Vision specialist" means a licensed ophthalmologist or optometrist.

(9) "Visual acuity" means the measure of a person's clarity of vision based on the Snellen visual acuity scale.

(10) "Visual field" means the area of physical space visible to the eye in a given fixed position.

§17B-2B-2. Class G instruction permit or driver's license; participation in approved driver training
program; eligibility criteria; required curriculum.

(a) A person who does not meet the visual acuity and visual field standards established by the commissioner for licensure to operate a motor vehicle in this state, but who is able to satisfy the minimum vision requirements using a bioptic telescopic device is eligible for a Class G instruction permit or driver’s license pursuant to this article if he or she is participating in or has successfully completed an approved driver training program.

(b) An applicant is eligible to participate in an approved driver training program if he or she:

(1) Submits to the commissioner and to the Division of Rehabilitation Services a report of examination by a vision specialist, on a form prescribed by the Division of Rehabilitation Services, which certifies that:

(A) In the opinion of the vision specialist, the applicant’s vision can be corrected with the use of a bioptic telescopic device and without field expanders to satisfy the minimum visual acuity and visual field standards established by the commissioner;

(B) No ocular diagnosis or prognosis currently exists or is likely to occur during the period of licensure which would cause deterioration of the applicant’s visual acuity or visual field to levels below the commissioner’s minimum visual acuity and visual field standards for licensure; and

(C) The applicant is a likely candidate for acceptance into an approved driver training program; and

(2) Satisfies any other criteria for participation established by the Division of Rehabilitation Services.
(c) An approved driver training program shall include, at a minimum:

(1) Predriving instruction with regard to highway signs and the rules of the road;

(2) Predriving instruction in proper use of bioptic telescopic devices; and

(3) At least thirty hours of behind-the-wheel instruction in driving with bioptic telescopic devices.

(d) The Division of Rehabilitation Services may waive predriving instruction with regard to highway signs and the rules of the road pursuant to subdivision (1), subsection (c) of this section if the applicant:

(1) Has at least three years of experience driving with an unrestricted license; and

(2) Passes the written examination provided in subdivision (2), subsection (a), section (3) of this section.

§17B-2B-3. Class G instruction permit; eligibility criteria; restrictions; duration of permit.

(a) An applicant is eligible for a Class G instruction permit if he or she has:

(1) Been accepted into and enrolled in an approved driver training program;

(2)Passed a written examination, in the manner prescribed by the commissioner, testing the applicant’s:

(A) Ability to read and understand highway signs regulating, warning and directing traffic; and
(B) Knowledge of the traffic laws of this state; and

(3) Satisfied, at each stage of the licensing process, any additional requirements for an instruction permit required by article two of this chapter that are not addressed in this article.

(b) The commissioner may not issue a Class G instruction permit until the applicant has surrendered any license he or she currently holds to operate a motor vehicle.

(c) A Class G instruction permit authorizes the permittee to operate a Class A passenger motor vehicle, weighing eight thousand (8000) pounds or less, subject to the following restrictions:

(1) The applicant may drive only while using a bioptic telescopic device;

(2) The applicant is subject to a daytime driving restriction;

(3) The applicant may drive only when accompanied by a certified driver rehabilitation specialist or driver rehabilitation educator; and

(4) Any other conditions or restrictions the commissioner considers necessary to insure the safe operation of the motor vehicle.

(d) A Class G instruction permit is valid for up to one year. Upon expiration of the instruction permit, the applicant may reapply for a new instruction permit, provided that he or she is eligible pursuant to subsection (a) of this section.

§17B-2B-4. Class G driver’s license; eligibility criteria; duration of license; surrender of current
(a) A person who has obtained a Class G instruction permit may obtain a Class G driver's license to operate a motor vehicle if he or she has:

(1) Been certified by the Division of Rehabilitation Services as having successfully completed an approved driver training program, along with any agency recommendations regarding license restrictions or modifications, including, but not limited to:

(A) Special adaptive equipment;

(B) Hours of permitted operation;

(C) Types of roads on which the applicant may operate a vehicle; and

(D) How far from home the applicant may operate a vehicle;

(2) Submitted to the commissioner and to the Director of the Division of Rehabilitation Services, on a form prescribed by the Division of Rehabilitation Services, a report of examination by a vision specialist, conducted after the applicant completes the approved driver training program, certifying that the applicant continues to meet the minimum visual acuity and visual field standards established by the commissioner for licensure to operate a motor vehicle;

(3) Successfully completed a comprehensive road skills examination, conducted at a location determined by the commissioner, with a certified driver rehabilitation specialist or driver rehabilitation educator in the test vehicle along with the driving examiner. The comprehensive road skills examination shall include, at a minimum:
(A) A “passenger in car” test with bioptic telescopic device in place designed to test competency in using the bioptic telescopic device under stationary and dynamic conditions;

(B) A maneuverability skills test; and

(C) A standardized on-road test designed to test driving competency of the applicant; and

(4) Satisfied, at each stage of the licensing process, any additional requirements for licensure required by article two of this chapter that are not addressed in this article;

(b) If an applicant fails the comprehensive road skills examination three times, he or she is not eligible to retake the examination until he or she has successfully completed additional training in an approved driver training program and been recommended for retesting by the director of the program.

(c) An applicant who has a current license to operate a motor vehicle other than a Class G driver's license must surrender his or her current driver's license before the commissioner will issue a Class G driver's license or instruction permit.

(d) Every Class G licensee must provide the commissioner with a report of examination by a vision specialist, conducted no more than three months prior to the annual anniversary of the issuance of the license, certifying that the applicant continues to meet the minimum visual acuity and visual field standards established by the commissioner for licensure to operate a motor vehicle. The report shall be submitted on a form prescribed by the commissioner.
§17B-2B-5. Restrictions on Class G driver’s license; removal of daytime driving restriction.

(a) A Class G driver’s license authorizes the licensee to operate a Class A passenger motor vehicle, weighing eight thousand pounds or less, subject to the following restrictions:

(1) The applicant may drive only while using a bioptic telescopic device;

(2) Daytime driving restriction; and

(3) Any other conditions or restrictions the commissioner considers necessary to insure the safe operation of the motor vehicle.

(b) An applicant to whom a Class G driver’s license has been issued may apply to the commissioner for removal of the daytime driving restriction if the applicant has:

(1) Operated a motor vehicle for thirty-six months without an at-fault accident, moving violation or license suspension;

(2) Submitted a report of a vision examination, conducted not more than six months prior to the application, by a vision specialist showing that the licensee’s visual impairment is stable and that he or she can see well enough to operate a vehicle at night;

(3) Successfully completed additional evaluation and training, in an approved driver training program, specifically designed for night driving;

(4) Passed a comprehensive night driving examination.

§17B-2B-6. Restricted out-of-state drivers; required to obtain Class G driver’s license; surrender of current
licensure; waiver of requirement to participate in an approved driver training program.

(a) A restricted out-of-state driver establishing residence in West Virginia must apply for a Class G driver’s license in this state.

(b) To obtain a Class G driver’s license, the restricted out-of-state driver must:

(1) Satisfy all the requirements of licensure contained in sections three and four of this article;

(2) Surrender his or her out-of-state driver’s license to the commissioner; and

(3) Provide the commissioner with a report of examination by a vision specialist, conducted no more than ninety-days prior to the application, showing that the applicant meets the minimum vision standards.

(c) If, based upon an evaluation of the out-of-state driver’s abilities, along with any recommendations, the Division of Rehabilitation Services certifies to the commissioner that the restricted out-of-state driver was required, as a condition of licensure in the other state, to complete training substantially equivalent to the approved driver training program required by this article, the commissioner may waive the requirement that the restricted out-of-state driver complete an approved driver training program in this state prior to licensure.

§17B-2B-7. Renewal of license.

(a) A Class G driver’s license is valid for no more than two years.
(b) To renew a Class G driver’s license, the licensee must submit a report of a comprehensive vision examination by a vision specialist at least ninety-days prior to expiration of the license.

(c) If the vision specialist certifies that the conditions causing the licensee’s visual impairment are stable, and the licensee continues to satisfy the commissioner’s minimum visual acuity and visual field standards for licensure, the division shall renew the license for a period of one year.

(d) If the vision specialist certifies that the conditions causing the licensee’s visual impairment are unstable or deteriorating, the commissioner may require the licensee to undergo additional testing or training before deciding whether to renew the license.

(e) If any comprehensive vision examination by a vision specialist determines that the licensee no longer satisfies the minimum visual acuity or visual field standards for licensure, the division shall not renew the license.

§17B-2B-8. Suspension, revocation and reinstatement of license.

(a) The commissioner may immediately suspend the Class G driver’s license of any driver who is involved in an accident resulting in bodily injury or death, violates the restrictions placed on his or her license or is convicted of more than one moving violation within a twelve-month period, if the commissioner makes a finding that allowing the licensee to continue to drive pending resolution of the suspension would present a danger to the public.

(b) The commissioner shall suspend the driver’s license of any licensee who fails to meet visual acuity or visual field minimum standards.
(c) The commissioner shall suspend the driver’s license of any licensee who fails an evaluation of his or her ability to safely operate a motor vehicle by the division of rehabilitation’s driving training program.

(d) A licensee whose license is suspended pursuant to this section may request a hearing within ten days of receiving the commissioner’s notice of immediate suspension. No stay of the license suspension may be granted pending the hearing, but the commissioner must conduct a requested hearing on the suspension of the license within seventy days of receiving the request for a hearing. Only the licensee may request a continuance, but no stay of the suspension may be granted pending the delayed hearing.

§17B-2B-9. Commissioner and director to collect information regarding Class G licensees; report to Legislature.

(a) The commissioner shall collect and monitor information regarding accidents, license suspensions and revocations and convictions of Class G licensees.

(b) On or before the first day of February, of each year after the first Class G driver’s license is issued:

1. The commissioner shall provide to the Joint Committee on Government and Finance a written report detailing:

   (A) The number of Class G driver’s licenses issued in the previous calendar year; and

   (B) Whether and to what extent holders of Class G driver’s licenses were, during the previous calendar year:

   (i) Involved in vehicular crashes; or
(ii) The subject of proceedings to suspend or revoke their licenses or were convicted of offenses involving moving violations, the rules of the road, illegal substance use or legal substance abuse.

(2) The Director of the Division of Rehabilitation Services shall provide to the Joint Committee on Government and Finance a written report detailing, for the previous calendar year:

(A) The number of applicants for the approved driver training program;

(B) The number of persons who successfully completed the program;

(C) The number of persons who failed to complete the program and the reason for each failure; and

(D) The status of the approved driver training program’s funding and the extent to which persons who applied for the program were able to pay the costs associated with it.


(a) The Director of the Division of Rehabilitation Services, after consultation with the commissioner, shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code establishing:

(1) Additional criteria, including minimum visual acuity and visual field standards, for acceptance into an approved driver training program;

(2) Additional curriculum requirements for an approved driver training program;
(3) Standards for successful completion of an approved driver training program;

(4) Standards for the comprehensive road skills test;

(5) Criteria for certifying whether an out-of-state driver training program is substantially equivalent to an approved driver training program in this state;

(6) Minimum requirements for additional driver training, if required, including criteria for night time driving;

(7) Any other standards or criteria necessary to implement this article.

(b) The commissioner, in collaboration with the Director of the Division of Rehabilitation Services, shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code establishing:

(1) Criteria for issuance of a Class G instruction permit or driver’s license, including minimum visual acuity and visual field standards;

(2) Standards for imposing and removing additional restrictions on an individual applicant’s Class G instruction permit or driver’s license;

(3) Standards for suspension, revocation and reinstatement of a Class G instruction permit or driver’s license; and

(4) Any other standards or criteria necessary to implement this article.

Except for the provisions of subsection (d), section four of this article requiring an annual report of vision examination to be submitted to the commissioner, the provisions of this article are not applicable to any person licensed by the commissioner to operate a motor vehicle with a bioptic telescopic device prior to the effective date of this article.

CHAPTER 67

(Com. Sub. for H.B. 4331 - By Delegates Boggs and Schadler)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §17B-2-1a, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-7 and §17B-2-8 of the Code of West Virginia, 1931, as amended, all relating to the issuance of driver's licenses; disposition of surrendered licenses; issuance of an identification card to applicants who possess a valid driver's license; providing a reduced criminal penalty for violating the terms and conditions of a level one or level two graduated driver's license; defining exceptions for the use of the address of principle residence; removing an obsolete provision related to the issuance of a driver's license without a photo; providing for the use of a passport in lieu of a birth certificate; requiring an applicant to pay a fee for the third and subsequent attempt at the written examination prior to obtaining an instruction permit; and extending the validity of instruction permits from sixty days to ninety days.

Be it enacted by the Legislature of West Virginia:
That §17B-2-la, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-7 and §17B-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17-2-la. Surrender of license from other state of jurisdiction prior to receipt of license from this state; examination; fees required.

§17-2-3a. Graduated driver’s license.

§17-2-5. Qualifications, issuance and fee for instruction permits.

§17-2-6. Application for license or instruction permit; fee to accompany application.

§17-2-7. Examination of applicants.

§17-2-8. Issuance and contents of licenses; fees.

§17B-2-la. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

(a) The Division of Motor Vehicles shall not issue a driver’s license to a person who holds a valid license to operate a motor vehicle issued by another state or jurisdiction unless or until the applicant shall surrender to the division the foreign license, or the person has signed and submitted to the division an affidavit to the effect that the person has surrendered all valid licenses issued to him or her by other states or jurisdictions. Any surrendered license issued by any other state or jurisdiction shall be destroyed or at the discretion of the division retained by the division and the division shall notify the original state of licensure that the person who surrendered the license has been licensed in this state. It shall be unlawful for a person to possess more than one valid driver’s license at any time.

(b) Every driver shall, within thirty days after taking up residence in this state, apply to the division for a driver’s license as prescribed in this article. For the purposes of this chapter the presumption that a natural person is a resident of this state is based on the provisions of section one-a, article
three, chapter seventeen-a of this code. The division may
assign the driver's license class, type, endorsements or
restrictions based on the applicant's prior licensing status,
age and the type of licensing system used by the state of prior
licensing.

(c) All other applicable provisions of this article relating
to issuance, fees, expiration and renewal of licenses, and
driver examination of applicants shall also apply to this
section.

§17B-2-3a. Graduated driver's licenses.

(a) Any person under the age of eighteen may not operate
a motor vehicle unless he or she has obtained a graduated
driver's license in accordance with the three-level graduated
driver's license system described in the following provisions.

(b) Any person under the age of twenty-one, regardless
of class or level of licensure, who operates a motor vehicle
with any measurable alcohol in his or her system is subject to
the provisions of section two, article five, chapter seventeen-c
of this code and section two, article five-a of said chapter.

Any person under the age of eighteen, regardless of class or
licensure level, is subject to the mandatory school attendance
provisions of section eleven, article eight, chapter eighteen of
this code.

(c) Level one instruction permit. -- An applicant who is
fifteen years or older meeting all other requirements
prescribed in this code may be issued a level one instruction
permit.

(1) Eligibility. -- The division shall not issue a level one
instruction permit unless the applicant:

*Clerk's Note: This section was also amended by H.B. 4023 (Chapter 68),
which passed subsequent to this act.
(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records or a valid and unexpired passport issued by the United States government, evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in section seven of this article;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of five dollars which shall permit the applicant two attempts at the written knowledge test.

(2) Terms and conditions of instruction permit. -- A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit under the provisions of section six of this article. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and
conditions of a level one instruction permit, which
convictions have become final unless a greater penalty is
required by this section or any other provision of this code.
Any person whose instruction permit has been revoked is
disqualified from retesting for a period of ninety days.
However, after the expiration of ninety days, the person may
retest if otherwise eligible. In addition to all other provisions
of this code for which a driver’s license may be restricted,
suspended, revoked or canceled, the holder of a level one
instruction permit may only operate a motor vehicle under
the following conditions:

(A) Under the direct supervision of a licensed driver,
twenty-one years of age or older, or a driver’s education or
driving school instructor who is acting in an official capacity
as an instructor, who is fully alert and unimpaired, and the
only other occupant of the front seat. The vehicle may be
operated with no more than two additional passengers, unless
the passengers are family members;

(B) Between the hours of five a.m. and eleven p.m.;

(C) All occupants must use safety belts in accordance
with the provisions of section forty-nine, article fifteen,
chapter seventeen-c of this code;

(D) Without any measurable blood alcohol content, in
accordance with the provisions of subsection (h), section two,
article five, chapter seventeen-c of this code; and

(E) Maintains current school enrollment or otherwise
shows compliance with the provisions of section eleven,
article eight, chapter eighteen of this code.

(F) A holder of a level one instruction permit who is
under the age of eighteen years may not use a wireless
communication device while operating a motor vehicle,
unless the use of the wireless communication device is for contacting a 911 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

(d) Level two intermediate driver’s license. -- An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver’s license.

(1) Eligibility. — The division shall not issue a level two intermediate driver’s license unless the applicant:

(A) Presents a completed application as prescribed in section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver’s education course approved by the State Department of Education or thirty hours of behind-the-wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division: Provided, That nothing in this paragraph shall be construed to require any school or any county board of education to provide any particular number of driver’s education courses or to provide driver’s education training to any student;
(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of five dollars.

(2) Terms and conditions of a level two intermediate driver’s license. -- A level two intermediate driver’s license issued under the provisions of this section shall expire thirty days after the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver’s license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver’s license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a.m. and eleven p.m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of eleven p.m. and five a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;
(C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Operates the vehicle with no more than three passengers under the age of nineteen, unless the passengers are family members, in addition to the driver;

(E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

(F) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) A holder of a level two intermediate driver's license who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 911 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

(H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and
(I) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver's license in accordance with the provisions of sections five, six and seven of this article.

(e) Level three, full Class E license. -- The level three license is valid until thirty days after the date the licensee attains his or her twenty-first birthday. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

1. Has reached the age of seventeen years; and
2. (A) Presents a completed application as prescribed by the provisions of section six of this article;
3. (B) Has held the level two intermediate license conviction free for the twelve-month period immediately preceding the date of the application;
(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (d) of this section; and

(D) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in section twelve, article two, chapter three of this code; or

(2) Reaches the age of eighteen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in section twelve, article two, chapter three of this code.

(f) A person violating the provisions of the terms and conditions of a level one or level two intermediate driver's license, is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

(a) Any person who is at least fifteen years of age may apply to the division for an instruction permit. However, any person who has not attained the age of eighteen shall comply with the provisions of section three-a of this article. The division may, in its discretion, after the applicant has successfully passed all parts of the examination other than the
road skills test, issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motor vehicle upon the public highways when accompanied by a licensed driver of at least twenty-one years of age, a driver's education or driving school instructor that is acting in an official capacity as an instructor, who is alert and unimpaired or a certified division license examiner acting in an official capacity as an examiner, who is occupying a seat beside the driver.

(1) Any instruction permit issued to a person under the age of eighteen years shall be issued in accordance with the provisions of section three-a of this article.

(2) Any permit issued to a person who has reached the age of eighteen years is valid for a period of ninety days. The fee for the instruction permit is five dollars.

(b) Any person sixteen years of age or older may apply to the division for a motorcycle instruction permit. Any person under the age of eighteen must have first completed the requirements for a level two intermediate driver's license or a Class E driver's license before being eligible for a motorcycle instruction permit.

The division may, in its discretion, after the applicant has successfully passed all parts of the motorcycle examination other than the driving test, and presented documentation of compliance with the provisions of section eleven, article eight, chapter eighteen of this code, if applicable, issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motorcycle upon the public streets or highways for a period of ninety days, during the daylight hours between sunrise and sunset only. No holder of a motorcycle instruction permit shall operate a motorcycle while carrying any passenger on the vehicle.
A motorcycle instruction permit is not renewable, but a qualified applicant may apply for a new permit. The fee for a motorcycle instruction permit is five dollars, which shall be paid into a special fund in the state treasury known as the motor vehicle fees fund.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

(a) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of the fee shall entitle an applicant under the age of eighteen to not more than two attempts at the written test or not more than three attempts to pass the road skills test. An applicant age eighteen years or older is entitled to not more than two attempts at the written test or not more than three attempts to pass the road skills test within a period of ninety days from the date of issuance of the instruction permit. An applicant who fails either the written test or the road skills test may not be tested twice within a period of one week.

(b) Any applicant who has not been previously licensed must hold an instruction permit for a minimum of thirty days. For the purposes of this section, the term "previously licensed" means an applicant who has obtained at least a level one graduated license or junior driver's license issued under the provisions of this article or has obtained an equal or greater level of licensure if previously licensed in another state.

(c) Every said application shall state the full legal name, date of birth, sex, and residence address of the applicant and briefly describe the applicant and shall state whether the applicant has theretofore been a licensed driver and, if so, when, and by what state or country and whether any such
license has ever been suspended or revoked within the five years next preceding the date of application, or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal, whether the applicant desires a notation on the driver's license indicating that the applicant is an organ donor, in accordance with article one-b of this chapter, a diabetic, deaf, or hard of hearing, or has any other handicap or disability and such other pertinent information as the commissioner may require.

§17B-2-7. Examination of applicants.

(a) Upon the presentment of the applicant's certified copy of the birth certificate issued by a state or other governmental entity responsible for vital records or a valid and unexpired passport issued by the United States government, as evidence that the applicant is of lawful age and verifiable identity, the Division of Motor Vehicles shall examine every applicant for a license to operate a motor vehicle in this state, except as otherwise provided in this section. The examination shall include a test of the applicant's eyesight, the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, the applicant's knowledge of the traffic laws of this state, and the applicant's knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle under the influence of alcohol. The examination shall also include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and any further physical and mental examination as the Division of Motor Vehicles considers necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways.

(b) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning the examination of applicants for licenses and the qualifications
required of applicants, and the examination of applicants by
the division shall be in accordance with the rules. The rules
shall provide for the viewing of educational material or films
on the medical, biological, and psychological effects of
alcohol upon persons, the dangers of driving a motor vehicle
while under the influence of alcohol and the criminal
penalties and administrative sanctions for alcohol and drug
related motor vehicle violations.

(c) After successful completion of the examination
required by this section, section three-a, or section seven-b of
this article, and prior to the issuance of a license pursuant to
the provisions of section eight of this article, every applicant
for a driver’s license, graduated driver’s license, or
motorcycle-only license shall attend a mandatory education
class on the dangers and social consequences of driving a
motor vehicle while under the influence of alcohol. To the
extent practicable, the commissioner shall use as lecturers at
those classes persons who can relate first-hand experiences
as victims or family members of victims of alcohol-related
accidents or drivers who have been involved in
alcohol-related accidents which caused serious bodily injury
or death.

§17B-2-8. Issuance and contents of licenses; fees.

(a) The division shall, upon payment of the required fee,
issue to every applicant qualifying therefor a driver’s license,
which shall indicate the type or general class or classes of
vehicle or vehicles the licensee may operate in accordance
with this chapter or chapter seventeen-e of this code, or
motorcycle-only license. Each license shall contain a coded
number assigned to the licensee, the full legal name, date of
birth, residence address, a brief description and a color
photograph of the licensee and either a facsimile of the
signature of the licensee or a space upon which the signature
of the licensee shall be written with pen and ink immediately
upon receipt of the license. No license is valid until it has been so signed by the licensee.

(b) A driver's license which is valid for operation of a motorcycle shall contain a motorcycle endorsement.

(c) The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, the license.

(d) The fee for the issuance of a Class E driver's license is two dollars and fifty cents per year for each year the license is issued to be valid. The fee for issuance of a Class D driver's license is six dollars and twenty-five cents per year for each year the license is issued to be valid. An additional fee of fifty cents shall be collected from the applicant at the time of original issuance or each renewal and the additional fee shall be deposited in the "combined voter registration and driver's licensing fund," established pursuant to the provisions of section twelve, article two, chapter three of this code. The additional fee for adding a motorcycle endorsement to a driver's license is one dollar per year for each year the license is issued.

(e) The fee for issuance of a motorcycle-only license is two dollars and fifty cents for each year for which the motorcycle license is to be valid. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the State Treasury known as the Motorcycle Safety Fund as established in section seven, article one-d of this chapter.

(f) The fee for the issuance of either the level one or level two graduated driver's license as prescribed in section three-a of this article is five dollars.
(g) The division may use an address on the face of the license other than the applicant’s address of residence if:

1. The applicant has a physical address or location that is not recognized by the post office for the purpose of receiving mail;

2. The applicant is enrolled in a state address confidentiality program or the alcohol test and lock program;

3. The applicant’s address is entitled to be suppressed under a state or federal law or suppressed by a court order; or

4. At the discretion of the commissioner, the applicant’s address may be suppressed to provide security for classes of applicants such as law-enforcement officials, protected witnesses and members of the state and federal judicial systems.

CHAPTER 68

(Com. Sub. for H.B. 4023 - By Mr. Speaker, Mr. Thompson and Delegate Armstead)
[By Request of the Executive]

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-6 of said code; and to amend and reenact §18-8-11 of said code, all relating to the denial or suspension of the driver’s license of any student between the ages of fifteen and eighteen who withdraws from school or fails to make substantial progress towards graduating; providing for appeal; defining certain terms; and providing for exceptions.
Be it enacted by the Legislature of West Virginia:

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17B-3-6 of said code be amended and reenacted; and that §18-8-11 of said code be amended and reenacted, all to read as follows:

Chapter
17B. Motor Vehicle Driver's Licenses.
18. Education.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.


(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.

(b) Any person under the age of twenty-one, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to the provisions of section two, article five, chapter seventeen-c of this code and section two, article five-a of said chapter.

Any person under the age of eighteen, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of section eleven, article eight, chapter eighteen of this code.

*CLERK'S NOTE: This section was also amended by H.B. 4331 (Chapter 67), which passed prior to this act.
(c) **Level one instruction permit.** -- An applicant who is fifteen years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) **Eligibility.** -- The division shall not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport issued by the United States government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in section seven of this article;

(D) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of five dollars, which shall permit the applicant at the written knowledge test.

(2) **Terms and conditions of instruction permit.** -- A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense
which requires the suspension, revocation or cancellation of
the instruction permit, may reapply for a new instruction
permit under the provisions of section six of this article. The
division shall immediately revoke the permit upon receipt of
a second conviction for a moving violation of traffic
regulations and laws of the road or violation of the terms and
conditions of a level one instruction permit, which
convictions have become final unless a greater penalty is
required by this section or any other provision of this code.
Any person whose instruction permit has been revoked is
disqualified from retesting for a period of ninety days.
However, after the expiration of ninety days, the person may
retest if otherwise eligible. In addition to all other provisions
of this code for which a driver's license may be restricted,
suspended, revoked or canceled, the holder of a level one
instruction permit may only operate a motor vehicle under
the following conditions:

(A) Under the direct supervision of a licensed driver,
twenty-one years of age or older, or a driver’s education or
driving school instructor who is acting in an official capacity
as an instructor, who is fully alert and unimpaired, and the
only other occupant of the front seat. The vehicle may be
operated with no more than two additional passengers, unless
the passengers are family members;

(B) Between the hours of five a.m. and eleven p.m.;

(C) All occupants must use safety belts in accordance
with the provisions of section forty-nine, article fifteen,
chapter seventeen-c of this code;

(D) Without any measurable blood alcohol content, in
accordance with the provisions of subsection (h), section two,
article five, chapter seventeen-c of this code; and

(E) Maintains current school enrollment and is making
satisfactory academic progress or otherwise shows
(F) A holder of a level one instruction permit who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

(d) **Level two intermediate driver’s license.** -- An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver’s license.

(1) **Eligibility.** -- The division shall not issue a level two intermediate driver’s license unless the applicant:

(A) Presents a completed application as prescribed in section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver’s education course approved by the State Department of Education or thirty hours of behind-the-wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the
Provided, That nothing in this paragraph shall be construed to require any school or any county board of education to provide any particular number of driver’s education courses or to provide driver’s education training to any student;

(D) Presents a driver’s eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of five dollars.

(2) Terms and conditions of a level two intermediate driver’s license. -- A level two intermediate driver’s license issued under the provisions of this section shall expire thirty days after the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver’s license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver’s license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a.m. and eleven p.m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of eleven p.m. and five a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;
(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Operates the vehicle with no more than three passengers under the age of nineteen, unless the passengers are family members, in addition to the driver;

(E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

(F) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) A holder of a level two intermediate driver's license who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.
(H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver’s license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code.

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver’s license; and

(I) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver’s license, the licensee’s privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee’s eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver’s license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver’s license in accordance with the provisions of sections five, six and seven of this article.

(e) Level three, full Class E license. -- The level three license is valid until thirty days after the date the licensee attains his or her twenty-first birthday. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver’s license.
A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

(1) Has reached the age of seventeen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article;

(B) Has held the level two intermediate license conviction free for the twelve-month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (d) of this section; and

(D) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the Combined Voter Registration and Driver’s Licensing Fund established in section twelve, article two, chapter three of this code;

(E) Presents a driver’s eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; or

(2) Reaches the age of eighteen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be
ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

(a) The division is hereby authorized to suspend the driver's license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation of a driver's license is required upon conviction;

(2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in the death or personal injury of another or property damage;

(3) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(4) Is an habitually reckless or negligent driver of a motor vehicle;

(5) Is incompetent to drive a motor vehicle;

(6) Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation;
(7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures or penalties imposed by a magistrate court or municipal court within ninety days, as required by section two-a, article three, chapter fifty or section two-a, article ten, chapter eight of this code;

(8) Has failed to appear or otherwise respond before a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a of this article;

(9) Is under the age of eighteen and has withdrawn either voluntarily or involuntarily due to misconduct from a secondary school or has failed to maintain satisfactory academic progress, as provided in section eleven, article eight, chapter eighteen of this code; or

(10) Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license as provided in article five-a, chapter forty-eight-a of this code and the child support enforcement division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due.

(b) The driver's license of any person having his or her license suspended shall be reinstated if:

(1) The license was suspended under the provisions of subdivision (7), subsection (a) of this section and the payment of costs, fines, forfeitures or penalties imposed by the applicable court has been made;
(2) The license was suspended under the provisions of subdivision (8), subsection (a) of this section, and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged; or

(3) The license was suspended under the provisions of subdivision (10), subsection (a) of this section, and the division has received a court order restoring the license or a certification by the child support enforcement division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(c) Any reinstatement of a license under subdivision (1), (2) or (3), subsection (b) of this section shall be subject to a reinstatement fee designated in section nine of this article.

(d) Upon suspending the driver’s license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license. The provisions of this subsection (d) providing for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a) of this section.
ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

(a) In accordance with the provisions of sections three-a and five, article two, chapter seventeen-b of this code, the Division of Motor Vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of eighteen who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED) from a state-approved institution or organization or has obtained the certificate; (2) is enrolled and is making satisfactory academic progress in a secondary school of this state or any other state; (3) is excused from the requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full-time student in this state or any other state.

(b) The attendance director or chief administrator shall upon request provide a driver’s eligibility certificate on a form approved by the Department of Education to any student at least fifteen but less than eighteen years of age who is properly enrolled and is making satisfactory academic progress in a school under the jurisdiction of the official for presentation to the Division of Motor Vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle.
(c) Whenever a student at least fifteen but less than eighteen years of age, except as provided in subsection (g) of this section, withdraws from school, the attendance director or chief administrator shall notify the Division of Motor Vehicles of the student’s withdrawal no later than five days from the date of the withdrawal. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student’s instruction permit or license to operate a motor vehicle will be suspended under the provisions of section six, article three, chapter seventeen-b of this code on the thirtieth day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student’s withdrawal from school was due to a circumstance or circumstances beyond the control of the student. If suspended, the division may not reinstate an instruction permit or license until such time as the student returns to school and shows satisfactory academic progress or until such time as the student attains eighteen years of age.

(d) Whenever a student at least fifteen but less than eighteen years of age is enrolled in a secondary school and fails to maintain satisfactory academic progress, the attendance director or chief administrator shall follow the procedures set out in subsection (c) of this section to notify the Division of Motor Vehicles. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student’s instruction permit or license will be suspended under the provisions of section six, article three, chapter seventeen-b of this code on the thirtieth day following the date the notice was sent unless documentation of compliance with the provisions of this
section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's failure to make satisfactory academic progress was due to a circumstance or circumstances beyond the control of the student. Once suspension is ordered, the division may not reinstate an instruction permit or license until such time as the student shows satisfactory academic progress or until such time as the student attains eighteen years of age.

(e) Upon written request of a student, within ten days of receipt of a notice of suspension as provided by this section, the Division of Motor Vehicles shall afford the student the opportunity for an administrative hearing. The scope of the hearing shall be limited to determining if there is a question of improper identity, incorrect age, or some other clerical error.

(f) For the purposes of this section:

(1) Withdrawal is defined as more than ten consecutive or fifteen total days unexcused absences during a school year, or suspension pursuant to subsections (a) and (b) of section one-a, article five, chapter eighteen-a of this code.

(2) "Satisfactory academic progress" means the attaining and maintaining of grades sufficient to allow for graduation and course-work in an amount sufficient to allow graduation in five years or by age nineteen, whichever is earlier.

(3) "Circumstances outside the control of the student" shall include, but not be limited to, medical reasons, familial responsibilities and the necessity of supporting oneself or another.
(4) Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the student.

(g) Whenever the withdrawal from school of the student, the student’s failure to enroll in a course leading to or to obtain a GED or high school diploma, or the student’s failure to make satisfactory academic progress is due to a circumstance or circumstances beyond the control of the student, or the withdrawal from school is for the purpose of transfer to another school as confirmed in writing by the student’s parent or guardian, no notice shall be sent to the Division of Motor Vehicles to suspend the student’s motor vehicle operator’s license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the Division of Motor Vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether any of the grounds for denial or suspension of a license as provided by this section are due to a circumstance or circumstances beyond the control of the student.

(h) The State Board shall promulgate rules necessary for uniform implementation of this section among the counties and as may otherwise be necessary for the implementation of this section. The rule may not include attainment by a student of any certain grade point average as a measure of satisfactory progress toward graduation.
AN ACT to amend and reenact §17B-2-12 of the Code of West Virginia, 1931, as amended; and to further amend said article by adding thereto a new section, designated §17B-2-12a, all relating to requiring vision screening for renewal of a driver's license.

Be it enacted by the Legislature of West Virginia:

That §17B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated §17B-2-12a, all to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-12. Expiration of licenses.

§17B-2-12a. Renewal of driver’s license upon expiration; vision screening; renewal fees.

§17B-2-12. Expiration of licenses.

1 (a) Except as provided in subsection (c) of this section, every driver's license shall expire five years from the date of its issuance.

4 (b)(1) Every driver's license issued to a person who has attained his or her twenty-first birthday shall expire on the
licensee’s birthday in those years in which the licensee’s age is evenly divisible by five. Except as provided in the following subdivisions and in subsection (c) of this section, no driver’s license may be issued for less than three years or for more than seven years and shall be valid for a period of five years, expiring on the licensee’s birthday in a year in which the licensee’s age is evenly divisible by five.

(2) Every driver’s license issued to a person who has not attained his or her twenty-first birthday shall expire thirty days after the licensee’s twenty-first birthday, except as provided in section three-a of this article.

(3) The driver’s license of any person in the Armed Forces shall expire six months after the date on which the person is separated from active duty in the Armed Forces under honorable circumstances.

(c) A license issued to a person who is not a citizen of the United States may only be issued for the time the person is legally authorized to be in the United States, not to exceed five years. If the time the person is authorized to be in the United States is extended, the commissioner may renew the license in accordance with section twelve-a of this article for the time extended, not to exceed five years.

§17B-2-12a. Renewal of driver’s license upon expiration; vision screening; renewal fees.

(a) The commissioner shall notify each person who holds a valid driver’s license of the expiration date of the license by first class mail to the last address known to the division. The notice shall be mailed at least ninety days prior to the expiration date of the license and shall include a renewal application form and instructions for renewal.
(b) The holder of a valid driver's license may apply to the division for renewal of the license on the form provided by the division. To be eligible for license renewal the applicant must:

1. Pay the fee required by section eight of this article;
2. Obtain a new color photograph from the division; and
3. Pass a vision screening conducted by the division.

(c) The commissioner shall assess an additional fee of five dollars for every application for renewal submitted after the expiration of the applicant's license.

(d) The commissioner shall determine whether an applicant qualifies for a renewed license.

(e) The commissioner shall provide by rule a procedure by which an applicant who does not meet the minimum vision standards for licensure may present evidence to show that his or her vision has been corrected to meet the minimum visual standards and that he or she is capable of safely operating a motor vehicle.

(f) The commissioner may not renew the driver's license of an applicant whose eyesight cannot be corrected to conform to the minimum vision standards established by this code and by the rules of the commissioner.

(g) Vision screening conducted pursuant to this section shall not be used to collect any type of personal biometric identifying information including, but not limited to, a retinal scan.

(h) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of article
35 three, chapter twenty-nine-a of this code to implement the
36 provisions of this section.

37 (i) The provisions of this section requiring an applicant
38 for renewal of a driver's license to successfully complete a
39 vision screening as a condition of renewing a driver's license
40 shall become effective on the first day of January, two
41 thousand nine.

CHAPTER 70

(Com. Sub. for S.B. 535 - By Senators Foster, Jenkins, Kessler,
Green, Hunter, Wells, Hall, McKenzie and White)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §17B-4-3 of the Code of West
Virginia, 1931, as amended; to amend and reenact §17C-5-2 and
§17C-5-7 of said code; and to amend and reenact §17C-5A-1,
§17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code, all
relating to modifications to administrative and criminal penalties
for driving a motor vehicle under the influence of alcohol and/or
drugs; reducing the criminal and administrative sanctions for
driving a vehicle with a lawfully suspended or revoked license;
providing for concurrent sentences for driving a vehicle with a
lawfully suspended or revoked license; removing the mandatory
24-hour incarceration for first offense driving under the
influence; creating an aggravated offense of driving with a blood
alcohol concentration of fifteen hundredths of one percent or
more, by weight; permitting participation in the Motor Vehicle
Alcohol Test and Lock Program for first offense driving under
the influence; process for rejecting or modifying hearing
examiner's proposed findings; law-enforcement officers excused
from hearings unless presence is requested by party whose license is at issue; adoption of law-enforcement affidavit if officer does not attend hearing; mandating participation in the Motor Vehicle Alcohol Test and Lock Program for first offense driving under the influence; providing enhanced administrative sanctions for persons operating a motor vehicle with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight; making certain technical changes to administrative procedures; transferring primary authority of the Safety and Treatment Program to the Department of Health and Human Resources; providing for removal of the Driver's Rehabilitation Fund from the jurisdiction of the Division of Motor Vehicles and placing it under the jurisdiction of the Secretary of the Department of Health and Human Resources; requiring Department of Health and Human Resources to propose legislative rules; providing that a person whose driver's license is revoked for refusing to take a secondary chemical test is not eligible to reduce the revocation period by completing the Safety and Treatment Program; removing requirement that victim impact panels be implemented pursuant to legislative rules; requiring the Commissioner of the Division of Motor Vehicles to propose legislative rules; reducing the minimum period of revocation for participation in the test and lock program; increasing minimum periods of participation in the ignition interlock device for aggravating offenses; and denying participation in the Motor Vehicle Alcohol Test and Lock Program for person whose driver's license is revoked for driving under the influence of drugs.

Be it enacted by the Legislature of West Virginia:

That §17B-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17C-5-2 and §17C-5-7 of said code be amended and reenacted; and that §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended and reenacted, all to read as follows:

Chapter
17B. Motor Vehicle Driver's Licenses.
17C. Traffic Regulations and Laws of the Road.
CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

(a) Except as otherwise provided in subsection (b) or (d) of this section, any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the third or any subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than ninety days and shall be fined not less than one hundred fifty dollars nor more than five hundred dollars.

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or for refusing to take a
secondary chemical test of blood alcohol content, is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year and shall be fined not less than one thousand dollars nor more than three thousand dollars; for the third or any subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than three years and, in addition to the mandatory prison sentence, shall be fined not less than three thousand dollars nor more than five thousand dollars.

(c) Upon receiving a record of the first or subsequent conviction of any person under subsection (b) of this section upon a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of six months which may be served concurrently with any other suspension or revocation. Upon receiving a record of the second or subsequent conviction of any person under subsection (a) of this section upon a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of ninety days which may be served concurrently with any other suspension or revocation.

(d) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by
weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours or shall be fined not less than fifty dollars nor more than five hundred dollars, or both.

Upon receiving a record of a first or subsequent conviction under this subsection for a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of six months which may be served concurrently with any other suspension or revocation.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article 5. Serious Traffic Offenses.

5A. Administrative procedures for suspension and revocation of licenses for driving under the influence of alcohol, controlled substances or drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§ 17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.
§ 17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.
§ 17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or drugs or refusal to submit to secondary chemical test.
§ 17C-5A-2. Hearing; revocation; review.
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§ 17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.
(a) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(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) While 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 years nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;
(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug;

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) While 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.

(c) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(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) While 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;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(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, but less than fifteen hundredths of one percent, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six months and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days 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 two hundred dollars nor more than one thousand dollars.
A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) 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. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(g) Any person who:

(1) Knowingly permits his or her vehicle to be driven in this state by any other person who:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug;

(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 more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.
(h) 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.

(i) 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 Motor 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 this subsection or subsection (a), (b), (c), (d),
(e), (f), (g) or (h) of this section may not also be charged with
an offense under this subsection arising out of the same
transaction or occurrence.
(j) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(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 while 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.

(k) 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.

(l) 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.

(m) For purposes of subsections (k) and (l) 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), (f) or (g) 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),
(g) or (h) of this section, which offense occurred within the
ten-year period immediately preceding the date of arrest in
the current proceeding.

(n) 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.
(o) The fact that any person charged with a violation of subsection (a), (b), (c), (d), (e) or (f) of this section, or any person permitted to drive as described under subsection (g) or (h) 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), (g) or (h) of this section.

(p) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in chapter sixty-a of this code.

(q) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not 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.
§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

(a) If any person under arrest as specified in section four of this article refuses to submit to any secondary chemical test, the tests shall not be given: Provided, That prior to the refusal, the person is given an oral warning and a written statement advising him or her that his or her refusal to submit to the secondary test finally designated will result in the revocation of his or her license to operate a motor vehicle in this state for a period of at least forty-five days and up to life; and that after fifteen minutes following the warnings the refusal is considered final. The arresting officer after that period of time expires has no further duty to provide the person with an opportunity to take the secondary test. The officer shall, within forty-eight hours of the refusal, sign and submit to the Commissioner of Motor Vehicles a written statement of the officer that: (1) He or she had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary chemical test finally designated in the manner provided in section four of this article; and (4) the person was given a written statement advising him or her that his or her license to operate a motor vehicle in this state would be revoked for a period of at least forty-five days and up to life if he or she refused to submit to the secondary test finally designated in the manner provided in section four of this article. The signing of the statement required to be signed by this section constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement
containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor. Upon receiving the statement the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state for the period prescribed by this section.

For the first refusal to submit to the designated secondary chemical test, the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state for a period of one year or forty-five days, with an additional one year of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article five-a of this chapter: Provided, That a person revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program. The application for participation in the Motor Vehicle Alcohol Test and Lock Program shall be considered to be a waiver of the hearing provided in section two of said article. If the commissioner has previously revoked the person's license under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, make and enter an order revoking the person's license to operate a motor vehicle in this state for a period of ten years: Provided, however, That the license may be reissued in five years in accordance with the provisions of section three, article five-a of this chapter. If the commissioner has previously revoked the person's license more than once under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, make and enter an order revoking the person's license to operate a motor vehicle in this state for a period of life. A copy of each order shall be forwarded to the person by registered or certified mail, return receipt requested, and shall contain the reasons for the revocation and shall specify the revocation period imposed pursuant to this section. A
revocation shall not become effective until ten days after receipt of the copy of the order. Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his or her blood, breath or urine as provided in section four of this article and the test may be administered although the person is not informed that his or her failure to submit to the test will result in the revocation of his or her license to operate a motor vehicle in this state for the period provided for in this section.

A revocation under this section shall run concurrently with the period of any suspension or revocation imposed in accordance with other provisions of this code and growing out of the same incident which gave rise to the arrest for driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and the subsequent refusal to undergo the test finally designated in accordance with the provisions of section four of this article.

(b) For the purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of suspensions or revocations shall also be regarded as suspensions or revocations under this section:

(1) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two of this article for conduct which occurred on or after the tenth day of June, one thousand nine hundred eighty-three; and

(2) Any revocation under the provisions of section one or two, article five-a of this chapter for conduct which occurred
on or after the tenth day of June, one thousand nine hundred eighty-three.

(c) A person whose license to operate a motor vehicle in this state has been revoked shall be afforded an opportunity to be heard, in accordance with the provisions of section two, article five-a of this chapter.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or drugs or refusal to submit to secondary chemical test.

(a) Any person who is licensed to operate a motor vehicle in this state and who drives a motor vehicle in this state shall be deemed to have given his or her consent by the operation thereof, subject to the provisions of this article, to the procedure set forth in this article for the determination of whether his or her license to operate a motor vehicle in this state should be revoked because he or she did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, or did refuse to submit to any secondary chemical test required under the provisions of article five of this chapter or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.
(b) Any law-enforcement officer investigating a person for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section shall report to the Commissioner of the Division of Motor Vehicles by written statement within forty-eight hours of the conclusion of the investigation the name and address of the person believed to have committed the offense. The report shall include the specific offense with which the person is charged and, if applicable, a copy of the results of any secondary tests of blood, breath or urine. The signing of the statement required to be signed by this subsection constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(c) If, upon examination of the written statement of the officer and the tests results described in subsection (b) of this section, the commissioner determines that a person committed an offense described in section two, article five of this chapter or an offense described in a municipal ordinance which has the same elements as an offense described in said section and that the results of any secondary test or tests indicate that at the time the test or tests were administered the person had, in his or her blood, an alcohol concentration of eight hundredths of one percent or more, by weight, or at the time the person committed the offense he or she was under the influence of alcohol, controlled substances or drugs, the commissioner shall make and enter an order revoking or suspending the person's license to operate a motor vehicle in this state. If the results of the tests indicate that at the time the test or tests were administered the person was under the age of twenty-one years and had an alcohol concentration in his or her blood of two hundredths of one percent or more, by
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weight, but less than eight hundredths of one percent, by
weight, the commissioner shall make and enter an order
suspending the person's license to operate a motor vehicle in
this state. A copy of the order shall be forwarded to the
person by registered or certified mail, return receipt
requested, and shall contain the reasons for the revocation or
suspension and describe the applicable revocation or
suspension periods provided in section two of this article. A
revocation or suspension shall not become effective until ten
days after receipt of a copy of the order.

(d) Any law-enforcement officer taking a child into
custody under the provisions of section six-a, article five of
this chapter who has reasonable cause to believe that the
child, at the time of driving the motor vehicle, had an alcohol
concentration in his or her blood of two hundredths of one
percent or more, by weight, or that the act of the child in
driving the motor vehicle was such that it would provide
grounds for arrest for an offense defined under the provisions
of section two of said article if the child were an adult, shall
report to the Commissioner of the Division of Motor
Vehicles by written statement within forty-eight hours the
name and address of the child.

(e) If applicable, the report shall include a description of
the specific offense with which the child could have been
charged if the child were an adult and a copy of the results of
any secondary tests of blood, breath or urine. The signing of
the statement required to be signed by this subsection
constitutes an oath or affirmation by the person signing the
statement that the statements contained in the statement are
true and that any copy filed is a true copy. The statement
shall contain upon its face a warning to the officer signing
that to willfully sign a statement containing false information
concerning any matter or thing, material or not material, is
false swearing and is a misdemeanor.
(f) Upon examination of the written statement of the officer and any test results described in subsection (d) of this section, if the commissioner determines that the results of the test indicate that at the time the test or tests were administered the child had, in his or her blood, an alcohol concentration of two hundredths of one percent or more, by weight, but also determines that the act of the child in driving the motor vehicle was not such that it would provide grounds for arrest for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (h), section two, article five of this chapter if the child were an adult, the commissioner shall make and enter an order suspending the child's license to operate a motor vehicle in this state. If the commissioner determines that the act of the child in driving the motor vehicle was such that it would provide grounds for arrest for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (h), section two, article five of this chapter if the child were an adult, the commissioner shall make and enter an order revoking the child's license to operate a motor vehicle in this state. A copy of the order shall be forwarded to the child by registered or certified mail, return receipt requested, and shall contain the reasons for the suspension or revocation and describe the applicable suspension or revocation periods provided for in section two of this article. A suspension or revocation shall not become effective until ten days after receipt of a copy of the order.

§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked or suspended under the provisions of section one of this article or section seven, article five of this chapter, the Commissioner of the Division of Motor Vehicles shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard. The written
request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing will be granted. The hearing shall be before the commissioner or a hearing examiner retained by the commissioner who shall rule on evidentiary issues and submit proposed findings of fact and conclusions of law for the consideration of the commissioner and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply. The commissioner may reject or modify the hearing examiner's proposed findings of fact and conclusions of law, in writing, and only if:

(1) There is an error of law;

(2) They are clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(3) They are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(b) The hearing shall be held at an office of the division located in or near the county in which the arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available.

(c) Any hearing shall be held within one hundred eighty days after the date upon which the commissioner received the timely written request for a hearing unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on the commissioner's own motion or upon application for each person for good cause shown. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement
or continuance of any hearing on the commissioner's own motion or for the benefit of any law-enforcement officer or any person requesting the hearing and the policies shall be enforced and applied to all parties equally. For the purpose of conducting the hearing, the commissioner may issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code: Provided, That the notice of hearing to the appropriate law-enforcement officers by registered or certified mail, return receipt requested, constitutes a subpoena to appear at the hearing without the necessity of payment of fees by the Division of Motor Vehicles.

(d) Any investigating officer who submits a statement pursuant to section one of this article that results in a hearing pursuant to this section shall not attend the hearing on the subject of that affidavit unless requested to do so by the party whose license is at issue in that hearing or by the commissioner. The hearing request form shall clearly and concisely inform a person seeking a hearing of the fact that the investigating officer will only attend the hearing if requested to do so and provide for a box to be checked requesting the investigating officer's attendance. The language shall appear prominently on the hearing request form. The Division of Motor Vehicles is solely responsible for causing the attendance of the investigating officers. Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the commissioner by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time. If the party whose license is at issue does not request the investigating officer to attend the hearing, the commissioner shall consider the written statement, test results and any other information submitted by the investigating officer pursuant to section one of this article in that officer's absence.
(e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.

The commissioner may propose a legislative rule in compliance with the provisions of article three, chapter twenty-nine-a of this code which may provide that if a person accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, intends to challenge the results of any secondary chemical test of blood, breath or urine under section seven, article five of this chapter or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, the person shall, within an appropriate period of time prior to the hearing, notify the commissioner in writing of his or her intention. The rule may provide that when there is a failure to comply with the notice requirement, the results of the secondary test, if any, shall be admissible as though the person and the commissioner had stipulated the admissibility of the evidence. Any rule shall provide that the rule shall not be invoked in the case of a person who is not represented by counsel unless the communication from the commissioner to
the person establishing a time and place for the hearing also
informed the person of the consequences of the person's
failure to timely notify the commissioner of the person's
intention to challenge the results of the secondary chemical
test or cross-examine the individual or individuals who
administered the test or performed the chemical analysis.

(f) In the case of a hearing in which a person is accused
of driving a motor vehicle while under the influence of
alcohol, controlled substances or drugs, or accused of driving
a motor vehicle while having an alcohol concentration in the
person's blood of eight hundredths of one percent or more, by
weight, or accused of driving a motor vehicle while under the
age of twenty-one years with an alcohol concentration in his
or her blood of two hundredths of one percent or more, by
weight, but less than eight hundredths of one percent, by
weight, the commissioner shall make specific findings as to:
(1) Whether the investigating law-enforcement officer had
reasonable grounds to believe the person to have been driving
while under the influence of alcohol, controlled substances or
drugs, or while having an alcohol concentration in the
person's blood of eight hundredths of one percent or more, by
weight, or to have been driving a motor vehicle while under
the age of twenty-one years with an alcohol concentration in
his or her blood of two hundredths of one percent or more, by
weight, but less than eight hundredths of one percent, by
weight; (2) whether the person committed an offense
involving driving under the influence of alcohol, controlled
substances or drugs, or was lawfully taken into custody for
the purpose of administering a secondary test; and (3)
whether the tests, if any, were administered in accordance
with the provisions of this article and article five of this
chapter.

(g) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol,
controlled substances or drugs, or did drive a motor vehicle
while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others and if the commissioner further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of ten years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
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(i) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or more, by weight, or finds that the person knowingly permitted the person's vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight the commissioner shall revoke the person's license for a period of six months or a period of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol
Test and Lock Program in accordance with the provisions of section three-a of this article: Provided, That a person whose license is revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program: Provided, however, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided further, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k) (1) If in addition to finding by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the commissioner also finds by a preponderance of the evidence that the person did drive a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of forty-five days with an additional two hundred and seventy days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of article three-a, article five-a, chapter seventeen-c of this code: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
(2) If a person whose license is revoked pursuant to subdivision (1) of this subsection proves by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(1) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the commissioner further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(m) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with
an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the commissioner further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(n) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall suspend the person's license for a period of sixty days: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article, the period of revocation shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

(o) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle
while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did have on or within the motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of one year: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(p) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest;

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest; or
(3) Any revocation under the provisions of section seven, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest.

(q) In the case of a hearing in which a person is accused of refusing to submit to a designated secondary test, the commissioner shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (4) whether the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated in the manner provided in said section.

(r) If the commissioner finds by a preponderance of the evidence that: (1) The investigating officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary chemical test finally designated; and (4) the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for a period of at least forty-five days and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run...
concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

(s) If the commissioner finds to the contrary with respect to the above issues the commissioner shall rescind his or her earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section or section seven, article five of this chapter. A copy of the commissioner's order made and entered following the hearing shall be served upon the person by registered or certified mail, return receipt requested. During the pendency of any hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.

If the commissioner shall after hearing make and enter an order affirming the commissioner's earlier order of revocation, the person shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code. The commissioner may not stay enforcement of the order. The court may grant a stay or supersede as of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits and the appellant will suffer irreparable harm if the order is not stayed: Provided, That in no event shall the stay or supersede as of the order exceed one hundred fifty days. Notwithstanding the provisions of section four, article five of said chapter, the commissioner may not be compelled to transmit a certified copy of the file or the transcript of the hearing to the circuit court in less than sixty days.

(t) In any revocation or suspension pursuant to this section, if the driver whose license is revoked or suspended had not reached the driver's eighteenth birthday at the time of the conduct for which the license is revoked or suspended, the driver's license shall be revoked or suspended until the driver's eighteenth birthday or the applicable statutory period
of revocation or suspension prescribed by this section, whichever is longer.

(u) Funds for this section's hearing and appeal process may be provided from the Drunk Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code, upon application for the funds to the Commission on Drunk Driving Prevention.

§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code establishing a comprehensive safety and treatment program for persons whose licenses have been revoked under the provisions of this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code and shall also establish the minimum qualifications for mental health facilities or other public agencies or private entities conducting the safety and treatment program: Provided, That the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section.

(b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving or other safety driving instruction and other programs designed to properly educate, train and rehabilitate the offender.
(c) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall provide for the preparation of an educational and treatment program for each person whose license has been revoked under the provisions of this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code which shall contain the following:

(A) A listing and evaluation of the offender's prior traffic record; (B) The characteristics and history of alcohol or drug use, if any; (C) His or her amenability to rehabilitation through the alcohol safety program; and (D) a recommendation as to treatment or rehabilitation and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

(2) The Department of Health and Human Resources shall establish a fee by legislative rule proposed pursuant to article three, chapter twenty-nine-a of this code to be collected from each offender enrolled in the safety and treatment program. The program provider shall collect the established fee from each participant upon enrollment unless the department has determined that the participant is an indigent based upon criteria established pursuant to subdivision (3) of this subsection. The Department of Health and Human Resources shall reimburse enrollment fees to program providers for each eligible indigent offender.

(3) The Department of Health and Human Resources shall establish by legislative rule, proposed pursuant to article three, chapter twenty-nine-a of this code, criteria to determine the eligibility for the payment of safety and treatment services for indigent offenders. The rule shall include, but is not limited to, the development of a criteria for determining eligibility; promulgation of application forms; establishment of procedures for the review of applications; and the establishment of a mechanism for the payment for safety and training services for eligible offenders.
(4) On or before the fifteenth day of January, of each year, the Secretary of the Department of Health and Human Resources shall report to the Legislature on:

(A) The total number of offenders participating in the safety and treatment program during the prior year;

(B) The total number of indigent offenders participating in the safety and treatment program during the prior year;

(C) The total number of program providers during the prior year; and

(D) The total amount of reimbursements paid to program provider during the prior year.

(5) The commissioner after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code which shall include successful completion of the educational, treatment or rehabilitation program, subject to the following:

(A) When the period of revocation is six months, the license to operate a motor vehicle in this state shall not be reissued until: (i) At least ninety days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (ii) the offender has successfully completed the program; (iii) all costs of the program and administration have been paid; and (iv) all costs assessed as a result of a revocation hearing have been paid;

(B) When the period of revocation is for a period of one year or for more than a year, the license to operate a motor vehicle in this state shall not be reissued until: (i) At least one
half of the time period has elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (ii) The offender has successfully completed the program; (iii) All costs of the program and administration have been paid; and (iv) All costs assessed as a result of a revocation hearing have been paid. Notwithstanding any provision in this code, a person whose license is revoked for refusing to take a chemical test as required by section seven, article five of this chapter for a first offense is not eligible to reduce the revocation period by completing the safety and treatment program.

(C) When the period of revocation is for life, the license to operate a motor vehicle in this state shall not be reissued until: (i) At least ten years have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (ii) the offender has successfully completed the program; (iii) all costs of the program and administration have been paid; and (iv) all costs assessed as a result of a revocation hearing have been paid.

(D) Notwithstanding any provision of this code or any rule, any mental health facilities or other public agencies or private entities conducting the safety and treatment program when certifying that a person has successfully completed a safety and treatment program shall only have to certify that the person has successfully completed the program.

(d) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall provide for the preparation of an educational program for each person whose license has been suspended for sixty days pursuant to the provisions of subsection (n), section two, article five-a of this chapter. The educational program shall consist of not less than twelve nor more than eighteen hours of actual classroom time.
(2) When a sixty-day period of suspension has been ordered, the license to operate a motor vehicle shall not be reinstated until: (A) At least sixty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect; (B) the offender has successfully completed the educational program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

(e) A required component of the rehabilitation program provided in subsection (b) of this section and the education program provided for in subsection (c) of this section shall be participation by the violator with a victim impact panel program providing a forum for victims of alcohol and drug-related offenses and offenders to share first-hand experiences on the impact of alcohol- and drug-related offenses in their lives. The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall propose and implement a plan for victim impact panels where appropriate numbers of victims are available and willing to participate and shall establish guidelines for other innovative programs which may be substituted where the victims are not available to assist persons whose licenses have been suspended or revoked for alcohol and drug-related offenses to gain a full understanding of the severity of their offenses in terms of the impact of the offenses on victims and offenders. The plan shall require, at a minimum, discussion and consideration of the following:

(A) Economic losses suffered by victims or offenders;

(B) Death or physical injuries suffered by victims or offenders;

(C) Psychological injuries suffered by victims or offenders;
(D) Changes in the personal welfare or familial relationships of victims or offenders; and

(E) Other information relating to the impact of alcohol and drug-related offenses upon victims or offenders.

The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

(a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol Test and Lock Program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter or have been convicted under section two, article five of this chapter.

(2) The program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the Driver's Rehabilitation Fund: Provided, That on and after the first day of July, two thousand seven, any unexpended balance remaining in the Driver's Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees collected shall be deposited in that fund.

(3) Except where specified otherwise, the use of the term "program" in this section refers to the Motor Vehicle Alcohol Test and Lock Program. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing
the provisions of this section. The rules shall also prescribe
those requirements which, in addition to the requirements
specified by this section for eligibility to participate in the
program, the commissioner determines must be met to obtain
the commissioner's approval to operate a motor vehicle
equipped with a motor vehicle alcohol test and lock system.

(4) For purposes of this section, a "motor vehicle alcohol
test and lock system" means a mechanical or computerized
system which, in the opinion of the commissioner, prevents
the operation of a motor vehicle when, through the system's
assessment of the blood alcohol content of the person
operating or attempting to operate the vehicle, the person is
determined to be under the influence of alcohol.

(5) The commissioner shall establish by legislative rule,
proposed pursuant to article three, chapter twenty-nine-a of
this code, criteria to determine the eligibility for the payment
of the installation of ignition interlock devices in the vehicles
of indigent offenders. The rule shall include, but is not
limited to, the development of a criteria for determining
eligibility; promulgation of application forms; establishment
of procedures for the review of applications; and the
establishment of a mechanism for the payment of
installations for eligible offenders.

(6) On or before the fifteenth day of January, of each
year, the commissioner of the division of motor vehicles shall
report to the Legislature on:

(A) The total number of offenders participating in the
program during the prior year;

(B) The total number of indigent offenders participating
in the program during the prior year;

(C) The terms of any contracts with the providers of
ignition interlock devices; and
(D) The total cost of the program to the state during the prior year.

(b)(1) Any person whose license is revoked for the first time pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when the person's minimum revocation period as specified by subsection (c) of this section has expired and the person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: Provided, That anyone whose license is revoked for the first time pursuant to subsection (k), section two of this article must participate in the program when the person's minimum revocation period as specified by subsection (c) of this section has expired and the person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program.

(2) Any person whose license has been suspended pursuant to the provisions of subsection (n), section two of this article for driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: Provided, That in the case of a person under the age of eighteen, the person is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect or after the person's eighteenth birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle
equipped with a motor vehicle alcohol test and lock system, the person must agree to comply with the following conditions:

(A) If not already enrolled, the person shall enroll in and complete the educational program provided in subsection (d), section three of this article at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person shall pay all costs of the educational program, any administrative costs and all costs assessed for any suspension hearing.

(3) Notwithstanding the provisions of this section to the contrary, a person eligible to participate in the program under this subsection may not operate a motor vehicle unless approved to do so by the commissioner.

(c) A person who participates in the program under subdivision (1), subsection (b) of this section is subject to a minimum revocation period and minimum period for the use of the ignition interlock device as follows:

(1) For a person whose license has been revoked for a first offense for six months pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (d) or (g), section two, article five of this chapter or pursuant to subsection (j), section two of this article, the minimum period of revocation for participation in the test and lock program is fifteen days and the minimum period for the use of the ignition interlock device is one hundred and twenty-five days;

(2) For a person whose license has been revoked for a first offense pursuant to section seven, article five of this chapter, the minimum period of revocation for participation
in the test and lock program is forty-five days and the minimum period for the use of the ignition interlock device is one year;

(3) For a person whose license has been revoked for a first offense pursuant to section one-a of this article for conviction of an offense defined in subsection (e), section two, article five of this chapter or pursuant to subsection (j), section two of this article, the minimum period of revocation for participation in the test and lock program is forty-five days and the minimum period for the use of the ignition interlock device is two hundred seventy days;

(4) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (a), section two, article five of this chapter or pursuant to subsection (f), section two of this article, the minimum period of revocation before the person is eligible for participation in the test and lock program is twelve months and the minimum period for the use of the ignition interlock device is two years;

(5) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (b), section two, article five of this chapter or pursuant to subsection (g), section two of this article, the minimum period of revocation is six months and the minimum period for the use of the ignition interlock device is two years;

(6) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (c), section two, article five of this chapter or pursuant to subsection (h), section two of this article, the minimum period of revocation for participation in the program is two
(7) For a person whose license has been revoked for a
first offense pursuant to the provisions of section one-a of
this article for conviction of an offense defined in subsection
(j), section two, article five of this chapter or pursuant to
subsection (m), section two of this article, the minimum
period of revocation for participation in the program is two
months and the minimum period for the use of the ignition
interlock device is ten months;

(d) Notwithstanding any provision of the code to the
contrary, a person shall participate in the program if the
person is convicted under section two, article five of this
chapter or the person's license is revoked under section two
of this article or section seven, article five of this chapter and
the person was previously either convicted or his or her
license was revoked under any provision cited in this
subsection within the past ten years. The minimum
revocation period for a person required to participate in the
program under this subsection is one year and the minimum
period for the use of the ignition interlock device is two
years, except that the minimum revocation period for a
person required to participate because of a violation of
subsection (n), section two of this article or subsection (i),
section two, article five of this chapter is two months and the
minimum period of participation is one year. The division
shall add an additional two months to the minimum period
for the use of the ignition interlock device if the offense was
committed while a minor was in the vehicle. The division
shall add an additional six months to the minimum period for
the use of the ignition interlock device if a person other than
the driver received injuries. The division shall add an
additional two years to the minimum period for the use of the
ignition interlock device if a person other than the driver is
injured and the injuries result in that person's death. The
division shall add one year to the minimum period for the use
of the ignition interlock device for each additional previous
conviction or revocation within the past ten years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

(e) Notwithstanding any other provision in this code, a person whose license is revoked for driving under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program.

(f) An applicant for the test and lock program may not have been convicted of any violation of section three, article four, chapter seventeen-b of this code for driving while the applicant's driver's license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program unless such is necessary for employment purposes.

(g) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver's license which shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(h) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider.

(i) A person whose license has been suspended pursuant to the provisions of subsection (n), section two of this article who has completed the educational program and who has not violated the terms required by the commissioner of the person's participation in the program is entitled to the reinstatement of his or her driver's license six months from the date the person is permitted to operate a motor vehicle by
the commissioner. When a license has been reinstated
pursuant to this subsection, the records ordering the
suspension, records of any administrative hearing, records of
any blood alcohol test results and all other records pertaining
to the suspension shall be expunged by operation of law:
Provided, That a person is entitled to expungement under the
provisions of this subsection only once. The expungement
shall be accomplished by physically marking the records to
show that the records have been expunged and by securely
sealing and filing the records. Expungement has the legal
effect as if the suspension never occurred. The records may
not be disclosed or made available for inspection and in
response to a request for record information, the
commissioner shall reply that no information is available.
Information from the file may be used by the commissioner
for research and statistical purposes so long as the use of the
information does not divulge the identity of the person.

(j) In addition to any other penalty imposed by this code,
any person who operates a motor vehicle not equipped with
an approved motor vehicle alcohol test and lock system
during that person's participation in the Motor Vehicle
Alcohol Test and Lock Program is guilty of a misdemeanor
and, upon conviction thereof, shall be confined in jail for a
period not less than one month nor more than six months and
fined not less than one hundred dollars nor more than five
hundred dollars. Any person who attempts to bypass the
alcohol test and lock system is guilty of a misdemeanor and,
upon conviction thereof, shall be confined in jail not more
than six months and fined not less than one hundred dollars
nor more than one thousand dollars: Provided, That
notwithstanding any provision of this code to the contrary, a
person enrolled and participating in the test and lock program
may operate a motor vehicle solely at his or her job site if the
operation is a condition of his or her employment. For the
purpose of this section, job site does not include any street or
highway open to the use of the public for purposes of
vehicular traffic.
AN ACT to repeal §18-9A-5a, §18-9A-5b, §18-9A-10a and §18-9A-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-1-1 of said code; to amend and reenact §18-9A-2, §18-9A-3a, §18-9A-4, §18-9A-5, §18-9A-6, §18-9A-7, §18-9A-8, §18-9A-9, §18-9A-10 and §18-9A-21 of said code; and to amend and reenact §18-20-5 of said code, all relating to public school support; defining terms; eliminating adjusted enrollment and certain waiver provisions; eliminating obsolete provisions; providing alternate computation of county and total basic foundation program funding for certain years; limiting basis of foundation allowances for personnel to certain ratios of net student enrollment instead of adjusted enrollment; establishing different net enrollment limits on the basis of differences in students per square mile and expiring existing ratios and funding provisions; providing for certain adjustments to net enrollment for allowances in low enrollment counties; requiring review of certain issues; establishing minimum ratios of professional instructional personnel per students in net enrollment; providing criteria for certain new positions; establishing student density categories for determining allowance for transportation; modifying incentive for alternative fuel use and allowance for transporting students to certain multi-county centers; removing obsolete provisions for certain competitive bidding; deleting allowance for administrative costs; providing foundation allowance for
professional student support personnel, including fixed charges; including professional student support personnel costs in determining professional substitute allowance; placing funding supplement for advanced placement and dual credit enrollment in allowance to improve instructional programs; repealing provisions for certain additional nursing positions; providing enrollment basis for alternative program funding and adding prevention programs; expiring certain provisions for funding for economies of scale in certain counties; requiring annual review and report by state superintendent on exceptional student services and accounting of services and costs; requiring appropriation for distribution upon application to support children with high acuity needs that exceed county capacity from funds available; and requiring rule to implement distribution.

Be it enacted by the Legislature of West Virginia:

That §18-9A-5a, §18-9A-5b, §18-9A-10a and §18-9A-22 of the Code of West Virginia, 1931, as amended, be repealed; that §18-1-1 of said code be amended and reenacted; that §18-9A-2, §18-9A-3a, §18-9A-4, §18-9A-5, §18-9A-6, §18-9A-7, §18-9A-8, §18-9A-9, §18-9A-10 and §18-9A-21 of said code be amended and reenacted; and that §18-20-5 of said code be amended and reenacted, all to read as follows:

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, public school librarian 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 nonteaching 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) "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 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-3a. Total state basic foundation program for fiscal years 2009 through 2013, only.
§18-9A-4. Foundation allowance for professional educators.
§18-9A-5. Foundation allowance for service personnel.
§18-9A-6. Foundation allowance for fixed charges.

1 For the purpose of this article:

2 (a) "State board" means the West Virginia Board of Education.

3 (b) "County board" or "board" means a county board of education.

4 (c) "Professional salaries" means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

5 (d) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one of this chapter, and includes technology integration specialists.

6 (e) "Professional instructional personnel" means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance, or psychologist duties.

7 (f) "Professional student support personnel" means a "professional person" as those terms are defined in section one, article one, chapter eighteen-a of this code who is assigned and serves on a regular full-time basis as a
26 counselor or as a school nurse with a bachelor’s degree and 27 who is licensed by the West Virginia Board of Examiners for 28 Registered Professional Nurses.

29 (g) “Service personnel salaries” means the state legally 30 mandated salaries for service personnel as provided in section 31 eight-a, article four, chapter eighteen-a of this code.

32 (h) “Service personnel” means all personnel as provided 33 in section eight, article four, chapter eighteen-a of this code. 34 For the purpose of computations under this article of ratios of 35 service personnel to net enrollment, a service employee shall 36 be counted as that number found by dividing his or her 37 number of employment days in a fiscal year by two hundred: 38 Provided, That the computation for any service person 39 employed for three and one-half hours or less per day as 40 provided in section eight-a, article four, chapter eighteen-a of 41 this code shall be calculated as one-half an employment day.

42 (i) “Net enrollment” means the number of pupils enrolled 43 in special education programs, kindergarten programs and 44 grades one to twelve, inclusive, of the public schools of the 45 county. Net enrollment further shall include:

46 (1) Adults enrolled in regular secondary vocational 47 programs existing as of the effective date of this section, 48 subject to the following:

49 (A) Net enrollment includes no more than one thousand 50 of those adults counted on the basis of full-time equivalency 51 and apportioned annually to each county in proportion to the 52 adults participating in regular secondary vocational programs 53 in the prior year counted on the basis of full-time 54 equivalency; and

55 (B) Net enrollment does not include any adult charged 56 tuition or special fees beyond that required of the regular 57 secondary vocational student;
(2) Students enrolled in early childhood education programs as provided in section forty-four, article five of this chapter, counted on the basis of full-time equivalency;

(3) No pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state;

(4) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) For any county whose net enrollment as determined under all other provisions of this definition is less than one thousand four hundred, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following:

(A) Divide the state’s lowest county student population density by the county’s actual student population density;

(B) Multiply the amount derived from the calculation in paragraph (A) of this subdivision by three hundred;

(C) If the increase in net enrollment as determined under this subdivision plus the county’s net enrollment as determined under all other provisions of this subsection is greater than one thousand four hundred, the increase in net enrollment shall be reduced so that the total does not exceed one thousand four hundred; and

(D) During the two thousand eight - two thousand nine interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review the provisions of this subdivision to determine whether or not they properly address the needs
of counties with low enrollment and a sparse population density.

(j) "Sparse-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties pursuant to subdivision (5) of the definition of net enrollment, to the square miles of the county is less than five.

(k) "Low-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties pursuant to subdivision (5) of the definition of net enrollment, to the square miles of the county is equal to or greater than five but less than ten.

(l) "Medium-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties pursuant to subdivision (5) of the definition of net enrollment, to the square miles of the county is equal to or greater than ten but less than twenty.

(m) "High-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties pursuant to subdivision (5) of the definition of net enrollment, to the square miles of the county is equal to or greater than twenty.

(n) "Levies for general current expense purposes" means ninety-four percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code: Provided, That beginning the first day of July, two thousand eight, "levies for general current expense purposes" means ninety percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code: Provided, however, That effective the first day of July,
two thousand ten, the definitions set forth in this subsection
are subject to the provisions of section two-a of this article.

(o) “Technology integration specialist” means a
professional educator who has expertise in the technology
field and is assigned as a resource teacher to provide
information and guidance to classroom teachers on the
integration of technology into the curriculum.

(p) “State aid eligible personnel” means all professional
educators and service personnel employed by a county board
in positions that are eligible to be funded under this article
and whose salaries are not funded by a specific funding
source such as a federal or state grant, donation, contribution
or other specific funding source not listed.

§18-9A-3a. Total state basic foundation program for fiscal
years 2009 through 2013, only.

(a) Notwithstanding any other provisions of this article to
the contrary, the total basic foundation program for the state
for the fiscal years two thousand nine through two thousand
thirteen shall be the sum of the amounts computed for each
county in accordance with this section, less the county’s local
share:

(1) For the fiscal year two thousand nine, the department
of education shall compute the total basic foundation
program for each county in accordance with the provisions of
this article and in accordance with the provisions of this
article in effect for fiscal year two thousand eight. The total
basic foundation program for each county computed in
accordance with this article is limited to a growth of one fifth
above the amount computed for the county in accordance
with the provisions in effect for fiscal year two thousand
eight. The total basic foundation program for the county is
the greater of the two computations.
(2) For the fiscal year two thousand ten, the department of education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year two thousand eight. The total basic foundation program for each county computed in accordance with this article is limited to a growth of two fifths above the amount computed for the county in accordance with the provisions in effect for fiscal year two thousand eight. The total basic foundation program for the county is the greater of the two computations.

(3) For the fiscal year two thousand eleven, the department of education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year two thousand eight. The total basic foundation program for each county computed in accordance with this article is limited to a growth of three fifths above the amount computed for the county in accordance with the provisions in effect for fiscal year two thousand eight. The total basic foundation program for the county is the greater of the two computations.

(4) For the fiscal year two thousand twelve, the department of education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year two thousand eight. The total basic foundation program for each county computed in accordance with this article is limited to a growth of four fifths above the amount computed for the county in accordance with the provisions in effect for fiscal year two thousand eight. The total basic foundation program for the county is the greater of the two computations.

(5) For the fiscal year two thousand thirteen and each year thereafter, the department of education shall compute
the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year two thousand eight. For the fiscal year two thousand thirteen only, the total basic foundation program for the county is the greater of the two computations.

§18-9A-4. Foundation allowance for professional educators.

(a) The basic foundation allowance to the county for professional educators shall be the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of this code, to the personnel employed, subject to the following:

(1) Subject to subdivision (2) of this subsection, in making this computation no county shall receive an allowance for the personnel which number is in excess of professional educators to each one thousand students in net enrollment as follows:

(A) For each high-density county, the number of personnel for which a county shall receive the allowance shall not exceed seventy-two and one tenth professional educators per each one thousand students in net enrollment;

(B) For each medium-density county, the number of personnel for which a county shall receive the allowance shall not exceed seventy-two and twenty-five one hundredths professional educators per each one thousand students in net enrollment;

(C) For each low-density county, the number of personnel for which a county shall receive the allowance shall not exceed seventy-two and four tenths professional educators per each one thousand students in net enrollment; and
(D) For each sparse-density county, the number of personnel for which a county shall receive the allowance shall not exceed seventy-two and fifty-five one hundredths professional educators per each one thousand students in net enrollment;

(2) For the ratios applicable to each of the four density categories set forth in subdivision (1) of this subsection, the number of professional educators per each one thousand students in net enrollment increases by five one hundredths per year for each of fiscal years two thousand ten, two thousand eleven, two thousand twelve and two thousand thirteen. For each fiscal year thereafter, the ratios remain at the two thousand thirteen level.

(3) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(4) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one’s enrollment therein and the personnel shall be considered within the above-stated limit.

(b) Subject to subsection (c) of this section, each county board shall establish and maintain a minimum ratio of professional instructional personnel per one thousand students in net enrollment as follows:

(1) For each high-density county, the minimum number of professional instructional personnel per one thousand students in net enrollment is sixty-five and eight tenths;

(2) For each medium-density county, the minimum number of professional instructional personnel per one thousand students in net enrollment is sixty-five and nine tenths;
(3) For each low-density county, the minimum number of professional instructional personnel per one thousand students in net enrollment is sixty-six;

(4) For each sparse-density county, the minimum number of professional instructional personnel per one thousand students in net enrollment is sixty-six and five one hundredths.

c For the ratios applicable to each of the four density categories set forth in subsection (b) of this subsection, the number of professional instructional personnel per each one thousand students in net enrollment increases by five one hundredths per year for each of fiscal years two thousand ten, two thousand eleven, two thousand twelve and two thousand thirteen. For each fiscal year thereafter, the ratios remain at the two thousand thirteen level.

d Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for professional educators under this section: Provided, That no county shall be penalized if it has increases in enrollment during that school year: Provided, however, That for the school year two thousand eight - two thousand nine, only, no county shall be penalized for not meeting the applicable minimum ratio required in subsection (b) of this section.

e No county shall increase the number of administrative personnel employed as either professional educators or pay grade “H” service personnel above the number which were employed, or for which positions were posted, on the thirtieth day of June, one thousand nine hundred ninety, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.
As the number of professional educators per each one thousand students in net enrollment increases during fiscal years two thousand nine through two thousand thirteen, any additional positions that are created as a result of that increase shall be positions that will enhance student achievement and are consistent with the needs as identified in each county board’s electronic county strategic improvement plan. County boards are encouraged to fill at least some of the additional positions with technology integration specialists.

During the two thousand eight - two thousand nine interim period, and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review the four density categories created in section two of this article, the ratios for professional educators established in this section and the ratios for service personnel established in section five of this article.

§18-9A-5. Foundation allowance for service personnel.

(a) The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of this code, to such service personnel employed, subject to the following:

(1) For the school year beginning on the first day of July, two thousand eight, and thereafter, no county shall receive an allowance for an amount in excess of service personnel per one thousand students in net enrollment, as follows:

(A) For each high-density county, the number of personnel for which a county shall receive the allowance shall not exceed forty-three and ninety-seven one hundredths service personnel per one thousand students in net enrollment;
(B) For each medium-density county, the number of personnel for which a county shall receive the allowance shall not exceed forty-four and fifty-three one hundredths service personnel per one thousand students in net enrollment;

(C) For each low-density county, the number of personnel for which a county shall receive the allowance shall not exceed forty-five and one tenth service personnel per one thousand students in net enrollment; and

(D) For each sparse-density county, the number of personnel for which a county shall receive the allowance shall not exceed forty-five and sixty-eight one hundredths service personnel per one thousand students in net enrollment; and

(2) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that the personnel shall be considered within the above-stated limit.

§18-9A-6. Foundation allowance for fixed charges.

The total allowance for fixed charges shall be the sum of the following:

(1) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four, five and eight of this article, multiplied by the current social security rate of contribution; plus

(2) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four, five and eight of this article,
multiplied by four hundredths of one percent as an allowance for unemployment compensation contribution; plus

(3) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four, five and eight of this article, multiplied by the rate which is derived by dividing the total estimated contributions for workers' compensation for all county boards by the sum of the foundation allowance for professional educators and other personnel, as determined in sections four, five and eight of this article. The total estimated contribution for workers compensation is determined by multiplying each county board's allowance for professional educators and other personnel, as determined by sections four, five and eight of this article, by the county's actual contribution rate by using data of the most recent year for which it is available; plus

(4) The teachers retirement fund allowance as determined in section six-a of this article.


(a) The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;
(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses an alternative fuel such as compressed natural gas or other acceptable alternative fuel, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent: Provided, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board. The amount shall only be used for the replacement of buses. Buses purchased after the first day of July, one thousand nine hundred ninety-nine, that are driven one hundred eighty thousand miles, regardless of year model, will be subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the
The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: Provided, That the superintendent shall not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year; and

(4) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose shall be the sum of the county shares: Provided, That no county shall receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase additional buses.

(c) One half of one percent of the transportation allowance distributed to each county shall be for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

(d) The amendments made to this section during the two thousand eight regular session of the Legislature are intended
77 to be temporary while the transportation issue is further
78 studied during the two thousand eight-two thousand nine
79 interim period.

§18-9A-8. Foundation allowance for professional student
support services.

1 (a) The basic foundation allowance to the county for
2 professional student support personnel shall be the amount of
3 money determined in accordance with the following:

4 (1) The sum of the state minimum salaries, as determined
5 in accordance with the provisions of article four, chapter
6 eighteen of this code, for all state aid eligible school nurse
7 and counselor positions in the county during the two
8 thousand eight fiscal year which number shall be reduced in
9 the same proportion as the number of professional educators
10 allowed to be funded under section four of this article to the
11 total number of professional educators employed that are
12 state aid eligible. In performing this calculation, the
13 numerator shall be the number of professional educators
14 actually funded under section four of this article and the
15 denominator shall be the total number of professional
16 educators employed that are eligible to be funded under
17 section four of this article:

18 (2) The amount derived from the calculation in
19 subdivision (1) of this subsection is increased by one-half
20 percent;

21 (3) The amount derived from the calculation in
22 subdivision (2) of this subsection is the basic foundation
23 allowance to the county for professional student support
24 personnel for the two thousand nine fiscal year;

25 (4) For fiscal years two thousand ten, two thousand
26 eleven, two thousand twelve and two thousand thirteen, the
(5) For all fiscal years thereafter, the basic foundation allowance to the county for professional student support personnel remains the same amount as in the two thousand thirteen fiscal year.

(b) The additional positions for counselors that may be created as a result of the one percent increase provided pursuant to this section shall be assigned to schools where the counselor can:

(1) Enhance student achievement;

(2) Provide early intervention for students in grades pre-kindergarten through five; and

(3) Enhance student development and career readiness.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

The total allowance for other current expense and substitute employees shall be the sum of the following:

(1) For current expense, ten percent of the sum of the computed state allocation for professional educators and service personnel as determined in sections four and five of this article. Distribution to the counties 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; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state
(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties shall be made proportional to the number of service personnel authorized for the county in compliance with section five of this article; plus

(4) For academic materials, supplies and equipment for use in instructional programs, two hundred dollars multiplied by the number of professional instructional personnel employed in the schools of the county. Distribution shall be made to each county for allocation to the faculty senate of each school in the county on the basis of two hundred dollars per professional instructional personnel employed at the school. Faculty senate means a faculty senate created pursuant to section five, article five-a of this chapter. Decisions for the expenditure of such funds shall be made at the school level by the faculty senate in accordance with the provisions of said section five, article five-a and shall not be used to supplant the current expense expenditures of the county. Beginning on the first day of September, one thousand nine hundred ninety-four, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

§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 counties after all applicable provisions of sections four and five of this article have been fully utilized.

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) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) 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.

(a) An appropriation may be made to the state department to be distributed to county boards for the operation of alternative education and prevention programs established in accordance with policies and procedures adopted by the state board under section six, article two of this chapter. The appropriation shall be an amount equal to twelve dollars per student in net enrollment, subject to appropriation by the Legislature. The state board shall distribute ninety-seven percent of the total appropriation to the county boards proportionate to each county's net enrollment. The remaining three percent of the appropriation shall be retained by the state department to support the provision of services to the county boards in administering programs established in accordance with policies and procedures adopted by the state board under section six, article two of this chapter: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

(a) The state superintendent of schools shall organize, promote, administer and be responsible for:

(1) Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.
(3)(A) Preparing the necessary rules, policies, formula for
distribution of available appropriated funds, reporting forms
and procedures necessary to define minimum standards in
providing suitable facilities for education of exceptional
children and ensuring the employment, certification and
approval of qualified teachers and therapists subject to
approval by the State Board of Education: Provided, That no
state rule, policy or standard under this article or any county
board rule, policy or standard governing special education
may exceed the requirements of federal law or regulation.

(B) The state superintendent shall annually review the
rules, policies and standards of the state and federal law for
serving the needs of exceptional children enrolled in the
public schools and shall report to the Legislative Oversight
Commission on Education Accountability by the first day of
December or as soon thereafter as requested by the
commission, two thousand eight, and in each year thereafter,
the findings of the review along with an accounting of the
services provided and the costs thereof for exceptional
children enrolled in the public schools of this state during the
latest available school year. An appropriation shall be made
to the department of education to be distributed to county
boards to support children with high acuity needs that exceed
the capacity of county to provide with funds available. Each
county board shall apply to the state superintendent for
receipt of this funding in a manner set forth by the state
superintendent that assesses and takes into account varying
acuity levels of the exceptional students. Any remaining
funds at the end of a fiscal year from the appropriation shall
be carried over to the next fiscal year. When possible,
federal funds shall be distributed to county boards for this
purpose before any of the state appropriation is distributed.
The state board shall promulgate a rule in accordance with
the provisions of article three-b, chapter twenty-nine-a of this
code that implements the provisions of this subdivision
relating to distributing the funds to the county boards. The
47 rule at least shall include a definition for “children with high
48 acuity needs”.

49 (4) Receiving from county boards of education their
50 applications, annual reports and claims for reimbursement
51 from such moneys as are appropriated by the Legislature,
52 auditing such claims and preparing vouchers to reimburse
53 said counties the amounts reimbursable to them.

54 (5) Assuring that all exceptional children in the state,
55 including children in mental health facilities, residential
56 institutions, private schools and correctional facilities as
57 provided in section thirteen-f, article two of this chapter
58 receive an education in accordance with state and federal
59 laws: Provided, That the state superintendent shall also
60 assure that adults in correctional facilities and regional jails
61 receive an education to the extent funds are provided
62 therefor.

63 (6) Performing other duties and assuming other
64 responsibilities in connection with this program as needed.

65 (7) Receive the county plan for integrated classroom
66 submitted by the county boards of education and submit a
67 state plan, approved by the State Board of Education, to the
68 Legislative Oversight Commission on Education
69 Accountability no later than the first day of December, one
70 thousand nine hundred ninety-five.

71 (b) Nothing contained in this section shall be construed
72 to prevent any county board of education from establishing
73 and maintaining special schools, classes, regular class
74 programs, home-teaching or visiting-teacher services out of
75 funds available from local revenue.
AN ACT to repeal §18B-1-i, §18B-1-1b and §18B-1-1c of the Code of West Virginia, 1931, as amended; to repeal §18B-1A-1 and §18B-1A-2 of said code; to repeal §18B-1B-8 and §18B-1B-9 of said code; to repeal §18B-3B-1 and §18B-3B-2 of said code; to repeal §18B-11-5 of said code; to amend and reenact §18-1-4 of said code; to amend and reenact §18-2E-5c of said code; to amend and reenact §18B-1-1a of said code; to amend said code by adding thereto a new article, designated §18B-1D-1, §18B-1D-2, §18B-1D-3, §18B-1D-4, §18B-1D-5, §18B-1D-6, §18B-1D-7 and §18B-1D-8; and to amend said code by adding thereto a new section, designated §18B-14-9, all relating to education generally; establishing Vision 2020: An Education Blueprint for Two Thousand Twenty; requiring State Board of Education plan that includes goals, objectives, strategies, indicators and benchmarks; specifying certain public education goals and objectives to be included in plan; submission of plan to Process for Improving Education Council; purposes and membership of council; providing legislative findings, intent and purposes; establishing goals for public higher education; creating education partnership to achieve state goals and objectives; establishing elements of higher education accountability system; requiring Higher Education Policy Commission and Council for Community and Technical College Education to propose rules by certain date;
defining terms; specifying objectives and priorities; establishing date to achieve certain objectives and priorities; defining responsibilities of Higher Education Policy Commission, Council for Community and Technical College Education and state institutions of higher education relative to accountability system; requiring system master plans, state compacts, institutional compacts and institutional and system report cards; establishing submission, approval, review and reporting requirements; authorizing implementation plans; assigning geographic areas of responsibility; specifying that certain reports are no longer required to be prepared annually except under certain conditions; providing for committee to examine higher education facility needs; specifying membership; and requiring recommendations to Legislative Oversight Commission on Education Accountability by certain date.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18B. Higher Education.

CHAPTER 18. EDUCATION.

Article
1. Definitions; Limitations of Chapter; Goals for Education.
2E. High Quality Educational Programs.
ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.


(a) This section, together with section one-a, article one, chapter eighteen-b of this code and article one-d of said chapter, shall be known as and may be cited as Vision 2020: An Education Blueprint for Two Thousand Twenty.

(b) For the purposes of this section:

(1) “Goals” means those long-term public purposes which are the desired end result and only may include those items listed in subsection (e) of this section;

(2) “Objectives” means the ends to be accomplished or attained within a specified period of time for the purpose of meeting the established goals; and

(3) “Strategies” means specific activities carried out by the public education system which are directed toward accomplishing specific objectives.

(c) The Legislature finds that:

(1) The measure of a thorough and efficient system of education is whether students graduate prepared to meet the challenges of the future as contributing members of society and that these challenges change, becoming ever more complex and involving a global context more than at any other time in the history of our nation;

(2) The state recently has embraced and is implementing the Partnership for 21st Century Skills model for teaching and learning including six key elements (core subjects, 21st
(3) Published national studies by several organizations routinely examine various elements of state education systems and selected underlying socioeconomic variables and rate and rank West Virginia and the other states, the District of Columbia and the territories based on the measurement systems and priorities established by the organizations, and these measurement systems and priorities change;

(4) While the state should take pride in studies that show West Virginia is among the leaders in several of its efforts and is making progress, its students often outperforming expectations based on typical indicators of the likelihood for student success, such as the income and education levels of their parents, it should also recognize that the state must do even more to ensure that high school graduates are fully prepared for post-secondary education or gainful employment;

(5) Therefore, the purpose of this section is to provide for the establishment of a clear plan that includes goals, objectives, strategies, indicators and benchmarks to help guide the state’s policymakers on the continuous development of the state’s education system for the 21st Century.

(d) As part of Vision 2020: An Education Blueprint for Two Thousand Twenty, the state board shall establish a plan in accordance with the provisions of this section for submission to and consideration by the Process for Improving Education Council pursuant to section five-c, article two-c of this chapter. The plan shall include only the goals, objectives, strategies, indicators and benchmarks for
The goals set forth in this section and that meet the requirements of this section. To add clarity and avoid confusion, the goals for public education set forth in the plan pursuant to this section are the exclusive goals for public education. The plan shall include:

1. The goals set forth in this section and no other goals;
2. At least the objectives set forth in this section and specified periods of time for achieving those objectives and any other objectives that may be included in the plan;
3. Strategies for achieving the specific objectives;
4. Indicators for measuring progress toward the goals and objectives established in this section; and
5. Benchmarks for determining when the goals and objectives have been achieved.

The plan shall include the following list of exclusive goals for the public education system in West Virginia:

1. Academic achievement according to national and international measures will exceed national and international averages. These national and international measures should include scores on assessments such as the National Assessment of Educational Progress (NAEP), the ACT, the SAT and the Programme for International Assessment (PISA);
2. The public education system will prepare fully all students for post-secondary education or gainful employment;
3. All working-age adults will be functionally literate;
(4) The public education system will maintain and promote the health and safety of all students and will develop and promote responsibility, citizenship and strong character in all students; and

(5) The public education system will provide equitable education opportunity to all students.

(f) The plan also shall include at least the following policy-oriented objectives:

(1) **Rigorous 21st Century curriculum and engaging instruction for all students.** -- All students in West Virginia public schools should have access to and benefit from a rigorous 21st Century curriculum that develops proficiency in core subjects, 21st Century content, learning skills and technology tools. These students also should have that curriculum delivered through engaging, research-based instructional strategies that develop deep understanding and the ability to apply content to real-world situations;

(2) **A 21st Century accountability and accreditation system.** -- The prekindergarten through twelve education system should have a public accrediting system that: (i) holds local school districts accountable for the student outcomes the state values; and (ii) provides the public with understandable accountability data for judging the quality of local schools. The outcomes on which the system is based should be rigorous and should align with national and international standards such as the National Assessment of Educational Progress (NAEP), the ACT, the SAT and the Programme for International Assessment (PISA). The broad standards established for these outcomes should include a focus on: (A) Mastery of basic skills by all students; (B) closing the achievement gap among student subgroups; and (C) high levels of proficiency in a wide range of desired 21st Century measures and processes. The system for
determining school and district accreditation should include school and district self-analysis and generate appropriate research-based strategies for improvement. It also should allow opportunities to create innovative approaches to instructional delivery and design. Thus, the system will incorporate processes for encouraging innovation, including streamlined applications for waivers to state board policy, financial support for successful initiatives and recognition of those practices that can be brought to a district or statewide scale. The primary goal of the accreditation system is to drive school improvement. This 21st Century accountability and accreditation system also should include the methods of addressing capacity set forth in section five, article two-e of this chapter;

(3) *A statewide balanced assessment process.* -- State, district, school and classroom decisionmaking should be grounded in 21st Century balanced assessment processes that reflect national and international rigorous performance standards and examine student proficiency in 21st Century content, skills and technology tools. A balanced assessment system includes statewide summative assessments, local benchmark assessments and classroom assessments for learning;

(4) *A personnel allocation, licensure and funding process that aligns with the needs of 21st Century school systems and is supported by a quality coordinated professional development delivery system.* -- Increased accountability demands, as well as the focus on 21st Century learning, require a reexamination of traditional approaches to personnel allocation, licensure and funding. Creating schools of the 21st Century requires new staffing roles and staffing patterns. It also requires ongoing professional development activities focused on enhancing student achievement and achieving specific goals of the school and district strategic plans. Thus, schools should have the ability to access,
organize and deliver high quality embedded professional
development that provides staff with in-depth sustained and
supported learning. Effective school improvement should
allow opportunity for staff to collectively learn, plan and
implement curricular and instructional improvements on
behalf of the students they serve;

(5) School environments that promote safe, healthy and
responsible behavior and provide an integrated system of
student support services. -- Each school should create an
environment focused on student learning and one where
students know they are valued, respected and safe.
Furthermore, the school should incorporate programs and
processes that instill healthy, safe and responsible behaviors
and prepare students for interactions with individuals of
diverse racial, ethnic and social backgrounds. School and
district processes should include a focus on developing
ethical and responsible character, personal dispositions that
promote personal wellness through planned daily physical
activity and healthy eating habits consistent with high
nutritional guidelines and multicultural experiences that
develop an appreciation of and respect for diversity;

(6) A leadership recruitment, development and support
continuum. -- Quality schools and school systems of the 21st
Century cannot be created without high quality leaders.
Thus, West Virginia should have an aligned leadership
professional development continuum that attracts, develops
and supports educational leadership at the classroom, school
and district level. This leadership development continuum
should focus on creating: (i) Learning-centered schools and
school systems; (ii) collaborative processes for staff learning
and continuous improvement; and (iii) accountability
measures for student achievement;

(7) Equitable access to 21st Century technology and
education resources and school facilities conducive to 21st
Century teaching and learning. -- A quality educational system of the 21st Century should have access to technology tools and processes that enhance effective and efficient operation. Administrators should have the digital resources to monitor student performance, manage a variety of data and communicate effectively. In the classroom, every teacher in every school should be provided with the instructional resources and educational technology necessary to deliver the West Virginia content standards and objectives. Schools of the 21st Century require facilities that accommodate changing technologies, 21st Century instructional processes and 21st Century staffing needs and patterns. These school facilities should mirror the best in green construction and be environmentally and educationally responsive to the communities in which they are located;

(8) Aligned public school with post-secondary and workplace readiness programs and standards. -- An educational system in the 21st Century should be seen as a continuum from the public school (prekindergarten through twelve) program through post-secondary education. In order to be successful in a global competitive marketplace, learning should be an ongoing, life-long experience. Thus, the public schools and the institutions of post-secondary education in West Virginia should create a system of common standards, expectations and accountability. Creating such an aligned system will enhance opportunities for success and assure a seamless educational process for West Virginia students; and

(9) A universal prekindergarten system. -- A high quality, universal prekindergarten system should be readily available to every eligible student. The system should promote oral language and preliteracy skills and reduce the deficit of these foundational skills through proactive, early intervention. Research indicates that universal prekindergarten systems improve graduation rates, reduce grade level retentions and reduce the number of special education placements.
Therefore, local school systems should create the supports and provide the resources to assure a quality prekindergarten foundation is available to all eligible students.

(g) In addition to the policy-oriented objectives set forth in subsection (f) of this section, the plan established pursuant to this section also shall include at least the following performance-oriented objectives:

(1) All children entering the first grade will be ready for the first grade;

(2) The performance of students falling in the lowest quartile on national and international measures of student performance will improve by fifty percent;

(3) Ninety percent of ninth graders will graduate from high school;

(4) By two thousand twelve, the gap between the county with the lowest college-going rate and the state average as of the effective date of this act will decrease by fifty percent and the college-going rate of the state will equal the college-going rate of the member states of the Southern Regional Education Board; and

(5) By two thousand twenty, the gap between the county with the lowest college-going rate and the state average for school year two thousand twelve will decrease by fifty percent and the college-going rate of the state will exceed the college-going rate of the member states of the Southern Regional Education Board by five percentage points.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5c. Process for Improving Education Council established; membership; expenses; meetings; powers.
(a) Process for Improving Education Council. -- There is hereby established the Process for Improving Education Council for the purpose of providing opportunities for consultation among state policy leaders on the process for improving education, including, but not limited to, determination of the things that students should know and be able to do as the result of a thorough and efficient education, the performance and progress of students toward meeting the high quality standards established by the state board, adopting goals, objectives, strategies, indicators and benchmarks for public education and any further improvements necessary to increase the capacity of schools and school systems to deliver a thorough and efficient education.

(b) Council membership. -- The Legislative Oversight Commission on Education Accountability, together with the Governor, ex officio, or the Governor's designee, the Chancellor of the Higher Education Policy Commission, ex officio, or the chancellor's designee, the Chancellor for Community and Technical College Education, ex officio, or the chancellor's designee and the state superintendent comprise the Process for Improving Education Council. Ex officio members are entitled to vote. The Governor or the Governor's designee shall convene the council, as appropriate, and shall serve as chair. The council may meet at any time at the call of the Governor or the Governor's designee.

(c) Compensation. -- Members of the council shall serve without compensation, but shall be reimbursed as provided by law by their respective agencies for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement of their expenses.

(d) Powers of the council. --
The council has the following powers:

(1) To meet and consult with the state board, or its designees, and make recommendations on issues related to student, school and school system performance. The following steps are part of the consultation process:

(A) The state board shall notify each member of the council whenever the state board proposes to amend its rules on any of the following issues:

(i) High quality education standards and efficiency standards established pursuant to section five of this article;

(ii) Indicators of efficiency established pursuant to section five of this article; and

(iii) Assessment and accountability of school and school system performance and processes established pursuant to section five of this article.

(B) The notice to be given pursuant to paragraph (A) of this subdivision shall contain a summary and explanation of the proposed changes, including a draft of the proposal when available, and shall be sent at least fifteen days prior to filing the proposal with the Secretary of State for public comment.

(C) If the Governor, or the Governor's designee, believes it is necessary for the council to meet and consult with the state board, or its designees, on changes proposed to any of the issues outlined in subdivision (1) of this subsection, he or she may convene a meeting of the council.

(D) If both the President of the Senate and the Speaker of the House of Delegates believe it is necessary for the council to meet and consult with the state board, or its designees, they shall notify the Governor who shall convene a meeting of the council.
(E) If the chancellor, or the chancellor's designee believes
that it is necessary for the council to meet and consult with
the state board, or its designees, he or she may request the
Governor to convene a meeting of the council.

(2) To require the state board, or its designees, to meet
with the council to consult on issues that lie within the scope
of the council's jurisdiction;

(3) To participate as observers in any on-site review of a
school or school system conducted by the Office of
Education Performance Audits; and

(4) To authorize any employee of the agencies
represented by council members to participate as observers
in any on-site review of a school or school system conducted
by the Office of Education Performance Audits.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-1a. Legislative intent; findings; establishment of state
goals for higher education and education;
creation of partnership to achieve state goals and
objectives.

(a) It is the intent of the Legislature in enacting this
section to establish state goals for public higher education
which benefit the citizens of the State of West Virginia.

(b) It is further the intent of the Legislature that this
section be read and implemented in conjunction with the
accountability system established in article one-d of this chapter and that any reference to this section in this code includes the provisions of that article.

(c) Findings. -- The Legislature finds that post-secondary education is vital to the future of West Virginia. For the state to realize its considerable potential in the 21st Century, it must have a system for the delivery of post-secondary education which is competitive in the changing national and global environment, is affordable for the state and its citizenry and has the capacity to deliver the programs and services necessary to meet regional and statewide needs.

The Legislature further finds that it is vitally important for young people entering the workforce to have the education and skills to succeed in today’s high-technology, knowledge-based economy. It is equally important for working-age adults who are the majority of the current and potential workforce also to possess the requisite education and skills to compete successfully in the workplace and to have the opportunity to continue learning throughout their lives. The future of the state rests not only on how well its youth are educated, but also on how well it educates its entire population of any age.

The Legislature further finds that providing access to a high-quality and affordable post-secondary education is a state responsibility and, while states spent more than seventy billion dollars on public higher education in two thousand six, they are not maximizing that investment. The Legislature recognizes the efforts of the National Conference of State Legislatures’ Blue Ribbon Commission on Higher Education in producing a report to assist the states in higher education policymaking. According to the commission report, “Transforming Higher Education: National Imperative -- State Responsibility”, the United States is losing its competitive advantage in a new, high-tech, highly mobile
global economy. This lack of competitiveness is a matter of the highest urgency for federal and state policymakers and higher education is at the center of this discussion. The report further states that "higher education is both the problem and the solution" because the nation has failed to focus on how higher education energizes American competitiveness and revitalizes the states. Pursuant to these findings, the commission made some specific recommendations addressed to the states which include the following:

(1) Define clear state goals;

(2) Identify your state’s strengths and weaknesses;

(3) Know your state demographic trends for the next ten to thirty years;

(4) Identify a place or structure to sustain the public policy agenda;

(5) Hold institutions accountable for their performance;

(6) Rethink funding formulas and student aid;

(7) Make a commitment to access, success and innovation;

(8) Encourage partnerships;

(9) Give special attention to adult learners; and

(10) Focus on productivity.

All of these recommendations are useful in providing policy guidance and have been given careful consideration in the development of this section and article one-d of this chapter.
Establishment of state goals. -- In recognition of its importance to the citizens of West Virginia, the Legislature hereby establishes the following goals for public higher education in the state:

(1) The ultimate goal of public education is to enhance the quality of life for citizens of the State of West Virginia.

(2) The overall focus of public education is on developing and maintaining a process of lifelong learning which is as seamless as possible at all levels, encourages citizens of all ages to increase their knowledge and skills and provides ample opportunities for them to participate in public higher education.

(3) Higher education collaborates with public education and other providers to offer education opportunities:

(A) To individuals of all ages and socioeconomic backgrounds in all areas of the state; and

(B) To overcome financial barriers to participation for both traditional and nontraditional students.

(4) Higher education seeks to enhance state efforts to diversify and expand the economy by focusing available resources on programs and courses which best serve students, provide the greatest opportunity for job creation and retention and are most supportive of emerging high-technology and knowledge-based businesses and industries.

(5) Higher education creates a learning environment that is student-friendly and that encourages and assists students in the completion of degree requirements, certifications or skill sets within a reasonable period of time.

(6) The learning environment expands participation for the increasingly diverse student population and responds to
the needs of the current workforce and other nontraditional students.

Through the establishment of innovative curricula and assessment efforts, state institutions of higher education ensure that students graduate from nationally recognized and accredited programs and meet or exceed national and international standards for performance in their chosen fields as evidenced through placement and professional licensure examinations.

Higher education promotes academic research and innovation to achieve measurable growth in West Virginia's knowledge-based economic sector.

State institutions of higher education emphasize productivity and strive to exceed the performance and productivity levels of peer institutions. In return, and within the constraints of fiscal responsibility, the state seeks to invest in institutions so that they may adequately compensate faculty, classified employees and other employees at a competitive level to attract and retain high quality personnel.

State institutions of higher education are committed to a shared responsibility with faculty, staff, students and their communities to provide access to the knowledge and to promote acquisition of the skills and abilities necessary to establish and maintain physical fitness and wellness.

Programs that encourage healthy lifestyles are essential for the vibrancy of the institutions of higher education, for the well-being of the communities they serve and for the state as a whole.

Increasing the fitness levels of adults on college and university campuses is critically important for the people of West Virginia, not only for disease prevention, but also, and
perhaps most importantly, to enhance the overall quality of life.

(C) While individuals must bear the primary responsibility for their own health, it is imperative that the institutions provide appropriate education and support focused on enriching and expanding the short- and long-term views and attitudes towards physical activity, understanding the principles of wellness and their application to a healthy lifestyle, understanding what components are a necessary part of an all-around healthy lifestyle and learning how to set and achieve realistic goals aimed at establishing healthy habits for the benefit of long-term health and well-being.

(e) Education partnership to achieve state goals and objectives. -- If public institutions of higher education are to provide services that meet the needs of state citizens as outlined in this section and article one-d of this chapter, then West Virginia must create and participate in a partnership across various education organizations that recognizes the valuable contributions each member of the group can make. In addition to public education as outlined in section four, article one, chapter eighteen of this code and in addition to the State of West Virginia, key members of this partnership include the state institutions of higher education, the Council for Community and Technical College Education and the Higher Education Policy Commission.

(1) State institutions of higher education. -- The institutions are the cornerstone of efforts to provide higher education services that meet the needs of state citizens. To varying degrees, and depending upon their missions, these institutions serve the state in three major ways:

(A) Instruction. -- By providing direct instruction to students along with the student services necessary to support the instructional mission. These services have two primary goals:
(i) To produce college graduates who have the knowledge, skills and desire to make valuable contributions to society; and

(ii) To provide opportunities for citizens to engage in lifelong learning to enhance their employability and their overall quality of life.

(B) Public service. -- By providing an occupational home for experts in a variety of fields and by serving as the educational home for students. In these capacities, institutions create a large and varied pool of high quality human resources capable of making valuable contributions to business and industry, local and state governments and communities. The following are examples of the types of public service that higher education institutions have to offer:

(i) Workforce development, primarily through community and technical colleges, to meet the immediate and long-term needs of employers and employees;

(ii) Technical assistance to state and local policymakers as they work to address challenges as diverse as ensuring that West Virginia’s citizens receive quality health care, assisting in the development of a solid transportation infrastructure and ensuring that public school teachers have enriching professional development opportunities; and

(iii) Opportunities to learn and serve in local communities, to teach civic responsibility and to encourage civic engagement.

(C) Research. -- By conducting research at state institutions of higher education, particularly Marshall University and West Virginia University, to enhance the quality of life in West Virginia in the following ways:
Targeting cutting-edge research toward solving pressing societal problems;

(ii) Promoting economic development by raising the level of education and specialization among the population; and

(iii) Creating jobs through development of new products and services.

(2) The Council for Community and Technical College Education and the Higher Education Policy Commission. -- In their role as state-level coordinating boards, the council and commission function as important partners with state policy leaders in providing higher education that meets state needs. The council and commission provide service to the state in the following ways:

(A) By developing a public policy agenda for various aspects of higher education that is aligned with state goals and objectives and the role and responsibilities of each coordinating board;

(B) By ensuring that institutional missions and goals are aligned with relevant parts of the public policy agenda and that institutions maximize the resources available to them to fulfill their missions and make reasonable progress toward meeting established state goals;

(C) By evaluating and reporting on progress in implementing the public policy agenda;

(D) By promoting system efficiencies through collaboration and cooperation across institutions and through focusing institutional missions as appropriate; and

(E) By conducting research, collecting data and providing objective recommendations to aid elected state officials in making policy decisions.
(3) State of West Virginia. -- Elected state officials represent the citizens of West Virginia and are critical partners in providing quality higher education. In this context, these state-level policymakers serve the state in the following ways:

(A) By establishing goals, objectives and priorities for higher education based on a thoughtful, systematic determination of state needs;

(B) By providing resources necessary to address state goals, objectives and priorities for higher education; and

(C) By providing incentives for and removing barriers to the achievement of state goals, objectives and priorities.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-1. Legislative intent and purpose; short title; rules required.
§18B-1D-2. Definitions.
§18B-1D-3. State vision for public higher education; findings; establishment of objectives.
§18B-1D-5. Master plans; reports; approval process.
§18B-1D-6. State compacts; legislative intent; rule required; implementation plans authorized.
§18B-1D-7. Findings; establishment of institutional compacts; compact elements; submission date; review and approval process; rule required.
§18B-1D-8. Institutional and system report cards.

§18B-1D-1. Legislative intent and purpose; short title; rules required.

(a) The intent of the Legislature in the enactment of this article is to outline and organize the elements of accountability for public higher education into an effective, coherent system to provide guidance to the state institutions of higher education, the commission and the council and to clarify the roles, relationships and responsibilities between
and among these entities, the citizens of West Virginia and
elected state officials. The main purposes of the
accountability system are as follows:

(1) To develop agreement on higher education goals,
objectives and priorities through negotiation and
consensus-building between elected officials acting on behalf
of the citizens of the state and the commission and the
council and institutions which receive public funds and
provide education services;

(2) To create a seamless education system and hold
boards and institutions accountable for meeting state goals
and objectives.

(3) To provide a data-driven, step-by-step process to
determine the progress of public higher education in
addressing established goals, objectives and priorities;

(4) To promote cooperation and collaboration among all
entities which are involved in the delivery of public
education in West Virginia; and

(5) To provide for generation, collection and
dissemination of data on which sound state-level policy
decisions can be based. Possible uses of this data include the
following:

(A) Identifying institutions and systems that increase
quality and productivity; and

(B) Creating a mechanism to target a portion of state
appropriations to institutions and systems based on
performance in meeting established state goals and
objectives.

(b) This article, together with section one-a, article one of
this chapter and section four, article one, chapter eighteen of
this code, shall be known as and may be cited as Vision 2020: An Education Blueprint for Two Thousand Twenty.

(c) By the first day of October, two thousand eight, the commission and the council shall propose rules for legislative approval in accordance with the provisions of section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code concerning the accountability system for higher education outlined in this article.

(1) The commission and the council may propose rules jointly or separately and may choose to address all of the accountability system in a single rule or may propose additional rules to cover specific elements.

(2) At a minimum, the rules shall address the respective responsibilities of the various parties, the development of statewide master plans, the process of entering into institutional and state compacts, performance indicators and institution and state-level reporting to ensure that higher education is accountable to the citizens of West Virginia.

§18B-1D-2. Definitions.

(a) General. -- For the purposes of this article and section one-a, article one of this chapter, terms have the meaning ascribed to them in section two, article one of this chapter, unless the context in which the term is used clearly requires a different meaning or a specific definition is provided in this section.

(b) Definitions. --

(1) "Accountability system for public higher education" or "accountability system" means all research, reports, documents, data and any other materials, the collection, analysis and dissemination of which are necessary or
expedient to accomplish the purposes of this article or section one-a, article one of this chapter. The system includes legislative goals, objectives and priorities; public policy agendas; statewide master plans; state and institutional compacts; implementation plans; institutional mission statements and master plans; and the statewide report card.

(2) "Education partnership to achieve state goals and objectives" or "education partnership" means the formal and informal working relationships established between and among the State of West Virginia, the commission, the council, the State Board of Education and State Department of Education and the state institutions of higher education for the purpose of achieving state goals and objectives.

(3) "Functional literacy rate" means the percentage of adults over the age of seventeen who are able to read beyond a fourth grade level and interpret basic information from sources such as road signs, job applications, newspaper articles and food and medicine labels.

(4) "Goals" means those long-term public purposes which are the desired and expected end result for which public higher education is established.

(5) "Implementation plan" means a document developed within the higher education community that identifies a series of objectives, sets forth performance indicators that can be used to determine if objectives are being achieved, outlines strategies for accomplishing the objectives and identifies benchmarks for evaluating progress in accomplishing the objectives over the life cycle of the plan.

(6) "Institutional compact" means a formal, written contract between either the commission or council and a state institution of higher education under its jurisdiction expressing intent to accomplish state and system goals and objectives.
(7) "Institutions under the jurisdiction of the commission" relative to the accountability system established by this article and section one-a, article one of this chapter means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty State College, the West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University, including Potomac State College of West Virginia University and the West Virginia University Institute of Technology.

(8) "Institutions under the jurisdiction of the council" relative to the accountability system established by this article and section one-a, article one of this chapter means Blue Ridge Community and Technical College, the Community and Technical College at West Virginia University Institute of Technology, Eastern West Virginia Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, West Virginia State Community and Technical College and West Virginia University at Parkersburg.

(9) "Net college costs" means the total cost of tuition, room and board minus the amount of financial aid a student receives.

(10) "Objectives" means the ends to be accomplished or attained within a specified period of time for the purpose of meeting the established goals.

(11) "Priority" or "priorities" means the order in which objectives are to be addressed for the purpose of achieving state goals.
(12) "Strategy" or "strategies" means specific activities carried out by public higher education which are directed toward accomplishing specific objectives.

(13) "Statewide master plan" or "system master plan" means a document developed by the council or commission that sets forth system goals, objectives and strategies and is aligned with, but not limited to, meeting state goals, objectives and priorities.

(14) "STEM courses and programs" means curricula leading to a degree or other recognized credential in the science, technology, engineering and mathematics fields of study or specialization.

(15) "State compact" means a formal, written agreement between the council and/or the commission and at least one other member of the education partnership to achieve state goals and objectives where significant collaboration and commitment of resources between the parties to the agreement is required in order to achieve the desired results.

§18B-1D-3. State vision for public higher education; findings; establishment of objectives.

(a) The Legislature finds that availability of high-quality post-secondary education is so important to the well-being of the citizens of West Virginia that it is in the best interests of the state to focus attention on areas of particular concern and within those areas to specify objectives and priorities that must be addressed by two thousand twenty. The purpose of these objectives and priorities is to achieve the broad-based goals for public higher education established in section one-a, article one of this chapter. Areas of special concern to the Legislature include economic and workforce development; education access and affordability; innovation; student preparation; degree and/or program completion; intra- and
inter-system cooperation and collaboration; research; and
teaching and learning.

(1) Economic and workforce development. --

(A) Diversifying and strengthening the economy of the
state;

(B) Providing incentives to systems and institutions to
focus attention on those courses and programs which create
and retain jobs in the state, especially among the emerging
high-technology, knowledge-based businesses and industries.

(2) Access and affordability. --

(A) Maintaining geographic access while eliminating
unnecessary duplication;

(B) Enhancing education opportunities for the widest
range of state citizens:

(i) By establishing tuition and fee levels for in-state
students that do not inhibit access to public education nor
cause students to incur excessive debt. This is particularly
important in West Virginia where about two-thirds of all
students attending college are enrolled in public higher
education institutions and where families devote a very large
share of their incomes to pay the cost of education. The
share of costs paid by families remains very high even after
adjusting for the impact of financial aid; and

(ii) By establishing tuition and fee rates for out-of-state
students at levels which, at a minimum, cover the full cost of
instruction unless doing so is inconsistent with a clearly
delineated public policy goal established by the Legislature,
the commission or the council.
(iii) **Innovation.** -- Devise innovative programs, delivery modes, partnerships, research initiatives, curricula and pedagogy to achieve the needs of the state and its citizens and carry out the mission and objectives of the state institutions of higher education. Methods include aligning entrepreneurial efforts, research and partnerships with established state goals.

(iv) **Student preparation.** -- Ensure that potential students are academically prepared for college and that graduates are adequately prepared for careers or further education.

(v) **Degree and/or program completion.** -- Despite significant improvement over the past decade, fewer than twenty percent of state residents hold a bachelor's degree. This shortage of highly educated, highly qualified workers substantially limits the state's ability to compete in the knowledge-based economy.

(vi) **Collaboration and cooperation.** -- Deliver education services to the extent possible through collaboration, coordination and brokering, with particular emphasis on the need for a seamless relationship between public and post-secondary education.

(vii) **Research.** -- Develop a greater research capacity within public higher education to enhance West Virginia in the eyes of the larger economic and education community, develop greater specialized expertise in high technology and policy fields, create more employment opportunities within the state and provide a basis for improved capacity to compete in the new economy through research focused on meeting state needs.

(viii) **Teaching and learning.** -- Develop admission and exit standards for students and emphasize professional staff development, program assessment and evaluation and other
incentives to improve teaching and learning. Ensure access
to stable and continuing graduate-level programs in every
region of the state, particularly in STEM subject areas and
teacher education related to teaching within a subject area to
improve teacher quality.

(b) Vision 2020: Objectives for public higher education.
-- In view of the findings outlined in subsection (a) of this
section, the Legislature hereby establishes the following
objectives to be addressed as highest priorities beginning on
the effective date of this article through development of
compacts and/or implementation plans between and among
members of the education partnership as provided in
subsection (e), section one-a, article one of this chapter. The
following is the legislative vision for the years two thousand
eight through two thousand twenty:

(1) Objective. -- Develop a state-level facilities plan and
funding mechanism to reduce the obligation of students and
parents to bear the cost of higher education capital projects
and facilities maintenance.

(A) Problem statement. --

(i) West Virginia is one of the very few states in the
nation which does not address higher education capital
project and facilities maintenance needs through a statewide
plan.

(ii) The burden of paying for capital projects and deferred
maintenance is placed on students and their families through
collection of capital fees at the institution level and
contributes significantly to the poor grade West Virginia
receives each year in the category of "Affordability" on
"Measuring Up: The National Report Card on Higher
Education".
(iii) Net college costs for low- and lower middle-income students to attend state community and technical colleges and four-year colleges and universities average approximately forty-five percent of their annual family income.

(iv) The high cost of capital fees contributes directly to the amount of debt incurred by students during their college years and the necessity to repay student loans severely limits career choices and areas of residence after graduation.

(B) Expected outcomes. -- Success in meeting this goal can be measured in part by benchmarks which include the following:

(i) Development by the council and commission of a compact with elected state officials to fund a significant portion of higher education capital project needs from dedicated state revenues;

(ii) Development by the council and commission of a system to establish priorities for institution capital projects in a manner that is consistent with state public policy goals for higher education;

(iii) Implementation of facilities maintenance plans by institutions to ensure that maintenance needs are not deferred appropriately;

(iv) Efficient use of existing classroom and other space by institutions:

(I) New capital funding is applied effectively to projects at institutions that have a demonstrated need for new facilities and major renovations; and

(II) The cost of operating and maintaining the facilities and physical plants of institutions are appropriate for the size and mission of the institution; and
(v) Capital and facilities maintenance planning that gives careful consideration to the recommendations arising from the study mandated by section nine, article fourteen of this chapter.

(2) Objective. -- Increase academic rigor and improve learning at higher education institutions.

(A) Problem statement. -- West Virginia has made significant progress on certain indicators within the category of student learning, but lags far behind national and regional averages on others.

(i) The state compares very well in workforce preparation as reflected in professional licensure examinations, ranking among the top five states in the country. More West Virginia graduates take these examinations than is typical nationally and the passage rate is at the national average.

(ii) The state also ranks well above the national average passage rate on the state teacher’s examination when compared to other states; however, there is serious cause for concern when the state is compared to the national benchmark in preparing students for graduate study.

(I) West Virginia ranks more than fifty percentage points below the national average in preparing students to take and pass graduate admissions examinations.

(II) Fewer West Virginia graduates take these examinations than is typical nationally and the proportion earning competitive scores is only about seventy-five percent of the national average.

(B) Expected outcomes. -- Success in meeting this goal can be measured in part by benchmarks which include the following:
(i) State institutions of higher education develop or use existing nationally normed assessments of student learning outcomes. Data generated through these assessments are analyzed and the results applied by the institutions to improve the quality of undergraduate general education programs; and

(ii) Implementation plans at the system and institution levels are developed to improve student preparation for graduate study and to expand graduate and professional education, where appropriate.

(3) **Objective.** -- Increase the percentage of entering students who persist to receive a degree, a certificate or an industry-recognized credential.

(A) **Problem statement.** --

(i) This goal is particularly important to West Virginia where only about one person in five holds an associate degree or higher.

(ii) The lack of a well-trained workforce is reflected in the most recent score of forty-one received by the state on the nationally recognized New Economy Index which measures the extent to which a state is prepared to participate in knowledge-based industries. This low score places the state well below the national benchmark of sixty on the index.

(iii) State institutions of higher education have placed a greater emphasis on student recruitment than on student retention and completion. This strategy alone cannot be successful in meeting state needs for the following reasons:

(I) The number of state high school graduates is expected to decline over the next several years; therefore, institutions must improve their performance in retaining the students who enroll.
(II) West Virginia is among the leading states in the percentage of first-year students at community colleges who return for their second year and large percentages of freshmen at four-year colleges and universities return for their sophomore year; however, when compared with other states, only a small percentage of these students actually persist to earn a bachelor’s degree or associate degree within six years.

(III) The state performs poorly on international comparisons of enrolled students who complete certificates or degrees, trailing behind other industrialized and even some third world nations.

(IV) While the state college-going rate has improved, most state institutions have made only marginal progress over the past decade in increasing the percentage of students who persist to obtain a degree or certificate.

(B) Expected outcomes. --

(i) Enhanced quality of life for West Virginians, including increased level of per capita income; and

(ii) Increased economic development opportunities by expanding existing high-technology and knowledge-based businesses and industries and attracting new ones which demand highly qualified professionals.

(4) Objective. -- State institutions of higher education, particularly community and technical colleges, make maximum effort to recruit and retain adults twenty-five years old or over.

(A) Problem statement. --

(i) The percentage of West Virginia’s working-age adults enrolled part-time in college-level education or training is
very low and the state has experienced one of the largest declines in the nation on this measure over the past twelve years.

(ii) A large part of preparing workers for the 21st Century and for a high-quality style of life hinges upon providing opportunity for adults to acquire a series of skill sets in addition to obtaining a degree or other credential.

(iii) A major focus for community and technical colleges is upon providing programs to upgrade employee skills through obtaining industry credentials. Currently, however, only certificate program degrees (one-year) and associate degrees (two-year) are counted for funding purposes even though other types of credentials often are as important in meeting workforce development goals as providing degree programs.

(B) Expected outcomes. --

(i) Provide programs of interest to nontraditional students, including those that afford them the opportunity to obtain certificates and credentials, enhance career development and acquire new skill sets;

(ii) Develop a high-visibility marketing program which makes adults aware of the opportunities available to them and assists them in entering or reentering the learning environment;

(iii) Provide for lower cost tuition and fee rates, particularly at the community and technical colleges, and/or greater access to financial aid for adult full- and part-time students.

(iv) Develop open admissions policies which provide opportunities for adults to participate in public post-secondary education beginning at any level of
preparedness. Most working-age adults cannot or will not "go back to high school" in order to prepare themselves to participate in higher education.

(v) Tailor institutional policies to meet the needs of adults, recognizing that these individuals have responsibilities that are different from those of traditional-aged college students. High on this list of needs are flexible class schedules to accommodate work obligations and waiving dorm residency requirements.

(5) Objective. -- Provide incentives to state institutions of higher education to encourage emphasis on STEM courses and programs leading to degrees in the high-demand fields of science, technology, engineering and mathematics and to encourage collaboration with public education to stimulate interest and prepare students to succeed in these fields.

(A) Problem statement. --

(i) STEM courses often are more expensive to deliver than traditional programs; therefore, institutions may be reluctant to start or expand programs in these areas because of anticipated cost;

(ii) Institutions have difficulty recruiting and retaining faculty members in STEM areas because of competition from surrounding states and other market forces;

(iii) There is insufficient communication between STEM teachers in public education, STEM faculty in higher education and professionals employed in STEM-related careers such as engineering;

(iv) Many students have not taken sufficiently rigorous high school courses to allow them to succeed in post-secondary STEM courses and programs. A large percentage of students enrolled in higher education STEM
programs either withdraw from the institution or change majors within the first year; and

(v) The transition from high school to college is difficult for many high school students who lack a family role model to provide guidance relevant to the higher education experience.

(B) Expected outcomes. --

(i) Increased capacity for high quality instruction across public higher education;

(ii) Increased student access to high quality undergraduate and graduate research opportunities in science, technology, engineering and mathematics;

(iii) Enhanced economic development opportunities through increased numbers of highly-qualified professionals available to business and industry;

(iv) Development of a consistent and effective forum for communication among STEM faculty in public and higher education and relevant professional communities to address the continuing needs of students, educators and industry;

(v) Increased percentage of high school students who have access to and take advantage of rigorous STEM courses;

(vi) Alignment of STEM curricula between public and higher education;

(vii) Development of a finance formula that gives greater weight to courses taken in high-cost disciplines and/or those that are critical to the state economy; and

(viii) Creation of a STEM coordinator position within the faculty of each state institution of higher education to provide
outreach to secondary schools, to mentor freshman students and to collaborate with coordinators at other institutions. Because of the size of the student body, the two research universities may need to create coordinator positions specific to certain high-demand STEM disciplines such as engineering and computer science.

(6) Objective. -- Develop a stable funding stream for state institutions of higher education to pay for essential programs which are expensive to deliver, are in high demand and/or are critical to the state’s capacity to replace an aging workforce as employees retire. This objective has a particular impact on community and technical colleges which deliver high-cost technical programs.

(A) Problem statement. --

(i) An educated and technically skilled workforce is vital to the state’s ability to be competitive in the global marketplace. Currently, West Virginia’s employers must struggle to find a sufficient number of highly qualified workers to fill the jobs they have available; and

(ii) The majority of technical occupations require the delivery of equipment-intensive, high-cost programs that state institutions of higher education, especially community and technical colleges, lack the capacity to provide.

(B) Expected outcomes. --

(i) State institutions delivering community and technical college education focus on expanding and/or implementing technical programs to meet the needs of high-demand, high-wage occupations;

(ii) Funding priorities for community and technical colleges focus on developing and maintaining high-cost technical programs;
(iii) Creation of a strategy to fund the replacement, upgrading and purchase of equipment to implement and/or maintain technical education programs; and

(iv) Support critical, noncredit programming by incorporating the number of contact hours delivered into a formula to distribute funding to community and technical colleges.

(7) Objective. -- Develop a mechanism to assure uniform delivery of community and technical college education for all regions of the state.

(A) Problem statement. -- The average education attainment rate in West Virginia lags eleven percent behind the national average in part because delivering education programs to the state’s adult, place-bound and rural populations presents significant challenges.

(B) Expected outcomes. --

(i) All state citizens have access to a minimum of two years of college education regardless of their place of residence within the state.

(ii) The state institutions increase the innovative use of technology and distance education to provide general and technical education access in sparsely populated rural areas.

(iii) Creation of a seamless education system and uniform transfer of credits with special attention to transfers between community and technical colleges and four-year institutions;

(iv) Appropriate use of adjunct faculty; and

(v) Where feasible, use of facilities in public schools, technical centers and other public facilities as classroom space.
(8) Objective. -- Develop greater research capacity throughout public higher education, with a special focus on the state's two doctoral degree-granting universities.

(A) Problem statement. --

(i) West Virginia ranks near the bottom among all states in the amount of federal and privately funded sponsored research it receives. Historically, only the National Science Foundation's Experimental Program to Stimulate Competitive Research (EPSCOR) has focused on building research capacity in the state, but if West Virginia is to benefit from the increased economic opportunity, better jobs and higher standard of living associated with more STEM professionals in the population, the state must invest more to build its research capacity; and

(ii) Low research capacity results in low levels of intellectual property creation, patenting and licensing of commercial property.

(B) Expected outcomes. --

(i) Partnering between and among higher education institutions in West Virginia and between state institutions and larger, resource-rich higher education institutions outside the state;

(ii) Developing an institutional and/or statewide research niche and focusing resources on research that contributes most to meeting state needs;

(iii) Leveraging scarce resources to make steady, targeted investments in research in niche areas where the state can be a real player at a competitive level;

(iv) Developing specific research expertise within the two state doctoral degree-granting universities to generate and
analyze data to provide policy recommendations. The areas of focus include funding strategies for higher education, demographic trends and methods to determine and meet workforce development needs by anticipating job creation and credential requirements;

(v) Improving communication among the research branches of higher education institutions, including identification of mutually complementary areas of interest to increase funding opportunities and collaboration on intellectual property issues; and

(vi) Focusing on economic development through commercial applications of research and recruitment of new research faculty members for this purpose.

(9) Objective. -- Increase the percentage of functionally literate adults in each region of the state.

(A) Problem statement. --

(i) The literacy attainment of a population is defined at its most basic level as the percentage of those individuals over the age of fifteen who can read and write, but such a definition does not address the realities of the 21st Century. The National Literacy Act of 1991 and the National Workforce Investment Act of 1998 both define literacy more broadly as "an individual's ability to read, write, speak in English, compute and solve problems at levels of proficiency necessary to function on the job, in the family of the individual and in society".

Approximately twenty percent of the adult population in West Virginia cannot meet this definition of functional literacy. One adult out of every five in the state lacks the basic literacy skills needed to succeed at work, to enter the learning environment of post-secondary education, to acquire
advanced occupational training or to participate in preparing
his or her own children to learn.

(ii) The high rate of illiteracy in West Virginia not only
handicaps adults in seeking employment and achieving their
goals for their own quality of life, but also has serious
implications for the future of their children and for the state.

There is a direct, positive correlation between the reading
scores of children and the education level of their parents.
The National Assessment of Education Progress (NAEP) has
concluded that youngsters whose parents are functionally
illiterate are twice as likely to become functionally illiterate
adults.

(iii) When the level of functional illiteracy in West
Virginia is compared to the requirements for high-demand
occupations, the negative consequences for the economy of
the state become obvious. The International Adult Literacy
Survey (IALS) established a scale of five levels which is used
extensively to measure the literacy attainment of adults.
When this scale was used to compare the literacy
requirements of projected high-growth occupations with
those in declining occupations such as certain types of
manufacturing, researchers found that level three literacy is
required for the new jobs, while level two is sufficient for the
jobs in the declining occupations. Therefore, workers
displaced from jobs in declining occupations as well as those
seeking to enter or reenter the work place must possess
literacy skills a full level higher than those required for
workers only a few years ago. Documents such as manuals
outlining standard operating procedures, health and safety
manuals, leave forms and retirement options that they
encounter daily require a level of literacy well above level
two.

(iv) A highly skilled and literate work force is essential
to the success of state businesses and industry. A ten percent
increase in the average education of all workers, equivalent to approximately one additional year of schooling, is associated with an increase of about nine percent in the productivity of that labor force. Additionally, workers who lack literacy skills cannot provide the data and feedback that companies need to make informed business decisions. A company whose employees cannot record reliable production data cannot assess its performance from year to year or determine how well it is meeting its long range goals and objectives.

(v) The rate of functional illiteracy in West Virginia also has a direct impact on the health of state citizens. Residents with low literacy skills have difficulty in many health areas including the following:

(I) Understanding the correct way to take medication, interpret test results or perform simple self-testing such as taking temperatures or checking blood glucose levels;

(II) Understanding and following directions given by physicians or the written instructions provided with prescription or over-the-counter medication for themselves or for their children;

(III) Reading and understanding information on food labels and other nutrition information to make sound decisions necessary to establish and maintain healthy lifestyles; and

(IV) Furnishing correct information in emergencies to medical providers about illnesses, surgeries and medications or understanding how to fill out insurance forms and other health-related documents.

(B) Expected outcomes. --
(i) Develop greater access and capacity to deliver literacy and remedial education, workforce development training and other higher education services to place-bound adults primarily through the community and technical colleges;

(ii) Increase the percentage of the working age population who participate in higher education, either full or part time;

(iii) Establish a statewide mechanism to collect data to provide a baseline for measuring progress toward meeting the goal of functional literacy for all working-age adults and to serve as a framework for setting priorities, identifying gaps in service and targeting services to key populations, industries, economic sectors and geographic areas;

(iv) Develop programs that include, at a minimum, the following:

(I) Learning opportunities within a real-life context, such as workplace and family literacy programs;

(II) Recognition of the diversity of individual abilities, skill levels, circumstances and life goals; and

(III) Strategies to access, promote and accommodate a variety of instructional methods and learning styles.

(v) Develop a culture committed to life-long learning by creating literacy-rich environments wherever people live and work that are capable of influencing changes in individual behavior; and

(vi) Create partnerships among schools, employers, workers, governments and communities to achieve these objectives and mechanisms to collect, interpret and disseminate data to assist policymakers in determining the appropriate level of resources essential to support lifelong learning systems.

(a) It is the responsibility of the commission, in cooperation with the council, to develop, oversee and advance the public policy agenda mandated by section four, article one-b of this chapter to address the goals and objectives established pursuant to this article and section one-a, article one of this chapter, including, but not limited to, aligning state and institutional compacts, master plans, implementation plans and institutional missions with state goals and objectives to accomplish the purposes of this article.

(b) It is the responsibility of the council, in cooperation with the commission when applicable, to develop, oversee and advance the public policy agenda mandated by section six, article two-b of this chapter to address the goals and objectives established pursuant to this article and section one-a, article one of this chapter, including, but not limited to, aligning state and institutional compacts, master plans, implementation plans and institutional missions with state goals and objectives to accomplish the purposes of this article.

(c) It is further the responsibility of the commission and council to collect the data, assemble it in the appropriate format and transmit all reports and any other essential documents as needed to fulfill the purposes of this article. Each report shall contain a brief, concise executive summary and shall include trends and recommendations in text format. Recommendations shall be ranked by order of importance and shall be supported by objective data available elsewhere in the report. In addition to those specifically mandated by
this chapter or chapter eighteen-c of this code, reporting responsibilities include, but are not limited to, the following:

(1) Ensuring that data systems collect the essential information state-level policymakers need to answer key policy questions to fulfill the purposes of the accountability system established pursuant to this article and section one-a, article one of this chapter;

(2) Collaborating with public education to establish policies to link existing pre-K, K-12, higher education and teacher data systems to enable tracking of student progress and teacher performance over time; and

(3) Ensuring that reports provide data analyses to determine if students entering the public higher education systems are prepared for post-secondary education and if students obtaining degrees, certificates or other credentials are prepared to pursue careers or to continue their education.

(d) It is the responsibility of public institutions of higher education to report to the commission or the council, as appropriate, on plans, accomplishments and recommendations to implement the goals and objectives contained in the institutional and state compacts.

§18B-1D-5. Master plans; reports; approval process.

(a) The commission and the council each shall develop a master plan for public higher education that is closely aligned with the goals and objectives of this article and section one-a, article one of this chapter as they relate to the missions of institutions under their respective jurisdictions.

(b) The authority of the commission and the council, respectively, related to developing and implementing statewide master plans is subject to the following conditions:
(1) The master plans shall be established for periods of not more than five years.

(2) The master plans in place on the effective date of this article continue in effect until the end of the five-year planning cycle unless amended or rescinded by the commission or council, respectively, pursuant to this article.

(3) Any new master plan proposed by the commission or council shall be communicated to the Legislative Oversight Commission on Education Accountability and may not be adopted or implemented without the approval of that body.

(4) The commission and council each shall perform a comprehensive review of its master plan at least annually and shall revise it periodically as appropriate to meet state goals and objectives.

(5) The commission and the council each shall review the progress of its higher education system in meeting the goals and objectives of the master plan and report to the Legislative Oversight Commission on Education Accountability, with detailed recommendations for amending the plan, by the first day of January, two thousand nine, and annually thereafter.

(6) At the end of each five-year planning cycle and as an integral part of the preparation of a new master plan, the commission and the council, respectively, shall prepare and submit to the Legislative Oversight Commission on Education Accountability a comprehensive report containing at least the following:

(A) A detailed, data-based analysis of the progress of the system and the institutions within the system toward meeting each goal and objective included in the current plan; and

(B) A strategy for using this data as a basis for developing the master plan for the next planning cycle.
(c) The master plan shall include a detailed set of system objectives designed to meet the state goals and objectives outlined in this article and section one-a, article one of this chapter, including, but not limited to, the following:

(A) A well-developed analysis of missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinants and projections for public higher education and other matters necessary in such a plan to assure that the needs of the state for a quality system of higher education are addressed; and

(B) A strategy for cooperation and collaboration with the State Board of Education and State Department of Education, state institutions of higher education, the counterpart state coordinating board and other relevant education providers to assure that a comprehensive and seamless system of education is developed and implemented for West Virginia.

§18B-1D-6. State compacts; legislative intent; rule required; implementation plans authorized.

(a) It is the intent of the Legislature that members of the education partnership to achieve state goals and objectives engage in developing state compacts between and among themselves for the purpose of enhancing the well-being of the citizens of West Virginia. Such a compact constitutes a formal contract and focuses on the goals and objectives established pursuant to this article and section one-a, article one of this chapter. A compact is called for when achievement of specific goals or objectives requires significant collaboration and commitment of resources by more than one member of the partnership.

(b) The rules to be proposed relating to state compacts pursuant to subsection (c), section one of this article shall include, but are not limited to, the following components:
(1) A procedure to determine when a state compact is necessary or desirable;

(2) A procedure for determining the identity of parties to the compact and for establishing compact terms:

(A) Parties to the compact may be any two or more members of the education partnership to achieve state goals and objectives who are positioned to make significant contributions to meeting compact objectives; and

(B) The terms of the compact shall focus on achievement of objectives. The expected outcomes shall be stated in concrete terms that are measurable.

(3) A mechanism for negotiating agreement on compact objectives. The mechanism shall provide for negotiation and development of consensus among the parties and must be reasonable in its operation and outcomes expectations;

(4) A procedure for creating and consolidating commitment between and among parties to the compact. Most state compacts will extend over multiple years and will require that negotiation between education partners and elected state officials take into account the constraints of the political process and the limits on available resources; and

(5) A process for periodic review, assessment and reporting of progress toward meeting the compact objectives. The rule shall provide for objective analysis and reporting to the compact partners and to the elected officials of the state.

(c) In addition to authorizing the commission and the council to enter into state compacts pursuant to subsections (a) and (b) of this section, it is the intent of the Legislature to encourage them strongly to develop implementation plans together with other members of the public higher education community to achieve system and institutional goals and
objectives which are consistent with and supportive of the
goals and objectives established in this article and section
one-a, article one of this chapter.

(1) At a minimum, each implementation plan shall
contain the following elements:

(A) Identification of the goal and the objectives to be
achieved;

(B) Identification of the parties to the implementation
plan and a process for developing consensus among the
parties;

(C) A needs assessment or other mechanism to determine
current status of the proposed objectives, including a survey
of available resources and other data relevant to achieving the
objectives;

(D) Identification of challenges or barriers to meeting
objectives;

(E) Delineation of tasks to be performed;

(F) A specific time line for meeting objectives;

(G) An evaluation process administered periodically to
determine progress in meeting the objectives during the life
span of the plan; and

(H) A method for determining success in achieving the
objectives following the closing date established by the time
line.

(2) Implementation plans are internal documents
developed among members of the public higher education
community and are not subject to an external approval
process.
§18B-1D-7. Findings; establishment of institutional compacts; compact elements; submission date; review and approval process; rule required.

(a) The Legislature finds that West Virginia long has recognized the value of education and, on a per capita income basis, ranks very high among the states in its investment to support public education. The Legislature further finds that a combination of state and national demographic and economic factors as well as significant changes in methods of course and program delivery compel both the state and public higher education to create a process that will strengthen institutional capacity to provide the services so valued by the citizens of the state and so essential to promoting economic vitality.

(b) Therefore, each state college and university shall prepare an institutional compact for submission to the commission and each community and technical college shall prepare an institutional compact for submission to the council. When the process herein provided is completed, the resulting institutional compact constitutes a negotiated contract between the state institution of higher education and the commission or council, respectively, containing at a minimum the following basic components:

(1) Institutional strategies for focusing resources on meeting the goals and objectives set forth in this article and section one-a, article one of this chapter; and

(2) Commission or council strategies for promoting and supporting the institution in fulfilling its mission and objectives, to make it more competitive with its peers and to ensure the continuity of academic programs and services to its students.
(c) In addition to the basic contract components described in subsection (b) of this section, each compact shall contain at least the following elements:

(1) A determination of the mission of the institution which specifically addresses changes necessary or expedient to accomplish the goals and objectives articulated by the state and the appropriate statewide master plan;

(2) A detailed statement of how the compact is aligned with and will be implemented in conjunction with the master plan of the institution;

(3) A comprehensive assessment of education needs within the institution's geographic area of responsibility;

(4) A strategy to ensure access to comprehensive community and technical college and workforce development services within each respective region of the state consistent with the mission of the institution;

(5) Provision for collaboration and brokering of education services as necessary or expedient to carry out the institutional mission and meet its objectives;

(6) Provision of student services at the optimum level to support the institutional mission and to achieve state goals and objectives;

(7) Strategies for using existing infrastructure and resources within each region, where feasible, to increase student access while controlling costs and maintaining academic quality; and

(8) Other public policy objectives or initiatives adopted by the commission or council pursuant to the intent and purposes of this article and section one-a, article one of this chapter.
(d) Each institutional compact shall be updated annually and shall follow the same general guidelines contained in this section.

(e) Development and updating of the institutional compacts is subject to the following conditions:

(1) The ultimate responsibility for developing and updating the compacts at the institutional level resides with the board of advisors or the board of governors, as appropriate. It is the responsibility of the commission or council to provide technical assistance as requested and to negotiate with the institution development of the strategies to promote and support the institution pursuant to subsection (b) of this section;

(2) The commission and the council each shall establish a date by which institutions under their respective jurisdictions shall submit their compacts to the commission or council pursuant to the provisions of this article. The date established by each state-level coordinating board shall apply uniformly to all institutions under the jurisdiction of that coordinating board and shall meet the following additional conditions:

(A) Allow sufficient time for careful analysis of the compacts by the central office staff and for review by members of the commission or the council, as appropriate; and

(B) Allow sufficient time for the institutions to make necessary revisions to the compacts as provided in this section.

(3) The commission and council shall review each compact from the institutions under their respective jurisdictions and either adopt the compact or return it with
specific comments for change or improvement. The
commission and council, respectively, shall continue this
process as long as each considers advisable;

(4) By the first day of May annually, if the institutional
compact of any institution as presented by that institution is
not adopted by the respective commission or council, then the
commission or council is empowered and directed to develop
and adopt the institutional compact for the institution and the
institution is bound by the compact so adopted; and

(5) As far as practicable, the commission and council
each shall establish uniform processes and forms for the
development and submission of the institutional compacts by
the institutions under their respective jurisdictions, taking
into consideration the differences in institutional missions
and objectives. As a part of this function, the commission
and council each shall organize the statements of legislative
goals and objectives contained in this article and section
one-a, article one of this chapter in a manner that facilitates
the purposes therein.

(f) Assignment of geographic areas of responsibility. —

(1) The commission shall assign geographic areas of
responsibility to the state institutions of higher education
under its jurisdiction, except for the state institutions of
higher education known as West Virginia School of
Osteopathic Medicine, Marshall University and West
Virginia University. For institutions other than the state
institutions of higher education known as West Virginia
School of Osteopathic Medicine, Marshall University and
West Virginia University, the geographic areas of
responsibility are made a part of their institutional compacts
to ensure that all areas of the state are provided necessary
programs and services to achieve state goals and objectives.
The commission and the council each shall develop
data-based measures to determine the extent to which institutions under their respective jurisdictions are providing higher education services aligned with state goals and objectives and institutional missions within their geographic areas of responsibility. This information shall be reported in the statewide report card established pursuant to section eight of this article.

(2) The council shall assign geographic areas of responsibility to the state institutions of higher education under its jurisdiction, including the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology and the regional campus known as West Virginia University at Parkersburg.

(3) The geographic areas of responsibility for the state institutions of higher education known as West Virginia School of Osteopathic Medicine, Marshall University and West Virginia University are assigned by the Legislature.

(4) The benchmarks established in the institutional compacts include measures of programs and services by geographic area throughout the assigned geographic area of responsibility.

(g) The compacts shall contain benchmarks to be used to determine progress toward meeting the objectives established in the compacts. The benchmarks shall meet the following criteria:

(1) They shall be objective;

(2) They shall be directly linked to the objectives in the compacts;
(3) They shall be measured by the indicators described in subsection (h) of this section; and

(4) Where applicable, they shall be used to measure progress in geographic areas of responsibility.

(h) The rules required by subsection (c), section one of this article shall include indicators which measure the degree to which the goals and objectives set forth in this article and section one-a, article one of this chapter are being met by the institutions under the jurisdiction of the commission and the council, respectively.

(1) The rules pertaining to benchmarks and indicators in effect for the commission and the council on the effective date of this section remain in effect for the institutions under their respective jurisdictions until amended, modified, repealed or replaced by the commission or the council, respectively, pursuant to the provisions of this article, section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code.

(2) The rules shall set forth at least the following as pertains to all state institutions of higher education:

(A) The indicators used to measure the degree to which the goals and objectives are being met;

(B) Uniform definitions for the various data elements to be used in establishing the indicators;

(C) Guidelines for the collection and reporting of data; and

(D) Sufficient detail within the benchmarks and indicators to provide the following information:
181 (i) Measurable evidence that the pursuits of the institution are focused on the education needs of the citizens of the state and are aligned with the objectives of the institutional compacts and statewide master plans;

185 (ii) Delineation of the objectives and benchmarks for an institution so that the commission or council can precisely measure the degree to which progress is being made toward achieving the goals and objectives provided in this article and section one-a, article one of this chapter; and

190 (iii) Identification of specific objectives within the master plan or compact of an institution that are not being met or toward which sufficient progress is not being made.

193 (3) In addition to any other requirement, the rule established by the council shall set forth at least the following as pertains to community and technical college education:

196 (A) Benchmarks and indicators which are targeted to identify the following:

198 (i) The degree to which progress is being made by institutions toward meeting state goals and objectives and the essential conditions for community and technical college education pursuant to section three, article three-c of this chapter;

203 (ii) Information and data necessary to be considered by the council in making the determination required by section three, article two-c of this chapter; and

206 (B) Sufficient detail within the benchmarks and indicators to provide clear evidence to support an objective determination by the council that an institution’s progress toward achieving state goals and objectives and the essential conditions for community and technical college education is
so deficient that implementation of the provisions of section four, article two-c of this chapter is warranted and necessary.

(i) The commission and the council, respectively, shall approve the compacts developed for the institutions under their respective jurisdictions by the boards of governors or the boards of advisors pursuant to this section and consistent with the powers and duties prescribed in section four, article two-a of this chapter and section one, article six of this chapter.

§18B-1D-8. Institutional and system report cards.

(a) The purpose of the institutional and statewide report cards is to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. The focus of the report cards is to determine annual progress of the commission, the council and institutions under their respective jurisdictions toward achieving state goals and objectives identified in this article and section one-a, article one of this chapter and system goals and objective contained in the statewide master plans of the commission and council created pursuant to section five of this article.

(b) The information contained in the report cards shall be consistent and comparable between and among state institutions of higher education. If applicable, the information shall allow for easy comparison with higher education-related data collected and disseminated by the Southern Regional Education Board, the United States Department of Education and other education data-gathering and data-disseminating organizations upon which state policymakers frequently rely in setting policy.

(c) The rules required by subsection (c), section one of this article shall provide for the collection, analysis and dissemination of information on the performance of the state
institutions of higher education, including health sciences education, in relation to the findings, goals and objectives set forth in this article and section one-a, article one of this chapter and those contained in the statewide master plans of the commission and council developed pursuant to section five of this article.

(1) The objective of this portion of the rule is to ensure that the Legislative Oversight Commission on Education Accountability and others identified in subsection (a) of this section are provided with full and accurate information while minimizing the institutional burden of recordkeeping and reporting.

(2) This portion of the rule shall identify various indicators of student and institutional performance that, at a minimum, must be reported annually, set forth general guidelines for the collection and reporting of data and provide for the preparation, printing and distribution of report cards under this section.

(d) The report cards shall be analysis-driven, rather than simply data-driven, and shall present information in a format that can inform education policymaking. They shall include an executive summary which outlines significant trends, identifies major areas of concern and discusses progress toward meeting state and system goals and objectives. They shall be brief and concise, reporting required information in nontechnical language. Any technical or supporting material to be included shall be contained in a separate appendix.

(e) The statewide report card shall include the data for each separately listed, applicable indicator identified in the rule promulgated pursuant to subsection (c) of this section and the aggregate of the data for all public institutions of higher education.

(f) The statewide report card shall be prepared using actual institutional, state, regional and national data, as
applicable and available, indicating the present performance of the individual institutions, the governing boards and the state systems of higher education. Statewide report cards shall be based upon information for the current school year or for the most recent school year for which the information is available, in which case the year shall be clearly noted.

(g) The president or chief executive officer of each state institution of higher education shall prepare and submit annually all requested data to the commission at the times established by the commission.

(h) The higher education central office staff, under the direction of the Vice Chancellor for Administration, shall provide technical assistance to each institution and governing board in data collection and reporting and is responsible for assembling the statewide report card from information submitted by each governing board.

(i) The statewide report card shall be completed and disseminated with copies to the Legislative Oversight Commission on Education Accountability prior to the first day of January of each year and the staff of the commission and the council shall prepare a report highlighting specifically the trends, progress toward meeting goals and objectives and major areas of concern for public higher education, including medical education, for presentation to the Legislative Oversight Commission on Education Accountability at the interim meetings in January, two thousand nine, and annually thereafter.

(j) Notwithstanding any other provisions of this code to the contrary, the following statutorily mandated reports are not required to be prepared and submitted annually unless a member of the Legislature makes a specific request for a particular report:
(1) An annual report, pursuant to subsection (a), section forty-eight, article three, chapter five-a of this code, on vehicle fleets;

(2) An annual report, pursuant to subsection (e), section ten, article one of this chapter, on plans, accomplishments and recommendations in implementing a cooperative relationship between Potomac State College and Eastern West Virginia Community and Technical College;

(3) An annual report, pursuant to paragraphs (A) and (B), subdivision (10), subsection (a), section four, article one-b of this chapter, concerning higher education performance and enrollment data;

(4) An annual report, pursuant to paragraph (A), subdivision (11), subsection (b), section six, article two-b of this chapter, concerning community and technical college performance;

(5) An annual report, pursuant to subsection (b), section seven, article five of this chapter, on all sales of obsolete, unusable or surplus commodities;

(6) An annual report, pursuant to section eight, article five of this chapter, on purchases from West Virginia businesses;

(7) An annual report, pursuant to subsection (j), section one, article ten of this chapter, on the amount of auxiliary fees collected to replace state funds subsidizing auxiliary services;

(8) An annual report, pursuant to subsection (c), section five, article thirteen of this chapter, on technical assistance provided to qualified businesses within approved research parks, research zones or technology centers;
(9) An annual report, pursuant to subsection (e), section six, article eighteen of this chapter, on the status of the Eminent Scholars Endowment Trust Fund; and

(10) An annual report, pursuant to subsection (e), section one, article three, chapter eighteen-c of this code, relevant to the health education loan program.

(k) For a reasonable fee, the Vice Chancellor for Administration shall make copies of the report cards, including any appendices of supporting material, available to any individual requesting them.

ARTICLE 14. MISCELLANEOUS.

§18B-14-9. Legislative findings; establishment of study committee; membership; recommendations on higher education facilities.

(a) The Legislature finds that it is in the best interest of the state to have an effective and comprehensive system for the delivery of public higher education programs. West Virginia is one of the very few states in the nation which does not address higher education capital project and facilities maintenance needs through a statewide plan. State institutions of higher education vary widely in their ability to incur debt for capital projects and the conditions of their facilities infrastructure. Some institutions have incurred substantial amounts of debt to address capital needs, while other institutions have not.

The Legislature further finds that average tuition and fees for current and former administratively linked community and technical colleges rank well above the national average primarily because of the capital fees that students at those institutions have to pay. The large amount of capital fees that students must pay at the institution level contributes significantly to the poor grade the state receives each year in the category of “Affordability” on “Measuring Up: The
National Report Card on Higher Education”. Net college costs for state students who come from families in the lowest forty percent of the population in terms of income to attend community and technical colleges and four-year colleges and universities in West Virginia represent about forty-five percent of their family’s annual income and there are few low-cost college opportunities.

The Legislature further finds that the high cost of capital fees contributes directly to the amount of debt incurred by students during their college years. The debt load, in turn, severely limits students’ career choices and often dictates their place of residence after graduation.

(b) It is the responsibility of the Legislature to determine how to make the best use of available resources and how best to address the problems outlined in subsection (a) of this section. Therefore, the Joint Committee on Government and Finance shall create a committee for the purposes of making a specific and detailed analysis of higher education capital project and facilities maintenance needs and providing recommendations to the Legislature.

(c) The committee consists of the following members:

(1) The President of the Senate or designee;

(2) The Speaker of the House of Delegates or designee;

(3) The chairs of the Senate and House of Delegates Committees on Education, who shall cochair the committee;

(4) The vice chairs of the Senate and House of Delegates Committees on Education;

(5) The chairs of the Senate and House of Delegates Committees on Finance or their designees;

(6) The cochairs of the Joint Commission on Economic Development or their designees;
(7) Two members each from the Senate Committees on Finance and Education appointed by the President of the Senate; and

(8) Two members each from the House Committees on Finance and Education appointed by the Speaker of the House.

(d) The committee shall develop and recommend a state-level facilities plan which includes, but is not limited to, the following:

(1) A review of capital project and facilities maintenance needs of all state institutions of higher education and recommendations for addressing those needs;

(2) Recommendations concerning the appropriate capital debt load that reasonably should be maintained by the commission, council and state institutions of higher education;

(3) Recommendations for a funding mechanism to reduce the obligation of students and parents to bear the cost of higher education capital projects and facilities maintenance;

(4) Recommendations for maximizing changes in bonding capacity that will occur in two thousand twelve;

(5) Development of a uniform definition of deferred maintenance;

(6) Recommendations for an appropriate mechanism to target a percentage of state capital contributions to address deferred maintenance needs; and

(7) Recommendations for a transparent methodology to set priorities for funding capital projects.

(e) The committee shall commence its work on or before the fifteenth day of May, two thousand eight, and shall
deliver its recommendations, together with draft legislation to implement the recommendations, to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance by the first day of December, two thousand eight.

CHAPTER 73

(Com. Sub. for S.B. 9 - By Senators Bailey and Love)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §18-2-8a of the Code of West Virginia, 1931, as amended, relating to hunter safety orientation programs in the public schools; providing for state board rule; minimum requirements; permissive implementation; and certification of program completers.

Be it enacted by the Legislature of West Virginia:

That §18-2-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-8a. Hunter safety orientation program.

(a) The Legislature finds that:

1 Firearms and hunting are important parts of West Virginia's history, culture and economy;
(2) Unfortunately, the use of firearms while hunting or at any other time can be dangerous when the firearms are not handled in a careful and safe manner; and

(3) Therefore, the opportunity of participating in a hunter safety orientation program should be offered to students in certain grades.

(b) The State Board of Education shall, with the advice of the State Superintendent of Schools and the Director of the Division of Natural Resources, promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the implementation of a hunter safety orientation program for use in the public schools of this state. The rule shall include at least the following provisions:

(1) The hunter safety orientation program may be offered to students in any of the grade levels sixth through twelfth grades over a two-week period during the school year as part of physical education classes, or as part of the general curriculum offered to students in any of these grade levels, or at the end of the school day;

(2) The hunter safety orientation program is voluntary to students and any student may choose not to participate in the program. If a student chooses not to participate in the program, he or she shall participate in another education activity;

(3) The hunter safety orientation program shall include instruction relating to:

(A) The protection of lives and property against loss or damage as a result of the improper use of firearms; and

(B) The proper use of firearms in hunting, sport competition and the care and safety of firearms in the home;
(4) The hunter safety orientation program may use materials prepared by any national nonprofit membership organization which has as one of its purposes the training of people in marksmanship and the safe handling and use of firearms; and

(5) The hunter safety orientation program shall be conducted by an instructor certified by the Division of Natural Resources or who has other training necessary to conduct the program as determined by the state board.

c) The county superintendent may implement the hunter safety orientation program in accordance with the rule required by this section in each school in the county that includes any of grades six through twelve at which, in the sole judgement of the superintendent, sufficient student interest in program enrollment justifies the program offering and an appropriately certified instructor is available.

d) The Division of Natural Resources shall issue a certificate of training, required by section thirty-a, article two, chapter twenty of this code, to any student who completes the hunter safety orientation program.

CHAPTER 74

(Com. Sub. for H.B. 4124 - By Delegates Staggers, M. Poling, Moye, Perry, Fleischauer, Hamilton, Paxton, Long, Canterbury, Campbell and Crosier)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to including education
concerning CPR and First Aid in the health education curriculum in any grades six through twelve.

Be it enacted by the Legislature of West Virginia:

That §18-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9. Required courses of instruction; violation and penalty.

(a) In all public, private, parochial and denominational schools located within this state, there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the Constitution of the United States, and in the government of the State of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The state board shall, with the advice of the state superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this code.

(b) The state board shall cause to be taught in all of the public schools of this state the subject of health education,
including instruction in any of the grades six through twelve as considered appropriate by the county board, on: (1) The prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products, and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity to maintaining healthy weight; and (4) education concerning CPR and First Aid. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health and Human Resources. The state board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding ten dollars for each violation, and each week during which there is a violation shall constitute a separate offense. If the person so convicted occupy a position in connection with the public schools, that person shall automatically be removed from that position and shall be ineligible for reappointment to that or a similar position for the period of one year.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-8f, relating to establishing “West Virginia Remembers Program” program in public schools; requiring state board rule; and specifying certain parameters.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-8f, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-8f. Creating the “West Virginia Remembers Program;” rules.

(a) There is hereby created the “West Virginia Remembers Program.” The objective of the West Virginia Remembers Program is to provide a forum wherein children in the public schools may learn about military service, patriotism and courage in the defense of our country from veterans who volunteer to share their experiences in the educational setting. The state board shall promulgate a rule for implementation of the program, including, but not limited to, the following:

(1) The program is not a part of the required curriculum;
Presentation of the program in any classroom is the option of the classroom teacher; and

(3) A process is established for soliciting speakers from veterans groups and identifying available speakers.

CHAPTER 76

(H.B. 4477 - By Delegates Frederick, M. Poling, Paxton, Rowan, Williams, Sumner, Crosier, Fragale, Browning, Rodighiero and Wysong)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 31, 2008.]

[CLERK'S NOTE: The title of this Act was amended, but the amended language was inadvertently omitted during the enrollment process. Therefore, the Governor not having received and signed a true and correct copy of the Act as passed by both houses, H.B. 4477 did not become law.

The text of the proposed Act has intentionally been omitted.]

CHAPTER 77


[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 17, 2008.]

AN ACT to amend and reenact §18-5A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-5-1 of said code; and to further amend said code by adding thereto a
new section, designated §18A-5-1c, all relating to student behavior and discipline in schools; reducing school violence and disorderly conduct; alternative learning settings; establishing and implementing consistent and effective discipline policies; legislative findings; and establishing the Bill of Rights and Responsibilities for Students and School Personnel.

Be it enacted by the Legislature of West Virginia:

That §18-5A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-5-1 of said code be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §18A-5-1c, all to read as follows:

Chapter.
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2. Local school improvement councils; election.

1 (a) A local school improvement council shall be established at every school consisting of the following:

3 (1) The principal, who serves as an ex officio member of the council and is entitled to vote;

5 (2) Three teachers elected by the faculty senate of the school;

7 (3) One bus operator who transports students enrolled at the school and one school service person, each elected by the school service personnel employed at the school;
Three parent(s), guardian(s) or custodian(s) of students enrolled at the school elected by the parent(s), guardian(s) or custodian(s) members of the school's parent teacher organization. If there is no parent teacher organization, the parent(s), guardian(s) or custodian(s) members shall be elected by the parent(s), guardian(s) or custodian(s) of students enrolled at the school in such manner as may be determined by the principal;

(5) Two at-large members appointed by the principal, one of whom resides in the school's attendance area and one of whom represents business or industry, neither of whom is eligible for membership under any of the other elected classes of members;

(6) In the case of vocational-technical schools, the vocational director. If there is no vocational director, then the principal may appoint no more than two additional representatives, one of whom represents business and one of whom represents industry;

(7) In the case of a school with students in grade seven or higher, the student body president or other student in grade seven or higher elected by the student body in those grades.

(b) Under no circumstances may more than one parent member of the council be then employed at that school in any capacity.

c) The principal shall arrange for such elections to be held prior to the fifteenth day of September of each school year to elect a council and shall give notice of the elections at least one week prior to the elections being held. To the extent practicable, all elections to select council members shall be held within the same week.

(d) Parent(s), guardian(s) or custodian(s), teachers and service personnel elected to the council shall serve a two-year
term and elections shall be arranged in such a manner that no
more than two teachers, no more than two parent(s),
guardian(s) or custodian(s) and no more than one service
person are elected in a given year. All other non-ex officio
members shall serve one-year terms.

e) Council members may only be replaced upon death,
resignation, failure to appear at three consecutive meetings of
the council for which notice was given, or a change in
personal circumstances so that the person is no longer
representative of the class of members from which appointed.
In the case of a vacancy in an elected position, the chair of
the council shall appoint another qualified person to serve the
unexpired term of the person being replaced or, in the case of
an appointed member of the council, the principal shall
appoint a replacement as soon as practicable.

f) As soon as practicable after the election of council
members, and no later than the first day of October of each
school year, the principal shall convene an organizational
meeting of the school improvement council. The principal
shall notify each member in writing at least two employment
days in advance of the organizational meeting. At this
meeting, the principal shall provide each member with the
following:

1) A copy of the current applicable sections of this code;

2) Any state board rule or regulation promulgated
pursuant to the operation of these councils; and

3) Any information as may be developed by the
department of education on the operation and powers of local
school improvement councils and their important role in
improving student and school performance and progress.

g) The council shall elect from its membership a chair
and two members to assist the chair in setting the agenda for
each council meeting. The chair shall serve a term of one year and a person may not serve as chair for more than two consecutive terms. If the chair's position becomes vacant for any reason, the principal shall call a meeting of the council to elect another qualified person to serve the unexpired term. Once elected, the chair is responsible for notifying each member of the school improvement council in writing two employment days in advance of any council meeting.

(h) School improvement councils shall meet at least once every nine weeks or equivalent grading period at the call of the chair or by three fourths of its members.

(1) The school improvement council shall schedule any meeting that involves the issue of student discipline pursuant to subdivision (2), subsection (1) of this section, outside the regularly scheduled working hours of any school employee member of the council.

(2) The school improvement council annually shall conduct a meeting to engage parents, students, school employees and other interested parties in a positive and interactive dialogue regarding effective discipline policies. The meeting shall afford ample time for the dialogue and comply with any applicable provision of state, federal or county board policy, rule or law, as appropriate, regarding student privacy rights.

(i) The local school improvement council shall meet at least annually with the county board, in accordance with the provisions in section fourteen, article five of this chapter. At this annual meeting, the local school improvement council chair, or another member designated by the chair, shall be prepared to address any matters as may be requested by the county board as specified in the meeting agenda provided to the council and may further provide any other information, comments or suggestions the local school improvement
council wishes to bring to the county board’s attention. Anything presented under this subsection shall be submitted to the county board in writing.

(j) School improvement councils shall be considered for the receipt of school of excellence awards under section three of this article and competitive grant awards under section twenty-nine, article two of this chapter and may receive and expend such grants for the purposes provided in such section. In any and all matters which may fall within the scope of both the school improvement councils and the school curriculum teams authorized in section five of this article, the school curriculum teams have jurisdiction.

(k) In order to promote innovations and improvements in the environment for teaching and learning at the school, a school improvement council shall receive cooperation from the school in implementing policies and programs it may adopt to:

(1) Encourage the involvement of parent(s), guardian(s) or custodian(s) in their child's educational process and in the school;

(2) Encourage businesses to provide time for their employees who are parent(s), guardian(s) or custodian(s) to meet with teachers concerning their child's education;

(3) Encourage advice and suggestions from the business community;

(4) Encourage school volunteer programs and mentorship programs; and

(5) Foster utilization of the school facilities and grounds for public community activities.
Each local school improvement council annually shall develop and deliver a report to the countywide council on productive and safe schools. The report shall include:

1. Guidelines for the instruction and rehabilitation of students who have been excluded from the classroom, suspended from the school or expelled from the school, the description and recommendation of in-school suspension programs, a description of possible alternative settings, schedules for instruction and alternative education programs and an implementation schedule for such guidelines. The guidelines shall include the following:

   A. A system to provide for effective communication and coordination between school and local emergency services agencies;

   B. A preventive discipline program which may include the responsible students program devised by the West Virginia board of education as adopted by the county board, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code; and

   C. A student involvement program, which may include the peer mediation program or programs devised by the West Virginia board of education as adopted by the county board, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code; and

2. The local school improvement council’s findings regarding its examination of the following, which also shall be reported to the county superintendent:

   A. Disciplinary measures at the school; and

   B. The fairness and consistency of disciplinary actions at the school. If the council believes that student discipline
at the school is not enforced fairly or consistently, it shall transmit that determination in writing, along with supporting information, to the county superintendent. Within ten days of receiving the report, the superintendent, or designee, shall respond in writing to the council. The county board shall retain and file all such correspondence and maintain it for public review.

(C) Any report or communication made as required by this subdivision shall comply with any applicable provision of state, federal or county board policy, rule or law, as appropriate, regarding student privacy rights.

(m) The council may include in its report to the county-wide council on productive and safe schools provisions of the State Board of Education policy 4373, student code of conduct, or any expansion of such policy which increases the safety of students in schools in this state and is consistent with the policies and other laws of this state.

(n) Councils may adopt their own guidelines established under this section. In addition, the councils may adopt all or any part of the guidelines proposed by other local school improvement councils, as developed under this section, which are not inconsistent with the laws of this state, the policies of the West Virginia board of education or the policies of the county board.

(o) The State Board of Education shall provide assistance to a local school improvement council upon receipt of a reasonable request for that assistance. The state board also may solicit proposals from other parties or entities to provide orientation training for local school improvement council members and may enter into contracts or agreements for that purpose. Any training for members shall meet the guidelines established by the state board.
CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.


§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of students is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the students while they are in transit to and from the school.

(b) Subject to the rules of the State Board of Education, the teacher shall exclude from the school any student known to have or suspected of having any infectious disease, or any student who has been exposed to any infectious disease, and shall immediately notify the proper health officer or medical inspector of the exclusion. Any student so excluded may not be readmitted to the school until he or she has complied with all the requirements of the rules governing those cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who
willfully disobeys a school employee; or who uses abusive or
profane language directed at a school employee. Any student
excluded shall be placed under the control of the principal of
the school or a designee. The excluded student may be
admitted to the classroom or school bus only when the
principal, or a designee, provides written certification to the
teacher that the student may be readmitted and specifies the
specific type of disciplinary action, if any, that was taken. If
the principal finds that disciplinary action is warranted, he or
she shall provide written and, if possible, telephonic notice of
the action to the parent(s), guardian(s) or custodian(s). When
a student is excluded from a classroom or a school bus two
times in one semester, and after exhausting all reasonable
methods of classroom discipline provided in the school
discipline plan, the student may be readmitted to the
classroom or the school bus only after the principal, teacher
and, if possible, the parent(s), guardian(s) or custodian(s) of
the student have held a conference to discuss the student’s
disruptive behavior patterns, and the teacher and the principal
agree on a course of discipline for the student and inform the
parent(s), guardian(s) or custodian(s) of the course of action.
Thereafter, if the student’s disruptive behavior persists, upon
the teacher’s request, the principal may, to the extent feasible,
transfer the student to another setting. The Legislature finds
that isolating students or placing them in alternative learning
centers may be the best setting for chronically disruptive
students. The county board shall create more alternative
learning centers or expand its capacity for alternative
placements, subject to funding, to correct these students’
behaviors so they can return to a regular classroom without
engaging in further disruptive behavior.

(d) The Legislature finds that suspension from school is
not appropriate solely for a student’s failure to attend class.
Therefore, a student may not be suspended from school
solely for not attending class. Other methods of discipline
may be used for the student which may include, but are not
limited to, detention, extra class time or alternative class
settings.
(e) Corporal punishment of any student by a school employee is prohibited.

(f) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. The county boards shall provide for the immediate incorporation and implementation in the schools of a preventive discipline program which may include the responsible student program and a student involvement program which may include the peer mediation program, devised by the West Virginia Board of Education. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students and any other program related to preventive discipline.

(g) For the purpose of this section:

(1) "Student" includes any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: Provided, That, in the case of adults, the student–teacher relationship shall terminate when the student leaves the school or other place of instruction or activity;
(2) "Teacher" means all professional educators as defined in section one, article one of this chapter and includes the driver of a school bus or other mode of transportation; and

(3) "Principal" means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

(h) Teachers shall exercise other authority and perform other duties prescribed for them by law or by the rules of the state board not inconsistent with the provisions of this chapter and chapter eighteen of this code.


(a) The Legislature finds that:

(1) The mission of public schools is to prepare students for equal and responsible citizenship and productive adulthood;

(2) Democratic citizenship and productive adulthood begin with standards of conduct in schools;

(3) Schools should be safe havens for learning with high standards of conduct for students; and

(4) Rights necessarily carry responsibilities.

(b) In recognition of the findings in this section, the following Bill of Rights and Responsibilities for Students and School Personnel is established:

(1) The right to attend a school and ride a bus that is safe, orderly and drug free;
(2) The right to learn and work in a school that has clear discipline codes with fair and consistently enforced consequences for misbehavior;

(3) The right to learn and work in a school that has alternative educational placements for violent or chronically disruptive students;

(4) The right to be treated with courtesy and respect;

(5) The right to attend a school and ride on a bus that is free from bullying;

(6) The right to support from school administrators when enforcing discipline policies;

(7) The right to support from parents, the community, public officials and businesses in their efforts to uphold high standards of conduct; and

(8) The responsibility to adhere to the principles in this Bill of Rights and Responsibilities for Students and School Personnel, and to behave in a manner that guarantees that other students and school personnel enjoy the same rights.

CHAPTER 78

(Com. Sub. for S.B. 593 - By Senators McCabe and Foster)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §18-9A-11 of the Code of West Virginia, 1931, as amended, relating to school finance; computation of local share; limit on certain library funding
obligations; and transfer of a library funding obligation to an excess levy.

Be it enacted by the Legislature of West Virginia:

That §18-9A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


(a) On the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to the provisions of articles one-c and three of said chapter, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of the value, made to it by the Tax Commissioner as follows:

(1) The state board shall first take ninety-five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county; and

(2) The state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the Tax Commissioner and shall deduct therefrom five percent as an allowance for the
usual losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the ninety-five percent of public utility taxes computed as provided in subdivision (1) of this subsection and this total shall be further reduced by the amount due each county assessor's office pursuant to the provisions of section eight, article one-c, chapter eleven of this code and this amount shall be the local share of the particular county.

As to any estimations or preliminary computations of local share required prior to the report to the Legislature by the Tax Commissioner, the state shall use the most recent projections or estimations that may be available from the Tax Department for that purpose.

(b) Effective the first day of July, two thousand thirteen, subsection (a) of this section is void and local share shall be calculated in accordance with the following:

1. The state board shall for each county compute by application of the levies for general current expense purposes, as defined in sections two and two-a of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value calculated pursuant to section five-b, article one-c, chapter eleven of this code;

2. Five percent shall be deducted from the revenue calculated pursuant to subdivision (1) of this subsection as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like; and

3. The amount calculated in subdivision (2) of this subsection shall further be reduced by the sum of money due each assessor's office pursuant to the provisions of section eight, article one-c, chapter eleven of this code and this
reduced amount shall be the local share of the particular county.

(c) Whenever in any year a county assessor or a county commission fails or refuses to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the State Tax Commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make corrections in the valuations as necessary so that they comply with the requirements of chapter eleven of this code and this section and the Tax Commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make the corrections constitutes grounds for removal from office.

(d) For the purposes of any computation made in accordance with the provisions of this section, in any taxing unit in which tax increment financing is in effect pursuant to the provisions of article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base-assessed value as defined in section two of said article.

(e) For purposes of any computation made in accordance with the provisions of this section, in any county where the county board of education has adopted a resolution choosing to use the provisions of the Growth County School Facilities Act set forth in section six-f, article eight, chapter eleven of this code, estimated school board revenues generated from application of the regular school board levy rate to new property values, as that term is designated in said section, may not be considered local share funds and shall be subtracted before the computations in subdivisions (1) and (2), subsection (a) of this section or in subdivisions (2) and (3), subsection (b) of this section, as applicable, are made.
(f) The Legislature finds that public school systems throughout the state provide support in varying degrees to public libraries through a variety of means including budgeted allocations, excess levy funds and portions of their regular school board levies as may be provided by special act. A number of public libraries are situated on the campuses of public schools and several are within public school buildings serving both the students and public patrons. To the extent that public schools recognize and choose to avail the resources of public libraries toward developing within their students such legally recognized elements of a thorough and efficient education as literacy, interests in literature, knowledge of government and the world around them and preparation for advanced academic training, work and citizenship, public libraries serve a legitimate school purpose and may do so economically. For the purposes of any computation made in accordance with the provisions of this section, the library funding obligation on the regular school board levies which is created by a special act and is due and payable from the levy revenues to a library shall be paid from the county school board’s discretionary retainage, which is hereby defined as the amount by which the regular school board levies exceed the local share as determined hereunder. If the library funding obligation which is created by a special act and is due and payable to a library is greater than the county school board’s discretionary retainage, the library funding obligation created by the special act is amended and is reduced to the amount of the discretionary retainage, notwithstanding any provisions of the special act to the contrary. Any excess of the discretionary retainage over the library funding obligation shall be available for expenditure by the county board in its discretion for its properly budgeted purposes.

(g) It is the intent of the Legislature that whenever a provision of subsection (f) of this section is contrary to any special act of the Legislature which has been or may in the
future be enacted by the Legislature that creates a library funding obligation on the regular school board levy of a county, subsection (f) of this section controls over the special act. Specifically, the special acts which are subject to said subsection upon the enactment of this section during the two thousand seven regular session of the Legislature include:

(1) Enrolled Senate Bill No. 11, passed on the twelfth day of February, one thousand nine hundred seventy, applicable to the Berkeley County Board of Education;

(2) Enrolled House Bill No. 1352, passed on the seventh day of April, one thousand nine hundred eighty-one, applicable to the Hardy County Board of Education;

(3) Enrolled Committee Substitute for House Bill No. 2833, passed on the fourteenth day of March, one thousand nine hundred eighty-seven, applicable to the Harrison County Board of Education;

(4) Enrolled House Bill No. 161, passed on the sixth day of March, one thousand nine hundred fifty-seven, applicable to the Kanawha County Board of Education;

(5) Enrolled Senate Bill No. 313, passed on the twelfth day of March, one thousand nine hundred thirty-seven, as amended by Enrolled House Bill No. 1074, passed on the eighth day of March, one thousand nine hundred sixty-seven, and as amended by Enrolled House Bill No. 1195, passed on the eighteenth day of January, one thousand nine hundred eighty-two, applicable to the Ohio County Board of Education;

(6) Enrolled House Bill No. 938, passed on the twenty-eighth day of February, one thousand nine hundred sixty-nine, applicable to the Raleigh County Board of Education;
(7) Enrolled House Bill No. 398, passed on the first day of March, one thousand nine hundred thirty-five, applicable to the Tyler County Board of Education;

(8) Enrolled Committee Substitute for Senate Bill No. 450, passed on the eleventh day of March, one thousand nine hundred ninety-four, applicable to the Upshur County Board of Education; and

(9) Enrolled House Bill No. 2994, passed on the thirteenth day of March, one thousand nine hundred eighty-seven, applicable to the Wood County Board of Education.

(h) Notwithstanding any provision of any special act set forth in subsection (g) of this section to the contrary, the county board of any county with a special act creating a library obligation out of the county’s regular school levy revenues may transfer that library obligation so that it becomes a continuing obligation of its excess levy revenues instead of an obligation of its regular school levy revenues, subject to the following:

(1) If a county board chooses to transfer the library obligation pursuant to this subsection, the library funding obligation shall remain an obligation of the regular school levy revenues until the fiscal year in which the excess levy is effective or would have been effective if it had been passed by the voters;

(2) If a county board chooses to transfer the library obligation pursuant to this subsection, the county board shall include the funding of the public library obligation in the same amount as its library funding obligation which exists or had existed on its regular levy revenues as one of the purposes for the excess levy to be voted on as a specifically described line item of the excess levy: Provided, That if the county board has transferred the library obligation to the
excess levy and the excess levy fails to be passed by the
voters or the excess levy passes and thereafter expires upon
the time limit for continuation as set forth in section sixteen,
article eight, chapter eleven of this code, then in any
subsequent excess levy which the county board thereafter
submits to the voters the library funding obligation again
shall be included as one of the purposes of the subsequent
excess levy as a specifically described line item of the excess
levy;

(3) If a county board chooses to transfer the library
obligation pursuant to this subsection, regardless of whether
or not the excess levy passes, effective the fiscal year in
which the excess levy is effective or would have been
effective if it had been passed by the voters, a county’s
library obligation on its regular levy revenues is void
notwithstanding any provision of the special acts set forth in
subsection (g) of this section to the contrary; and

(4) Nothing in subdivision (3) of this subsection prohibits
a county board from funding its public library obligation
voluntarily.

CHAPTER 79

(S.B. 297 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed March 7, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8,
§18-9D-13 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-4b; and to amend and reenact
§29-22-18a of said code, all relating generally to the School Building Authority; modifying definitions and qualifications of construction projects and major improvement projects; authorizing the School Building Authority to issue bonds by using moneys deposited in the Excess Lottery School Building Debt Service Fund from the State Excess Lottery Fund; providing that moneys from the State Excess Lottery Fund are deposited into the Excess Lottery School Building Debt Service Fund; and clarifying the powers of the authority in issuing bonds.

Be it enacted by the Legislature of West Virginia:

That §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-13 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-4b; and that §29-22-18a of said code be amended and reenacted, all to read as follows:

Chapter 18. Education.
§18-9D-6. School Building Capital Improvements Fund in State Treasury; School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.
§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.
§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.
§18-9D-4b. School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.
ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

*§18-9D-2. Definitions.*

1 For the purposes of this article, unless a different
2 meaning 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
6 pursuant to this article;

7 (3) "Construction project" means a project in the
8 furtherance of a facilities plan with a cost greater than one
9 million 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
17 to making the construction project operational;

18 (D) Construction project does not include such items as
19 books, computers or equipment used for instructional
20 purposes; fuel; supplies; routine utility services fees; routine
21 maintenance costs; ordinary course of business
22 improvements; other items which are customarily considered

*Clerk's Note:* This section was also amended by H.B. 4406 (Chapter 192),
which passed subsequent to this act.
(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;

(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:

(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;

(B) Best serves the needs of individual students, the general school population and the communities served by the facilities;

(C) Includes the school major improvement plan;

(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;

(F) Received by the authority for the purposes of this
article; and
(G) Deposited in the Excess Lottery School Building Debt Service Fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code;

(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 the 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 one million 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 are customarily considered to result in a current or ordinary course of business operating charge.

§18-9D-4b. **School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.**

The School Building Authority is expressly authorized to issue bonds and pay debt service on bonds pursuant to the provisions of this article with funds distributed from the State Excess Lottery Fund under section eighteen-a, article twenty-two, chapter twenty-nine of this code and deposited into the Excess Lottery School Building Debt Service Fund.

§18-9D-6. **School Building Capital Improvements Fund in State Treasury; School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.**

(a) There is continued in the State Treasury a School Building Capital Improvements Fund to be expended by the authority as provided in this article. The School Building Capital Improvements Fund shall be an interest-bearing account with interest credited to and deposited in the School
Building Capital Improvements Fund and expended in accordance with the provisions of this article.

The School Building Authority may pledge all or any part of the revenues paid into the School Building Capital Improvements Fund that are needed to meet the requirements of any revenue bond issue or issues authorized by this article prior to the twentieth day of July, one thousand nine hundred ninety-three, or revenue bonds issued to refund revenue bonds issued prior to that date, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues when other moneys pledged may be insufficient for the payment of the principal, interest and redemption premium, including any additional protective pledge of revenues that the authority in its discretion has provided by resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bond issue. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Capital Improvements Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article.

Any balance remaining in the School Building Capital Improvements Fund after the authority has issued bonds authorized by this article and after the requirements of all funds, including reserve funds established in connection with the bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article have been satisfied may be used for the redemption of any of the outstanding bonds issued under this article which by their terms are then redeemable, or for the purchase of the bonds at the market price, but not exceeding the price, if any, at
which the bonds are in the same year redeemable and all
bonds redeemed or purchased shall immediately be canceled
and shall not again be issued.

The School Building Authority, in its discretion, may use
the moneys in the School Building Capital Improvements
Fund to finance the cost of projects authorized in accordance
with the provisions of section sixteen of this article on a cash
basis. Any pledge of moneys in the fund for revenue bonds
issued prior to the twentieth day of July, one thousand nine
hundred ninety-three, is a prior and superior charge on the
fund over the use of any of the moneys in the fund to pay for
the cost of any project on a cash basis: Provided, That any
expenditures from the fund, other than for the retirement of
revenue bonds, may only be made by the authority in
accordance with the provisions of this article.

(b) There is continued in the State Treasury a special
revenue fund named the School Building Debt Service Fund
into which shall be deposited the amounts specified in section
eighteen, article twenty-two, chapter twenty-nine of this
code. All amounts deposited in the fund shall be pledged to
the repayment of the principal, interest and redemption
premium, if any, on any revenue bonds or refunding revenue
bonds authorized by this article for which moneys deposited
in the School Building Debt Service Fund have been pledged
by the authority: Provided, That deposited moneys may not
be pledged to the repayment of any revenue bonds issued
prior to the first day of January, one thousand nine hundred
ninety-four, or with respect to revenue bonds issued for the
purpose of refunding revenue bonds issued prior to the first
day of January, one thousand nine hundred ninety-four.
Additionally, the authority may provide in the resolution and
in the trust agreement for priorities on the revenues paid into
the School Building Debt Service Fund that are necessary for
the protection of the prior rights of the holders of bonds
issued at different times under the provisions of this article.
On or prior to the first day of May of each year, the authority shall certify to the State Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: Provided, That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year for which moneys deposited in the School Building Debt Service Fund have been pledged, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any remaining balance in the School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.
(c) There is continued in the State Treasury a special revenue fund named the School Construction Fund into which shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature: 

Provided, That for the school year beginning the first day of July, two thousand four, only, funds from the excess lottery allocated in section eighteen-a, article twenty-two, chapter twenty-nine of this code shall not be transferred to the School Construction Fund and, in lieu thereof, made available for legislative appropriation: Provided, however, That for the school year beginning the first day of July, two thousand four, only, up to five million dollars of the amounts in the fund may be appropriated by the Legislature for budget shortfalls.

Expenditures from the School Construction Fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements made pursuant to subsection (e), section fifteen of this article and section nine, article five of this chapter and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Construction Fund shall be an interest-bearing account, with the interest credited to and deposited in the School Construction Fund and expended in accordance with the provisions of this article. Deposits to and expenditures from the School Construction Fund are subject to the provisions of subsection (k), section fifteen of this article.
(d) There is continued in the State Treasury a special revenue fund named the School Major Improvement Fund into which shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the School Major Improvement Fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Major Improvement Fund shall be an interest-bearing account, with interest being credited to and deposited in the School Major Improvement Fund and expended in accordance with the provisions of this article.

(e) There is created in the State Treasury a special revenue fund named the Excess Lottery School Building Debt Service Fund into which shall be deposited the amounts specified in section eighteen-a, article twenty-two, chapter twenty-nine of this code. All amounts deposited in the fund shall be pledged, as designated by the authority, to the repayment of the principal, interest and redemption premium, if any, on revenue bonds or refunding revenue bonds authorized by section four-b of this article. On or prior to the first day of May of each year, the authority shall certify to the State Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.
After the authority has issued bonds authorized by this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the Excess Lottery School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: Provided, That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year, including coverage and reserve funds established in connection with the bonds issued pursuant to this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.

(f) The Legislature finds and declares that the Supreme Court of Appeals of West Virginia has held that the issuance of additional revenue bonds authorized under the School Building Authority Act, as enacted in this article prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section four, article X of the Constitution of West Virginia,
221 but that revenue bonds issued under this article prior to the
twentieth day of July, one thousand nine hundred ninety-
three, are not invalid.

The Legislature further finds and declares that the
financial capacity of a county to construct, lease and improve
school facilities depends upon the county's bonding capacity
(local property wealth), voter willingness to pass bond issues
and the county's ability to reallocate other available county
funds instead of criteria related to educational needs or upon
the ability of the School Building Authority created in this
article to issue bonds that comply with the holding of the
West Virginia Supreme Court of Appeals or otherwise assist
counties with the financing of facilities construction and
improvement. The Legislature further finds and declares that
this section, as well as section eighteen, article twenty-two,
chapter twenty-nine of this code, had been reenacted during
the first extraordinary session of the West Virginia
Legislature in the year one thousand nine hundred ninety-four
in an attempt to comply with the holding of the Supreme
Court of Appeals of West Virginia.

The Legislature further finds and declares that it intends,
through the reenactment of this section and section eighteen,
article twenty-two, chapter twenty-nine of this code, to
dedicate a source of state revenues to special revenue funds
for the purposes of paying the debt service on bonds and
refunding bonds issued subsequent to the first day of January,
one thousand nine hundred ninety-four, the proceeds of
which will be used for the construction and improvement of
school building facilities. The Legislature further finds and
declares that it intends, through the reenactment of this
section and section thirty, article fifteen, chapter eleven of
this code and section eighteen, article twenty-two, chapter
twenty-nine of this code, to appropriate revenues to two
special revenue funds for the purposes of construction and
improvement of school building facilities. Furthermore, the
Legislature intends to encourage county boards to maintain existing levels of county funding for construction, improvement and maintenance of school building facilities and to generate additional county funds for those purposes through bonds and special levies whenever possible. The Legislature further encourages the School Building Authority, the state board and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to comply with the provisions of sections four and six, article X of the Constitution of West Virginia; and section one, article XII of said constitution.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate face value of bonds that may be issued by the authority, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is five hundred million dollars. The issuance of revenue bonds under the provisions of this article shall be authorized, from time to time, by resolution or resolutions of the School Building Authority which shall set forth the proposed projects authorized in accordance with the provisions of section sixteen of this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: Provided, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the
provisions of section sixteen of this article are not required to
set forth the proposed projects in the resolution. The
resolution shall prescribe the rights and duties of the
bondholders and the School Building Authority and, for that
purpose, may prescribe the form of the trust agreement
referred to in this section. The bonds may be issued, from
time to time, in such amounts; shall be of such series; bear
such date or dates; mature at such time or times not
exceeding forty years from their respective dates; bear
interest at such rate or rates; be in such denominations; be in
such form, either coupon or registered, carrying such
registration, exchangeability and interchangeability
privileges; be payable in such medium of payment and at
such place or places within or without the state; be subject to
such terms of redemption at such prices not exceeding one
hundred five percent of the principal amount of the bonds;
and be entitled to such priorities on the revenues paid into the
fund pledged for repayment of the bonds as may be provided
in the resolution authorizing the issuance of the bonds or in
any trust agreement made in connection with the bonds:
Provided, however, That revenue bonds issued on or after the
first day of January, one thousand nine hundred ninety-four,
and prior to the first day of January, two thousand eight,
which are secured by lottery proceeds from section eighteen
article twenty-two, chapter twenty-nine of this code shall
mature at such time or times not exceeding ten years from
their respective dates: Provided further, That revenue bonds
issued on or after the first day of January, two thousand eight,
which are secured by lottery proceeds from section eighteen
or eighteen-a, article twenty-two, chapter twenty-nine of this
code, shall mature at such time or times not exceeding twenty
years from their respective dates.

(b) The bonds shall be signed by the Governor, and by
the president or vice president of the authority, under the
great seal of the state, attested by the Secretary of State, and
the coupons attached to the bonds shall bear the facsimile
signature of the president or vice president of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if the officers had remained in office until the delivery. The revenue bonds shall be sold in the manner determined by the authority to be for the best interests of the state.

(c) Any pledge of revenues made by the School Building Authority for revenue bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article is valid and binding between the parties from the time the pledge is made; and the revenues pledged shall immediately be subject to the lien of the pledge without any further physical delivery of the revenues pledged or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether the parties have notice of the lien of the pledge and the pledge shall be a prior and superior charge over any other use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the authority provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the
projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with the provisions of section sixteen of this article or in any other manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds.

(e) After the issuance of any revenue bonds, the revenues pledged for the revenue bonds shall not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions that are contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued.

(f) The revenue bonds and the revenue refunding bonds and bonds issued for combined purposes, together with the interest on the bonds, are exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof.

(g) To meet the operational costs of the School Building Authority, the School Building Authority may transfer to a special revenue account in the State Treasury interest on any debt service reserve funds created within any resolution authorizing the issue of bonds or any trust agreement made in connection with the bonds for expenditure in accordance with legislative appropriation or allocation of appropriation.

(h) Any school construction bonds issued under this section shall be issued on parity with any existing School Building Authority bonds previously issued under this article.

(a) From the School Building Capital Improvements Fund the School Building Authority shall make periodic payments in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article prior to the first day of January, one thousand nine hundred ninety-four, or for refunding bonds issued prior to that date as may be specified in the resolution of the authority authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed as specified in such resolution or trust agreement in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another, except as may be provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund, less such reserve for payment of principal and interest and redemption premium, if any, as may be required by the resolution of the School Building Authority, authorizing the issue or any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but not exceeding the price, if any, at which such bonds shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

(b) From the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund, the authority shall make periodic payments in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article on or after the first day of January, one thousand nine hundred ninety-four, and for which the authority has pledged revenues in such fund for the payment of such bonds, as may be specified in the resolution...
of the authority authorizing the issue thereof or in any trust
agreement entered into in connection therewith. The
payments so made shall be placed as specified in the
resolution or trust agreement in a special sinking fund which
is hereby pledged to and charged with the payment of the
principal of the bonds of the issue and the interest thereon,
and to the redemption or repurchase of the bonds, the sinking
fund to be a fund for all bonds of the particular issue without
distinction or priority of one over another, except as may be
provided in the resolution authorizing the issuance of the
bonds. The moneys in the special sinking fund, less the
reserve for payment of principal and interest and redemption
premium, if any, as may be required by the resolution of the
School Building Authority authorizing the issue or any trust
agreement made in connection therewith, may be used for
redemption of any of the outstanding bonds payable from the
fund which by their terms are then redeemable, or for the
purchase of bonds at the market price, but not exceeding the
price, if any, at which such bonds shall in the same year be
redeemable; and all bonds redeemed or purchased shall
forthwith be canceled and shall not again be issued.

§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 or the Excess Lottery 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-f 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 or the Excess Lottery 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 or the Excess Lottery 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 or the Excess Lottery 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.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.


(a) There is continued a special revenue fund within the State Lottery Fund in the State Treasury which is designated and known as the State Excess Lottery Revenue Fund. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under subdivision (1), subsection (a), section one thousand four hundred eight, article twenty-two-b of this chapter, shall be deposited in the State Treasury and placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the
Auditor and the State Treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State Treasury to be known as the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) ten million dollars into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the Economic Development Project Fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the Higher Education Improvement Fund for Higher Education; and (7) five million dollars into the State Park Improvement Fund for Park Improvements. For the fiscal year beginning the first day of July, two thousand three, the commission shall deposit: (1) Sixty-five million dollars into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) seventeen million dollars into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the Economic Development Project Fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars
into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the Higher Education Improvement Fund for Higher Education; and (7) five million dollars into the State Park Improvement Fund for Park Improvements.

(c) For the fiscal year beginning the first day of July, two thousand four, and subsequent fiscal years, the commission shall deposit: (1) Sixty-five million dollars into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) twenty-seven million dollars into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the Economic Development Project Fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) nineteen million dollars into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds: Provided, That for the fiscal year beginning the first day of July, two thousand eight, and subsequent fiscal years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this subsection and instead nineteen million dollars shall be deposited into the Excess Lottery School Building Debt Service Fund; (5) forty million dollars into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the Higher Education Improvement Fund for Higher Education; and (7) five million dollars into the State Park Improvement Fund for Park Improvements. No portion of the distributions
made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia Economic Development Authority created and provided for in article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code, and upon direction of the Governor, issue revenue bonds of the Economic Development Authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds at the discretion of
the authority. Any revenue bonds issued on or after the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) There is continued in the State Treasury a special revenue fund named the Economic Development Project Fund into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsections (b) and (c) of this section. The Economic Development Project Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance thereof. The West Virginia Economic Development Authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the Economic Development Project Fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued, from time to time, under the provisions of this article.

(3) After the West Virginia Economic Development Authority has issued bonds authorized by this section and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in
connection with the bonds issued pursuant to this subsection, any balance remaining in the Economic Development Project Fund may be used for the redemption of any of the outstanding bonds issued under this subsection which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(4) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia; and that the bondholders' remedies are limited in all respects to the Special Revenue Fund established in this subsection for the liquidation of the bonds.

(5) The West Virginia Economic Development Authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for such projects as may be certified under the provision of this subsection. Provided, That the bond proceeds shall be expended in accordance with the requirements and provisions of article five-a, chapter twenty-one of this code and either article twenty-two or twenty-two-a, chapter five of this code, as the case may be: Provided, however, That if such bond proceeds are expended pursuant to article twenty-two-a, chapter five of this code and if the Design-Build Board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article and that a competitive bidding process was used in selecting the design builder and awarding such contract, such determination shall be conclusive for all purposes and shall be deemed to satisfy all the requirements of said article.
(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the Governor, or his or her designee, the Secretary of the Department of Revenue, the Executive Director of the West Virginia Development Office and six persons appointed by the Governor: Provided, That at least one citizen member must be from each of the state's three congressional districts. The committee shall meet as often as necessary and make certifications from bond proceeds in accordance with this subsection. The committee shall meet within thirty days of the effective date of this section.

(7) Applications for grants submitted on or before the first day of July, two thousand two, shall be considered refiled with the committee. Within ten days from the effective date of this section as amended in the year two thousand three, the lead applicant shall file with the committee any amendments to the original application that may be necessary to properly reflect changes in facts and circumstances since the application was originally filed with the committee.

(8) When determining whether or not to certify a project, the committee shall take into consideration the following:

(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;

(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved and the compensation reasonably anticipated to be paid persons
filling new jobs or the compensation currently paid to persons whose jobs would be retained;

(D) Whether the project will promote economic development in the region and the type of economic development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) No grant may be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state.

The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by the Economic Development Authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing.

(11) The committee may not certify a project unless the committee finds that the project is in the public interest and the grant will be used for a public purpose. For purposes of
this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields, parks, stadiums and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting and other facilities;

(G) Improvements at state parks, such as construction, expansion or extensive renovation of lodges, cabins, conference facilities and restaurants;

(H) Railroad bridges, switches and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;

(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football and soccer fields;

(J) State-owned buildings that are registered on the National Register of Historic Places;
(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping and security systems to revitalize decaying downtown areas;

and

(L) Other facilities that promote or enhance economic development, educational opportunities or tourism opportunities thereby promoting the general welfare of this state and its residents.

(12) Prior to the issuance of bonds under this subsection, the committee shall certify to the Economic Development Authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account created in the State Treasury to be known as the Economic Development Project Bridge Loan Fund to be administered by the Economic Development Authority created in article fifteen, chapter thirty-one of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Loan repayment amounts including the portion attributable to interest shall be paid into the fund created in this subdivision.

(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c) and (h) of this section, the commission shall first make the distribution to the Economic
Development Project Fund; second, make the distribution or distributions to the other funds from which debt service is to be paid; third, make the distribution to the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund; and fourth, make the distribution to the General Purpose Account: Provided, That, subject to the provisions of this subsection, to the extent such revenues are not pledged in support of revenue bonds which are or may be issued, from time to time, under this section, the revenues shall be distributed on a pro rata basis.

(f) For the fiscal year beginning on the first day of July, two thousand two, and each fiscal year thereafter, the commission shall, after meeting the requirements of subsections (b), (c) and (h) of this section and after transferring to the State Lottery Fund created under section eighteen of this article an amount equal to any transfer from the State Lottery Fund to the Excess Lottery Fund pursuant to subsection (f), section eighteen of this article, deposit fifty percent of the amount by which annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds two hundred twenty-five million dollars in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation by the Legislature.

(g) When bonds are issued for projects under subsection (d) of this section or for the School Building Authority, infrastructure, higher education or park improvement purposes described in this section that are secured by profits from lotteries deposited in the State Excess Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development Project Fund an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of July, two thousand two, as certified to the Lottery Director; and second, to the fund or funds from which debt service is paid on bonds issued under this section for the School Building Authority, infrastructure,
higher education and park improvements an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, as certified to the Lottery Director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(h) In fiscal year two thousand four and thereafter, prior to the distributions provided in subsection (c) of this section, the Lottery Commission shall deposit into the General Revenue Fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one, article twenty-one, chapter eleven of this code.

(i) (1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the Public Employees Insurance Agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the Governor to focus resources on the creation of a prescription drug program for
senior citizens by pursuing a Medicaid waiver to offer prescription drug services to senior citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or rebate programs for seniors; by coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient and cost-effective program possible for the senior citizens of this state; and by working closely with the state's congressional delegation to ensure that a national program is implemented. The Legislature further directs that the Governor report his progress back to the Joint Committee on Government and Finance on an annual basis beginning in November of the year two thousand one until a comprehensive program has been fully implemented.

CHAPTER 80

(S.B. 459 - By Senators Plymale, Edgell, Bailey, Green, Hunter, Oliverio, Stollings, Wells, Boley, Guills and Hall)

[Passed February 8, 2008; in effect from passage.]
[Approved by the Governor on February 19, 2008.]

AN ACT to amend and reenact §18-9D-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9D-21; and to amend and reenact §18B-17-2 of said code, all relating to education rules; authority of School Building Authority to promulgate rules; determining effective dates; waiving technical deficiencies; and authorizing rules of the School Building Authority and the Higher Education Policy Commission.
Be it enacted by the Legislature of West Virginia:

That §18-9D-20 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-21; and that §18B-17-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-20. Authority to promulgate rules; legislative authorization; effective date of rules; technical deficiencies waived.

(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 on the eighth day of June, two thousand seven, 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.

(c) Under the provisions of article three-a, chapter twenty-nine-a of this code, the Legislature expressly authorizes the promulgation of the rules described in this article, subject only to the limitations with respect to each rule set forth by law authorizing its promulgation. The Legislature further declares that all rules now or hereafter authorized in this article are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

(d) The effective date of a legislative rule authorized in section twenty-one of this article is governed by the provisions of section fourteen, article three-a, chapter twenty-nine-a of this code under the following conditions:

(1) The School Building Authority, in promulgating the rule, establishes an effective date which is earlier than that provided by that section, in which case the effective date established by the authority controls; or

(2) The Legislature, in the bill authorizing the rule, establishes an effective date for the rule, in which case the effective date established by the Legislature controls.

(e) The Legislature further declares each legislative rule now or hereafter authorized under this article to have been validly promulgated, notwithstanding any failure to comply with any requirement of article three-a, chapter twenty-nine-a of this code relating to the promulgation of rules at any stage of the promulgation process prior to authorization by the Legislature in this article.


(a) The legislative rule filed in the State Register on the twenty-seventh day of September, two thousand seven,
relating to the School Building Authority (School Building Authority requirements for Comprehensive Educational Facility Plan rule) is authorized.

(b) The legislative rule filed in the State Register on the twenty-seventh day of September, two thousand seven, relating to the School Building Authority (funding School Building Authority projects rule) is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of September, two thousand seven, relating to the School Building Authority (School Building Authority school planning and design criteria rule) is authorized.

(d) The legislative rule filed in the State Register on the twenty-seventh day of September, two thousand seven, relating to the School Building Authority (School Building Authority project administration and review rule) is authorized.

(e) The legislative rule filed in the State Register on the twenty-seventh day of September, two thousand seven, and amended by the School Building Authority and refiled on the tenth day of December, two thousand seven, relating to the School Building Authority (School Building Authority contract and agreements rule) is authorized.

(f) The legislative rule filed in the State Register on the twenty-seventh day of September, two thousand seven, relating to the School Building Authority (School Building Authority reporting procedures rule) is authorized.

(g) The legislative rule filed in the State Register on the twelfth day of July, two thousand seven, and amended by the School Building Authority and refiled on the twenty-eighth day of December, two thousand seven, relating to the School Building Authority (School Access Safety Act rule) is authorized.
CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 17. LEGISLATIVE RULES.


1. (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.

2. (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.

3. (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.

4. (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.

5. (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.

6. (f) The legislative rule filed in the State Register on the fourth day of January, two thousand eight, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.
AN ACT to amend and reenact §18-19-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-10-1, §18B-10-5, §18B-10-6 and §18B-10-7 of said code, all relating to higher education tuition and fees; clarifying eligibility requirements for tuition and fee waivers for certain applicants; allowing increases in existing tuition and fees at institutions that are below the state average; changing method of calculating limits on waivers of tuition and fees; exempting tuition and fee waivers granted to higher education employees, spouses and dependents and all tuition and fee waivers authorized by statute from calculation of limits on percentage of tuition and fee waivers granted by state institutions of higher education; and requiring waivers of tuition and fees for certain individuals.

Be it enacted by the Legislature of West Virginia:

That §18-19-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18B-10-1, §18B-10-5, §18B-10-6 and §18B-10-7 of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
18B. Higher Education.
ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR SPOUSES AND CHILDREN OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.

§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 meet the following conditions:

1. In the case of a child, is at least sixteen and not more than twenty-five years of age;

2. Is enrolled in a post-secondary education or training institution in this state; and

3. Is the child or spouse of an enlisted 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.
ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.
§18B-10-5. Fee waivers -- Undergraduate schools.
§18B-10-6. Fee waivers -- Professional and graduate schools.
§18B-10-7. Tuition and fee waivers for children and spouses of officers, firefighters, National Guard personnel, reserve personnel and active military duty personnel killed in the line of duty.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

1 (1) Tuition and required educational and general fees;
2 (2) Auxiliary and auxiliary capital fees; and
3 (3) Required educational and general capital fees.

(b) An institution may establish a single special revenue account for each of the following classifications of fees:

1 (1) All tuition and required educational and general fees collected;
2 (2) All auxiliary and auxiliary capital fees collected; and
3 (3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt
service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from the accounts, an institution may expend funds from each special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student's attorney to perform legal services for students in civil matters at the institutions: Provided, That the legal services are limited only to those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed.

d) The commission and council jointly shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees.

e) The schedule of all tuition and fees, and any changes in the schedule, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of the schedule and changes.

(f) The boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.
(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the provisions of this subsection.

(g) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student's finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis if the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with the provisions of article three-a,
(5) An institution may charge interest or fees for any deferred or installment payment plans.

(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government. The fee may not be used to finance litigation against the institution.

(i) Institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rule proposed by the commission and council jointly pursuant to this section. The tuition rule shall:

(1) Provide a basis for establishing nonresident tuition and fees;

(2) Allow institutions to charge different tuition and fees for different programs;

(3) Provide that a board of governors may propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;
(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(E) The commission, council or both, as appropriate, shall certify to the Legislature annually by the first day of October the amount of fees collected for each of the five years;

(4) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(j) A penalty may not be imposed by the commission or council upon any institution based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission or council on the numbers of nonresidents and such other enrollment information as the commission or council may request.
(k) Tuition and fee increases of the governing boards, except for the governing boards of the state institutions of higher education known as Marshall University and West Virginia University, are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(1) Subject to the provisions of subdivisions (4) and (8) of this subsection, a governing board of an institution under the jurisdiction of the commission may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year. The nine and one-half percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established specialized fee which may be proposed by a governing board.

(2) A governing board of an institution under the jurisdiction of the council may propose tuition and fee increases of up to four and three-quarters percent for undergraduate resident students for any fiscal year, except a governing board may propose increases in excess of four and three-quarters percent if existing tuition and fee rates at the institution are below the state average for tuition and fees at institutions under the jurisdiction of the council. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board.

(3) The commission or council, as appropriate, shall examine individually each request from a governing board for an increase.

(4) Subject to the provisions of subdivision (8) of this subsection, the governing boards of Marshall University and
West Virginia University, as these provisions relate to the
state institutions of higher education known as Marshall
University and West Virginia University, each may annually:

(A) Increase tuition and fees for undergraduate resident
students to the maximum allowed by this section without
seeking approval from the commission; and

(B) Set tuition and fee rates for post-baccalaureate
resident students and for all nonresident students, including
establishing regional tuition and fee rates, reciprocity
agreements or both.

(C) The provisions of this subdivision do not apply to
tuition and fee rates of the administratively linked institution
known as Marshall Community and Technical College, the
administratively linked institution known as the Community
and Technical College at West Virginia University Institute
of Technology, the regional campus known as West Virginia
University at Parkersburg and, until the first day of July, two
thousand seven, the regional campus known as West Virginia
University Institute of Technology.

(5) Any proposed tuition and fee increase for state
institutions of higher education other than the state
institutions of higher education known as Marshall
University and West Virginia University requires the
approval of the commission or council, as appropriate. In
determining whether to approve or deny the governing
board's request, the commission or council shall determine
the progress the institution has made toward meeting the
conditions outlined in this subdivision and shall make this
determination the predominate factor in its decision. The
commission or council shall consider the degree to which
each institution has met the following conditions:
(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a of this chapter;

(C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one and one-a of this chapter;

(D) Has demonstrated to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Has demonstrated to the satisfaction of the commission or council that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

(F) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

(6) This section does not require equal increases among institutions or require any level of increase at an institution.

(7) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (5) of this subsection.

(8) Notwithstanding the provisions of subdivisions (1) and (4) of this subsection, tuition and fee increases at state institutions of higher education which are under the
jurisdiction of the commission, including the state institutions
of higher education known as Marshall University and West
Virginia University, are subject to the following conditions:

(A) Institutions may increase tuition and fees for resident,
undergraduate students by no more than an average of seven
and one-half percent per year during any period covering four
consecutive fiscal years, with the first fiscal year of the first
four fiscal-year cycle beginning on the first day of July, two
thousand seven;

(B) The seven and one-half percent average cap does not
apply to an institution for any fiscal year in which the total
state base operating budget appropriations to that institution
are less than the total state base operating budget
appropriations in the fiscal year immediately preceding;

(C) A new capital fee or an increase in an existing capital
fee is excluded from the tuition and fee increase calculation
in this subdivision:

(i) If the new fee or fee increase is approved by an
institutional governing board or by a referendum of an
institution's undergraduate students, or both, on or before the
first day of February, two thousand six; or

(ii) If the following conditions are met:

(I) The new fee or fee increase was approved by an
institutional governing board or by a referendum of an
institution's undergraduate students, or both, on or before the
first day of July, two thousand six;

(II) The institution for which the capital fee is approved
has been designated a university pursuant to the provisions of
section six, article two-a of this chapter by the effective date
of this section; and
(III) The institutional board of governors previously oversaw a community and technical college that achieved independent accreditation and consequently acquired its own board of governors;

(D) Institutions shall provide, in a timely manner, any data on tuition and fee increases requested by the staff of the commission. The commission shall:

(i) Collect the data from any institution under its jurisdiction; and

(ii) Annually by the first day of July, provide a detailed analysis of the institutions' compliance with the provisions of this subdivision to the Legislative Oversight Commission on Education Accountability.

§18B-10-5. Fee waivers -- Undergraduate schools.

Each governing board periodically may establish fee waivers for students in undergraduate studies at institutions under its jurisdiction entitling recipients to waiver of tuition, capital and other fees subject to the following conditions and limitations:

(a) Undergraduate fee waivers established by the governing boards of Marshall University and West Virginia University, respectively, for the state institutions of higher education known as Marshall University and West Virginia University, are subject to the provisions of section six-a of this article;

(b) For the governing boards of state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University, the following conditions apply:
(1) An institution may not have in effect at any time undergraduate fee waivers totaling more in value than five percent of the tuition and required fees assessed for all full-time equivalent undergraduate students registered during the fall semester of the immediately preceding academic year.

(2) Each undergraduate fee waiver entitles the recipient of the waiver to attend a designated state institution of higher education without payment of the tuition, capital and other fees as may be prescribed by the governing board and is for a period of time not to exceed eight semesters of undergraduate study.

(3) The governing board shall make rules pursuant to the provisions of section six, article one of this chapter governing the award of undergraduate fee waivers; the issuance and cancellation of certificates entitling the recipients to the benefits of the waiver; the use of the fee waivers by the recipients; and the rights and duties of the recipients with respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(4) The awarding of undergraduate fee waivers shall be entered in the minutes of the meetings of the governing board.

(5) Students enrolled in an administratively linked community and technical college shall be awarded a proportionate share of the total number of undergraduate fee waivers awarded by a governing board. The number to be awarded to students of the community and technical college is based upon the full-time equivalent enrollment of that institution.

(6) An institution may grant fee waivers to its employees, their spouses and dependents and these waivers are not
counted when determining the maximum percentage of waivers permitted by this section.

(7) Any fee waivers mandated by this article or by section three, article nineteen, chapter eighteen of this code are not counted when determining the maximum percentage of waivers permitted by this section.

§18B-10-6. Fee waivers -- Professional and graduate schools.

In addition to the fee waivers authorized for undergraduate study by the provisions of section five of this article, each governing board periodically may establish fee waivers for study in graduate and professional schools under its jurisdiction, including medicine and dentistry, entitling the recipients to waiver of tuition, capital and other fees subject to the following conditions and limitations:

(a) Graduate and professional fee waivers established by the governing boards of Marshall University and West Virginia University, respectively, are subject to the provisions of section six-a of this article;

(b) For the governing boards of state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University, the following conditions apply:

(1) An institution may not have in effect at any time graduate and professional school fee waivers totaling more in value than five percent of the tuition and required fees assessed for all full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the five percent in this subdivision, all graduate assistants employed by these institutions shall be granted a fee waiver.
(2) Each graduate or professional school fee waiver entitles the recipient to waiver of the tuition, capital and other fees as may be prescribed by the governing boards and is for a period of time not to exceed the number of semesters normally required in the recipient's academic discipline.

(3) The governing boards shall make rules pursuant to the provisions of section six, article one of this chapter governing the award of graduate and professional school fee waivers; the issuance and cancellation of certificates entitling the recipients to the benefits of the waivers; the use of the fee waivers by the recipients; and the rights and duties of the recipients with respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(4) The awarding of graduate and professional school fee waivers shall be entered in the minutes of the meeting of each governing board.

(5) An institution may grant fee waivers to its employees, their spouses and dependents, and these waivers are not counted when determining the maximum percentage of waivers permitted by this section.

(6) Any fee waivers mandated by this article or by section three, article nineteen, chapter eighteen of this code are not counted when determining the maximum percentage of waivers permitted by this section.

§18B-10-7. Tuition and fee waivers for children and spouses of officers, firefighters, National Guard personnel, reserve personnel and active military duty personnel killed in the line of duty.

(a) Each state institution of higher education shall waive tuition and fees for any person who is the child or spouse of an individual who:
(1) Was employed or serving as:

(A) A law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code;

(B) A correctional officer at a state penal institution;

(C) A parole officer;

(D) A probation officer;

(E) A conservation officer; or

(F) A registered firefighter; and

(2) Was killed in the line of duty while:

(A) Employed by the state or any political subdivision of the state; or

(B) A member of a volunteer fire department serving a political subdivision of this state.

(b) Each state institution of higher education shall waive tuition and fees for any person who is the child or spouse of:

(1) A National Guard member or a member of a reserve component of the armed forces of the United States killed in the line of duty. The member is considered to have been killed in the line of duty if death resulted from performing a duty required by his or her orders or commander while in an official duty status, other than on federal active duty, authorized under federal or state law; or

(2) A person on federal or state active military duty who is a resident of this state and is killed in the line of duty. The person is considered to have been killed in the line of duty if
death resulted from performance of a duty required by his or her orders or commander while in an official duty status.

(c) Any waiver granted pursuant to this section is subject to the following:

(1) The recipient may attend any undergraduate course if classroom space is available;

(2) The recipient has applied and been admitted to the institution;

(3) The recipient has applied for and submitted the Free Application for Federal Student Aid;

(4) The recipient has exhausted all other sources of student financial assistance dedicated solely to tuition and fees that exceed other grant assistance that are available to him or her, excluding student loans;

(5) Waiver renewal is contingent upon the recipient continuing to meet the academic progress standards established by the institution.

(d) The state institution of higher education may require the person to pay:

(1) Special fees, including any laboratory fees, if the fees are required of all other students taking a single course or that particular course; and

(2) Parking fees.

(e) The governing boards may promulgate rules:

(1) For determining the availability of classroom space;
(2) As it considers necessary to implement this section; and

(3) Regarding requirements for attendance, which may not exceed the requirements for other persons.

(f) The governing boards may extend to persons attending courses and classes under this section any rights, privileges or benefits extended to other students which it considers appropriate.

CHAPTER 82

(H.B. 4623 - By Delegates Morgan, C. Miller and Craig)

[Passed March 8, 2008; in effect ninety days from passage.] [Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §18-23-4a of the Code of West Virginia, 1931, as amended, relating to the Higher Education Policy Commission; the Council for Community and Technical College Education; governing boards of state institutions of higher education; establishing minimum employer contributions; and allowing contributions to employee retirement plans by certain higher education employers to exceed the percentage contributions of employees.

Be it enacted by the Legislature of West Virginia:

That §18-23-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
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 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, Council for Community and Technical College Education and itself, shall contract for a retirement plan for its employees, to be known as the “Higher Education Retirement Plan”. The governing boards, Council for Community and Technical College Education 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, Council for Community and Technical College Education and the governing boards, may contract for supplemental retirement plans for any or all of their employees to supplement the benefits the employees otherwise receive. The governing
boards, Council for Community and Technical College Education 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) Each governing board, the Council for Community and Technical College Education and the Higher Education Policy Commission, by way of additional compensation to their employees, shall pay an amount, which, at a minimum, equals the contributions of the employees into the higher education retirement plan from funds appropriated to the board or commission for personal services.

(e) As part of an overall compensation plan, the Higher Education Policy Commission, the Council for Community and Technical College Education or an institutional governing board, each at its sole discretion, may increase its contributions to any employee retirement plan to an amount that exceeds the contributions of employees.

(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, the Council for Community and Technical College Education or the Higher Education Policy Commission, the Auditor periodically shall 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 matching funds of the governing board, Council for Community and Technical College Education or Higher Education Policy Commission.

(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 or the Council for Community and Technical College Education 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 or the Council for Community and Technical College Education.

CHAPTER 83


[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §18A-2-4 of the Code of West Virginia, 1931, as amended, relating to employment of school bus operators issued passenger endorsement on commercial driver license through intrastate waiver program for diabetes; eligibility for employment; conditions; negating negligence for noncompliance.
Be it enacted by the Legislature of West Virginia:

That §18A-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-4. Commercial driver's license for school personnel; intrastate waiver for bus operators diagnosed with diabetes mellitus requiring insulin; reimbursement of electrician's and commercial driver's license when required.

(a) If a commercial driver's license is required as a condition of employment for any school employee or qualified applicant who becomes an employee by a county board of education, the cost shall be paid in full by the employer.

It is unlawful for any county board of education to require any employee or applicant who becomes an employee of the board to pay the cost of acquiring a commercial driver's license as a condition of employment.

(b) The Division of Motor Vehicles shall accept the West Virginia Department of Education physical and psychomotor test result forms in lieu of the Division of Motor Vehicles vision report form.

(c) A school bus operator who is currently employed by a county board of education or who is otherwise subject to state board rules governing school bus operators and who is diagnosed with diabetes mellitus requiring insulin is not ineligible for employment as a school bus operator because of the diagnosis if the operator is issued a passenger
endorsement for his or her commercial driver license through 
the intrastate waiver program pertaining to diabetes of the 
West Virginia Division of Motor Vehicles, subject to the 
following:

(1) A copy of the information required to be submitted to 
the Division of Motor Vehicles for waiver application and 
proof of passenger endorsement under the waiver program is 
submitted to his or her employer; and

(2) The operator remains in compliance with the 
stipulations of and grounds for eligibility for the intrastate 
waiver.

(d) If a county board of education requires of any 
employee who is employed as an electrician any license 
renewal when the employee is exempt from renewing the 
license pursuant to section three, article three-b, chapter 
twenty-nine of this code, the cost of such license renewal 
shall be paid in full by the county board of education.

(e) Compliance with or failure to comply by a health care 
provider licensed and authorized pursuant to chapter thirty of 
this code, with the reporting requirements of the Division of 
Motor Vehicles regarding the provisions of subsection (c) of 
this section does not constitute negligence, nor may 
compliance or noncompliance with the requirements of this 
section be admissible as evidence of negligence in any civil 
or criminal action.
AN ACT to amend and reenact §18A-4-2b of the Code of West Virginia, 1931, as amended, relating to providing the state minimum salary supplement and the reimbursement of educational expenses to school psychologists and school nurses for achieving certain national certifications; increasing the number of certificate holders who are eligible for the supplements and reimbursements each year; and requiring State Board of Education rule.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2b. State minimum salary supplement and educational expense reimbursement for professional personnel with recognized national certification in speech-language pathology, audiology, counseling, school psychology or school nursing.

(a)(1) The Legislature finds that achieving a nationally recognized professional certification in speech-language pathology or audiology involves a rigorous process of demonstrating both knowledge and skills and results in
highly trained and capable employees. Individuals who attain national professional certification by the American Speech-Language-Hearing Association provide needed and essential services to the school students of this state. Individuals should be encouraged to achieve and maintain the national professional certification through reimbursement of expenses and a salary bonus which reflects their additional certification.

(2) The Legislature finds that the rigorous standards and processes for advanced certification by either the National Board of Certified Counselors or the West Virginia Board of Examiners in Counseling helps to promote the quality of counseling in schools. Counselors in the public schools of West Virginia should be encouraged to achieve and maintain the advanced certification through reimbursement of expenses and a salary bonus that reflects their additional certification.

(3) The Legislature finds that achieving a nationally recognized professional certification in school psychology involves a rigorous process of demonstrating competencies in scientific research-based knowledge and skills. School psychologists provide assessment, counseling and consultation to students, teachers, school administrators and parents. Individuals who attain national professional certification by the National Association of School Psychologists provide services to students, families and school systems in this state. School psychologists should be encouraged to achieve and maintain this national professional certification through reimbursement of expenses and a salary bonus which reflects their additional certification.

(4) The Legislature finds that achieving a nationally recognized professional certification in school nursing involves a rigorous process of demonstrating competencies in health care and nursing applications, knowledge and skills.
School nurses provide assessment, counseling and consultation to students, teachers, school administrators and parents. School nurses who attain national professional certification by the National Board for Certification of School Nurses provide services to students, families and school systems in this state. School nurses should be encouraged to achieve and maintain this national professional certification through reimbursement of expenses and a salary bonus which reflects their additional certification.

Therefore, the purpose of this section is:

(A) To provide a statewide salary supplement for certain professional personnel employed in the public schools who hold nationally recognized professional certification in speech-language pathology, audiology, counseling, school psychology or school nursing;

(B) To treat these professional certifications equally;

(C) To encourage others to attain such a certification; and

(D) To help school systems recruit these highly qualified professionals.

In addition to any amounts prescribed in the applicable state minimum salary schedule, any professional personnel who hold national certification or other credential as provided in this section shall be paid an annual salary supplement of two thousand five hundred dollars. The payment is:

(1) To be made in equal monthly installments;

(2) To be considered a part of the state minimum salaries for teachers; and
(3) To continue for the life of the certification, or for ten years for any one certification, whichever first expires.

(c) Professional personnel employed as speech-language pathologists, audiologists, counselors, school psychologists or school nurses are eligible upon enrollment for reimbursement for one-half of the fee for certification in accordance with this section. In addition, these personnel are eligible upon attainment of the certification for reimbursement of the remainder of the application fee plus other expenses actually incurred toward attainment of the certification, not exceeding six hundred dollars, upon approval by the department of education. Not more than one hundred fifteen speech-language pathologists, audiologists, counselors, school psychologists and school nurses, combined total, are eligible for reimbursement in any one fiscal year.

(d) Notwithstanding subsection (b) of this section, for the school year beginning the first day of July, two thousand eight, the number of speech-language pathologists, audiologists, counselors, school psychologists and school nurses paid the annual salary supplement provided for in said subsection may not exceed the number of speech-language pathologists, audiologists and counselors eligible to be paid the annual salary supplement under the provisions of this section in effect during the school year beginning the first day of July, two thousand seven, by more than one hundred fifteen qualified recipients, and the total amount of qualified recipients may not increase thereafter by more than one hundred fifteen in each subsequent fiscal year.

(e) The state board shall promulgate a legislative rule establishing criteria for selection of the individuals eligible for reimbursement and a salary supplement in accordance with this section. The selection criteria shall prioritize the length of time the certification has been held and the years of experience of the holder in determining eligibility.
(f) The state board shall report the rule to the Legislative Oversight Commission on Education Accountability by the January, two thousand nine, legislative interim meeting period and shall report on its progress in developing the rule to the commission during prior interim meetings as requested.

(g) No provision of this section may be construed to require any appropriation, or any specific level of appropriation, by the Legislature, or payment of any supplement or reimbursement described in this section for which a specific appropriation has not been made.

(h) Notwithstanding any other provision of this section or the provisions of section two-a of this article, professional personnel may not be paid a salary supplement pursuant to the provisions of both said sections.

CHAPTER 85

(Com. Sub. for H.B. 4472 - By Delegate Fragale)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-4-21, relating to school personnel; and providing that a board of education must wait ten days before posting a new job opening following the death of an employee.

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-4-21, to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-21. Posting of position opening following death of incumbent.

1 A county board may not declare a position vacant and 2 post a job opening sooner than ten days following the death 3 of an individual employed in that position.

CHAPTER 86

(H.B. 4478 - By Delegates M. Poling, Paxton, Wysong, Rodighiero, Ellis, Duke, Rowan, Gall and Wells)

[Passed March 4, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §18A-5-8 of the Code of West Virginia, 1931, as amended, relating to authority of certain aides to exercise control over students; compensation; transfers and limitations thereof; and expanding the classifications of service personnel for which transfers during the instructional term are limited.

Be it enacted by the Legislature of West Virginia:

That §18A-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 does 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 does 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 county 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 county 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 county board approval.

(g) Autism mentors and aides providing services to children diagnosed as autistic or with autism spectrum disorder; and paraprofessionals, interpreters and aides
providing one-on-one services to students with exceptionalities as required by the students’ individualized education programs (IEP).

(1) Legislative findings and intent.

(A) The Legislature finds that it is not in the best interest of a student with autism or a student with an exceptionality whose IEP requires one-on-one services to have multiple teachers, mentors, aides, paraprofessionals, interpreters or any combination thereof during the instructional term; and

(B) It is the intent of the Legislature that filling positions 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 for autism mentors and aides who work with students with autism and for paraprofessionals, interpreters and aides who work with students with exceptionalities whose IEPs require one-on-one services.

(2) Transfer limitations and conditions.

(A) Notwithstanding the provisions of subsection (f) of this section, after the fifth day prior to the beginning of the instructional term, a service person may not transfer to another position in the county during that instructional term, unless he or she does not have valid certification, if the service person is employed and assigned as an autism mentor or aide who works with students with autism, or as a paraprofessional, interpreter or aide who works with a student with an exceptionality whose IEP requires one-on-one services.

(B) The provisions of this subsection are subject to the following conditions:

(i) The aide, autism mentor, paraprofessional or interpreter 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 who is subject to the provisions
of this subsection 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 (j), section thirteen, article five, chapter eighteen
of this code and section two, article twenty of said chapter.

CHAPTER 87

(Com. Sub. for H.B. 3215 - By Delegates Doyle,
Wysong and Tabb)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 28, 2008.]

AN ACT to repeal §18B-1-7 of the Code of West Virginia, 1931, as
amended; to repeal §18B-1A-7 of said code; to repeal §18B-1B-11 of said code; to repeal §18B-2B-6a of said code; to
repeal §18B-6-1 of said code; to repeal §18B-14-8 of said code; to
amend and reenact §18B-1-2 and §18B-1-8 of said code; to
amend and reenact §18B-1B-6 of said code; to amend and reenact §18B-1C-2 of said code; to amend and reenact §18B-2A-1, §18B-2A-2 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-7a; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-2C-1 and §18B-2C-3 of said code; to amend and reenact §18B-3-3 of said code; to amend and reenact §18B-3C-5, §18B-3C-8, §18B-3C-12, §18B-3C-13 and §18B-3C-14; to amend said code by adding thereto a new section, designated §18B-3C-15; and to amend and reenact §18B-8-3 of said code, all relating to higher education generally; state institutions of higher education; statewide network of independently accredited community and technical colleges; modifying certain powers and duties of West Virginia Council for Community and Technical College Education, Higher Education Policy Commission and institutional boards of governors; defining terms; designating certain community and technical colleges as independent state institutions of higher education and removing administrative link to former sponsoring institutions; clarifying student rights under certain circumstances; providing for appointment of institutional presidents; specifying contract terms and evaluation procedures; modifying title of certain institutional employees; providing for continuation in office; abolishing institutional boards of advisors and establishing boards of governors for certain community and technical colleges; providing for initial appointments to boards of governors; quorums; establishing eligibility criteria and defining membership; requiring institutional master plans and compacts focused on achieving state goals, objectives and priorities; providing for transfer of certain orders, resolutions, rules and obligations from former sponsoring institutions to certain boards of governors; requiring division of assets and liabilities by date certain; providing guidelines for division of assets and liabilities; providing mechanism and time lines for resolution of disputes; prohibiting challenge of certain decisions in state courts; modifying requirements for certain rules; requiring certain
legislative and emergency rules; specifying approval procedure for emergency rules; clarifying certain reporting requirements; modifying procedure for establishing priorities for certain capital projects; modifying specifications for development of certain budgets; clarifying and redefining relationships between and among certain higher education boards and institutions; making legislative findings and specifying legislative intent; defining statewide network of independently accredited community and technical colleges; establishing core mission, objectives and priorities for independent community and technical colleges; authorizing certain governing boards to change institutional name by date certain; modifying number of lay members on certain governing boards; authorizing certain governing boards to maintain association with former sponsoring institutions under certain circumstances; continuing certain contracts related to program delivery and provision of certain services; making certain governing boards responsible for maintaining or achieving independent accreditation and essential conditions; requiring former sponsoring institutions to provide certain services for specified period; modifying fee requirements and limitations; specifying contract terms; providing for contract modification under certain circumstances; establishing Pierpont Community and Technical College as an independent state institution of higher education; defining institutional mission and duties and responsibilities of governing boards; requiring independent accreditation by date certain; providing for program accreditation by Fairmont State University under contract until certain date and requiring approval of contract terms by Council for Community and Technical College Education; directing council to take steps necessary to achieve independent accreditation status; providing for severing accreditation contract between institutions under certain circumstances; establishing advanced technology centers; defining mission, goals and objectives; establishing boards of advisors; specifying membership and terms of office; providing for transition oversight and implementation by Legislative Oversight Commission on
Education Accountability; providing for salary increase when faculty member is promoted in rank; making technical corrections; and deleting obsolete provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GOVERNANCE.

1. Definitions.
2. Student rights when institutional affiliations or governance structures change.

§18B-1-2. Definitions.
The following words when used in this chapter and chapter eighteen-c of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) "Governing boards" or "boards" means the institutional boards of governors created pursuant to section one, article two-a of this chapter;

(b) "Free-standing community and technical colleges" means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and Eastern West Virginia Community and Technical College, which may not be operated as branches or off-campus locations of any other state institution of higher education;

(c) "Community and technical college", in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, Eastern West Virginia Community and Technical College, New River Community and Technical College, West Virginia University at Parkersburg, The Community and Technical College at West Virginia University Institute of Technology, Blue Ridge Community and Technical College, Marshall Community and Technical College, West Virginia State Community and Technical College and Pierpont Community and Technical College;

(d) "Community and technical college education" means the programs, faculty, administration and funding associated with the delivery of community and technical college education programs;
(e) "Essential conditions" means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(f) "Higher education institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(g) "Higher Education Policy Commission", "Policy Commission" or "Commission" means the commission created pursuant to section one, article one-b of this chapter;

(h) "Chancellor for Higher Education" means the chief executive officer of the Higher Education Policy Commission employed pursuant to section five, article one-b of this chapter;

(i) "Chancellor for Community and Technical College Education" means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to section three, article two-b of this chapter;

(j) "Chancellor" means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. "Chancellor" means Chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

(k) "Institutional operating budget" or "operating budget" means for any fiscal year an institution's total unrestricted education and general funding from all sources in the prior fiscal year, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;
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(1) "Community and technical college education program" means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All programs are under the jurisdiction of the council. Any reference to "post-secondary vocational education programs" means community and technical college education programs as defined in this subsection;

(m) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(n) “Vice Chancellor for Administration” means the person employed in accordance with section two, article four of this chapter. Any reference in this chapter or chapter eighteen-c of this code to “Senior Administrator” means Vice Chancellor for Administration;

(o) "State college" means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College or West Virginia State University;

(p) "State institution of higher education" means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

(q) “Board of visitors” means the advisory board previously appointed for the West Virginia Graduate College and the advisory board previously appointed for West
Virginia University Institute of Technology, which provide
guidance to the Marshall University Graduate College and
West Virginia University Institute of Technology,
respectively;

(r) "Institutional compact" means the compact between
the commission or council and a state institution of higher
education under its jurisdiction, as described in section six,
article one-d of this chapter;

(s) "Peer institutions", "peer group" or "peers" means
public institutions of higher education used for comparison
purposes and selected by the commission pursuant to section
three, article one-a of this chapter;

(t) "Administratively linked community and technical
college" means a state institution of higher education
delivering community and technical college education and
programs which has maintained a contractual agreement to
receive essential services from another accredited state
institution of higher education prior to the first day of July,
two thousand eight;

(u) "Sponsoring institution" means a state institution of
higher education that maintained an administrative link to a
community and technical college providing essential services
prior to the first day of July, two thousand eight. This
definition includes institutions whose governing boards had
under their jurisdiction a community and technical college,
regional campus or a division delivering community and
technical college education and programs;

(v) "Collaboration" means entering into an agreement
with one or more providers of education services in order to
enhance the scope, quality or efficiency of education
services;
(w) "Broker" or "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state;

(x) “Council” means the West Virginia Council for Community and Technical College Education created pursuant to article two-b of this chapter;

(y) “West Virginia Consortium for Undergraduate Research and Engineering” or “West Virginia CURE” means the collaborative planning group established pursuant to article one-c of this chapter;

(z) “Advanced technology center” means a facility established under the direction of an independent community and technical college for the purpose of implementing and delivering education and training programs for high-skill, high-performance Twenty-first Century workplaces;

(aa) “Statewide network of independently accredited community and technical colleges” or “community and technical college network” means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited or are seeking independent accreditation by the regional accrediting agency, each governed by its own independent governing board, and each having a core mission of providing affordable access to and delivering high quality community and technical education in every region of the state; and

(bb) “Independent community and technical college” means a state institution of higher education under the jurisdiction of the council which is independently accredited
or seeking independent accreditation, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, The Community and Technical College at West Virginia University Institute of Technology, Eastern West Virginia Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, West Virginia State Community and Technical College, and West Virginia University at Parkersburg.

(cc) "Dual credit course" or "dual enrollment course" is a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level.

§18B-1-8. Student rights when institutional affiliations or governance structures change.

(a) When a conflict exists between academic program requirements at an institution to be consolidated, merged, separated from, or administratively linked to another state institution of higher education, the requirements of the institution at which the student initially enrolled prevail. A student may not be required to earn additional credits toward the degree pursued, or to take additional courses, that were not included in the program of study at the time the student declared that major at the enrolling institution.

(b) A student enrolled in an institution to be consolidated, merged, separated from, or administratively linked to another state institution of higher education shall continue to receive
ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-6. Appointment of institutional presidents; evaluation.

(a) Appointment of institutional presidents. --
Appointment of presidents of the state institutions of higher education shall be made as follows:

(1) The initial contract term for a president of a state institution of higher education may not exceed two years. At the end of the initial contract period, and subject to the provisions of subsection (c) of this section, the governing board may offer the president a contract of longer duration, but not to exceed five years.

(A) The provisions relating to initial contract periods do not affect the terms of a current contract for any person holding a multiyear contract and serving as president of a state institution of higher education or division of a state institution of higher education delivering community and technical education on the thirtieth day of June, two thousand eight;

(B) At the end of the current contract period and thereafter, the governing board shall make presidential appointments in accordance with the provisions of this section.

(2) The person who is president, provost, or divisional administrative head of the community and technical college on the thirtieth day of June, two thousand eight, becomes the president of the institution on the effective date of this section.
(3) The president of a state institution of higher education serves at the will and pleasure of the appointing governing board.

(4) Subject to the approval of the commission, the governing board of the institution appoints a president for Bluefield State College, Concord University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty State College, West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

(5) Subject to the approval of the council, the governing board of the community and technical college appoints a president for Blue Ridge Community and Technical College, The Community and Technical College at West Virginia University Institute of Technology, Eastern West Virginia Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, West Virginia State Community and Technical College, and West Virginia University at Parkersburg.

(b) Other appointments. -- The institutional president appoints a provost to be the administrative head of the Potomac campus of West Virginia University and a provost to be the administrative head of West Virginia University Institute of Technology.

(c) Evaluation of presidents. --

(1) The appointing governing board shall conduct written performance evaluations of the institution's president. Evaluations shall be done at the end of the initial two-year contract period and in every third year of employment as
president thereafter, recognizing unique characteristics of the institution and using institutional personnel, boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact and in achieving the goals, objectives and priorities established in articles one and one-d of this chapter.

(2) After reviewing the evaluations, the board of governors shall make a determination by majority vote of its members on continuing employment and the compensation level for the president in accordance with the provisions of subsection (a) of this section.

(d) The commission and council each shall propose a rule for legislative approval in accordance with the provisions of section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code by the first day of September, two thousand eight, to provide guidance for the institutional governing boards in filling vacancies in the office of president in accordance with the provisions of this chapter. The rule shall include, but is not limited to, clarifying the powers, duties and roles of the governing boards, the commission, the council, and the chancellors in the presidential appointment process.

(e) The Legislature finds that an emergency exists and, therefore, the commission and the council each shall file a rule to implement the provisions of this section as an emergency rule by the first day of September, two thousand eight, pursuant to the provisions of article three-a, chapter twenty-nine-a of this code. The emergency rule may not be implemented without prior approval of the Legislative Oversight Commission on Education Accountability.
ARTICLE 1C. WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY.

§18B-1C-2. West Virginia University Institute of Technology; division of West Virginia University.

(a) West Virginia University Institute of Technology is a fully integrated division of West Virginia University. All administrative and academic units are consolidated with primary responsibility for direction and support assigned to West Virginia University. The advisory board previously appointed for West Virginia University Institute of Technology is known as the board of visitors and shall provide guidance to the division in fulfilling its mission. The chairperson of the board of visitors serves as an ex-officio, voting member of the West Virginia University Board of Governors.

(b) The fully integrated division is named West Virginia University Institute of Technology. The headquarters of West Virginia University Institute of Technology remains in Montgomery, West Virginia.

(c) The provisions of this section do not affect the independent accreditation or continued operation of The Community and Technical College at West Virginia University Institute of Technology. Effective the first day of July, two thousand eight, the institution becomes an independent community and technical college administered by its own governing board under the jurisdiction and authority of the council and is subject to all applicable provisions of this chapter and chapter eighteen-c of this code.

(d) Auxiliary enterprises shall be incorporated into the West Virginia University auxiliary enterprise system. The West Virginia University Board of Governors shall determine if operations at West Virginia University Institute of
Technology can be operated on a self-sufficient basis when establishing rates for auxiliary services and products.

(c) West Virginia University Institute of Technology has a strong reputation in engineering and other scientific disciplines. These programs shall be maintained, cultivated and emphasized further as its sustaining mission over the next decade.

(f) By the first day of April, two thousand seven, the West Virginia University Board of Governors shall develop and approve a plan to implement the provisions of this article. Beginning the first day of July, two thousand six, the board of governors may begin implementing appropriate changes in the operations of West Virginia University Institute of Technology to further the purposes of this article.

(g) By the first day of November, two thousand six, and annually thereafter for a period of four years, the West Virginia University Board of Governors shall prepare and submit a report to the commission and Legislative Oversight Commission on Education Accountability on progress being made to implement the provisions of this article.

(h) West Virginia University Institute of Technology shall develop or maintain baccalaureate degree programs as a permanent component of its curriculum.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment; establishment of boards for independent community and technical colleges.


§18B-2A-7a. Transfer of orders, resolutions, policies and rules, obligations, etc.
reappointment; establishment of boards for independent community and technical colleges.

(a) A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Marshall University, New River Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

(b) Independent community and technical colleges established --

(1) Effective the first day of July, two thousand eight, the board of advisors is abolished and a board of governors is established for Marshall Community and Technical College; Pierpont Community and Technical College, formerly a division of Fairmont State University; The Community and Technical College at West Virginia University Institute of Technology; West Virginia State Community and Technical College; and West Virginia University at Parkersburg.

(A) In making the initial appointments to these boards of governors, the Governor shall appoint those persons who are lay members of the boards of governors by the thirtieth day of June, two thousand eight.

(B) At the end of the initial term, and thereafter, an appointment to fill a vacancy on the board or reappointment of a member who is eligible to serve an additional term is made in accordance with the provisions of this section.
(c) The institutional boards of governors for Marshall University and West Virginia University consist of sixteen persons. The boards of governors of the other state institutions of higher education consist of twelve persons.

(d) Each board of governors includes the following members:

(1) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;

(2) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution;

(3) A member from the institutional classified employees duly elected by the classified employees of the respective institution; and

(4) For the institutional Board of Governors at Marshall University, thirteen lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

(5) For the institutional Board of Governors at West Virginia University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the Board of Visitors of West Virginia University Institute of Technology.

(6) For each institutional board of governors of the other state institutions of higher education, nine lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.
(e) Of the nine members appointed by the Governor, no more than five may be of the same political party. Of the thirteen members appointed by the Governor to the governing board of Marshall University, no more than eight may be of the same political party. Of the twelve members appointed by the Governor to the governing board of West Virginia University, no more than seven may be of the same political party. Of the nine members appointed by the Governor, at least six shall be residents of the state. Of the thirteen members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the twelve members appointed by the Governor to the governing board of West Virginia University, at least eight shall be residents of the state.

(f) The student member serves for a term of one year. Each term begins on the first day of July.

(g) The faculty member serves for a term of two years. Each term begins on the first day of July. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(h) The member representing classified employees serves for a term of two years. Each term begins on the first day of July. Members representing classified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(i) The appointed lay citizen members serve terms of up to four years each and are eligible to succeed themselves for no more than one additional term.

(j) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all
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91  elections shall be held and all appointments shall be made no
92  later than the thirtieth day of June preceding the
93  commencement of the term. Each board of governors shall
94  elect one of its appointed lay members to be chairperson in
95  June of each year except for the fiscal year beginning on the
96  first day of July, two thousand eight only, when the board
97  shall elect the chairperson in July. A member may not serve
98  as chairperson for more than four consecutive years.

99  (k) The appointed members of the institutional boards of
100  governors serve staggered terms of up to four years except
101  that four of the initial appointments to the governing boards
102  of community and technical colleges which become
103  independent on the first day of July, two thousand eight are
104  for terms of two years and five of the initial appointments are
105  for terms of four years.

106  (l) A person is ineligible for appointment to membership
107  on a board of governors of a state institution of higher
108  education under the following conditions:

109  (1) For a baccalaureate institution or university, a person
110  is ineligible for appointment who is an officer, employee or
111  member of any other board of governors, an employee of any
112  institution of higher education; an officer or member of any
113  political party executive committee; the holder of any other
114  public office or public employment under the government of
115  this state or any of its political subdivisions; an employee of
116  any affiliated research corporation created pursuant to article
117  twelve of this chapter; an employee of any affiliated
118  foundation organized and operated in support of one or more
119  state institutions of higher education; or a member of the
120  council or commission. This subsection does not prevent the
121  representative from the faculty, classified employees,
122  students, or the superintendent of a county board of education
123  from being members of the governing boards.
(2) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of a board of visitors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students, or chairpersons of the boards of advisors from being members of the governing boards.

(m) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(n) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

(o) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. The members of the board of governors serve without compensation, but are reimbursed for all
reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.


(a) The boards of governors shall hold at least six meetings in every fiscal year, including an annual meeting each June for the purpose of electing officers.

Of the sixteen voting members of the boards of governors of Marshall University and West Virginia University, nine shall constitute a quorum. Of the twelve voting members of the boards of governors of the other state institutions of higher education, seven shall constitute a quorum. A majority vote of the quorum shall be necessary to pass upon matters before the institutional board of governors.

(b) The boards of governors may set aside time as they consider appropriate to afford administrators, faculty, students and classified staff an opportunity to discuss issues affecting these groups.


Each governing board separately has the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institution of higher education under its jurisdiction;

(b) Develop a master plan for the institution under its jurisdiction.
(1) The ultimate responsibility for developing and updating the master plans at the institutional level resides with the board of governors, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission or council, as appropriate.

(2) Each master plan shall include, but not be limited to, the following:

(A) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(B) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(C) Document the involvement of the commission or council, as appropriate, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

(3) The plan shall be established for periods of not less than three nor more than five years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, are necessary;

(c) Prescribe for the institution under its jurisdiction, in accordance with its master plan and compact, specific functions and responsibilities to achieve the goals, objectives and priorities established in articles one and one-d of this chapter to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;
(d) Direct the preparation of a budget request for the institution under its jurisdiction, which relates directly to missions, goals and projections as found in the institutional master plan and the institutional compact;

(e) Consider, revise and submit to the commission or council, as appropriate, a budget request on behalf of the institution under its jurisdiction;

(f) Review, at least every five years, all academic programs offered at the institution under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to established state goals, objectives and priorities, the institutional master plan, the institutional compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institution under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;

(g) Ensure that the sequence and availability of academic programs and courses offered by the institution under its jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at the institution under its jurisdiction is transferable to any other state institution of higher education for credit with the grade earned;
(h) Subject to the provisions of article one-b of this chapter, approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the commission may select and use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(i) Use faculty, students and classified employees in institutional-level planning and decisionmaking when those groups are affected;

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institution under its jurisdiction;

(k) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article two, chapter six-c of this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

(l) Solicit and use or expend voluntary support, including financial contributions and support services, for the institution under its jurisdiction;

(m) Appoint a president for the institution under its jurisdiction subject to the provisions of section six, article one-b of this chapter;

(n) Conduct written performance evaluations of the president pursuant to section six, article one-b of this chapter;
(o) Employ all faculty and staff at the institution under its jurisdiction. The employees operate under the supervision of the president, but are employees of the governing board;

(p) Submit to the commission or council, as appropriate, no later than the first day of November of each year an annual report of the performance of the institution under its jurisdiction during the previous fiscal year as compared to established state goals, objectives, and priorities, and goals stated in its master plan and institutional compact;

(q) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution’s responsibility district. To accomplish this goal, the boards may share resources among the various groups in the community;

(r) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;

(s) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its master plan and institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall enter the delegation in the minutes of the meeting when the decision was made and shall notify the commission or council, as appropriate. Any delegation of power and control may be rescinded by the appropriate governing board, the commission or council, as appropriate, at any time, in whole or in part, except that the commission may not revoke
delegations of authority made by the governing boards of Marshall University or West Virginia University as they relate to the state institutions of higher education known as Marshall University and West Virginia University;

(t) Unless changed by the commission or the council, as appropriate, continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for the institution under its jurisdiction. Individual departments at a state institution of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(u) Consult, cooperate and work with the State Treasurer and the State Auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds at the institution under its jurisdiction that ensures that properly submitted requests for payment be paid on or before due date but, in any event, within fifteen days of receipt in the State Auditor's office;

(v) In consultation with the appropriate chancellor and the Secretary of the Department of Administration, develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institution under its jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized system or forms which shall be submitted to the respective governing board and the Department of Finance and Administration;

(w) Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically
appropriated for its use to any corresponding line item in a general revenue account at any agency or institution under its jurisdiction as long as such transferred funds are used for the purposes appropriated;

(x) Transfer funds from appropriated special revenue accounts for capital improvements under its jurisdiction to special revenue accounts at agencies or institutions under its jurisdiction as long as such transferred funds are used for the purposes appropriated;

(y) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the governing board, its institution, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing board may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law; and

(z) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.

§18B-2A-7a. Transfer of orders, resolutions, policies and rules, obligations, etc.

(a) Effective the first day of July, two thousand eight, a governing board is established for the following state institutions of higher education pursuant to section one of this article:

(1) Marshall Community and Technical College;

(2) Pierpont Community and Technical College, formerly a division of Fairmont State University;
(3) The Community and Technical College at West Virginia University Institute of Technology;

(4) West Virginia State Community and Technical College; and

(5) West Virginia University at Parkersburg.

(b) All orders, resolutions, policies and rules adopted or promulgated by a governing board of a former administratively linked community and technical college, regional campus, or division within an accredited institution on behalf of an institution named in subsection (a) of this section relating to the community and technical college or community and technical college education, or which the newly-established board of governors finds necessary or expedient for the exercise of its lawful powers and duties pursuant to the provisions of this chapter, shall continue in effect until rescinded, revised, altered or amended by the newly-established board of governors. Nothing in this section requires the initial rules or policies of a community and technical college to be promulgated again under the rule adopted by the council pursuant to section six, article one of this chapter unless such rules or policies are rescinded, altered or amended.

(c) Each valid agreement and obligation, undertaken or agreed to by the former sponsoring institution or governing board of a division, regional campus or administratively-linked community and technical college before the first day of July, two thousand eight, on behalf of a community and technical college named in subsection (a) of this section is hereby transferred to the board of governors of that community and technical college.

(d) Each newly established board of governors and each appropriate institution formerly sponsoring a community and
technical college shall jointly agree on a division of all assets and liabilities. If the boards of governors are unable to reach agreement concerning a division of assets and liabilities on or before the first day of December, two thousand eight, the boards of governors shall submit a summary of issues in dispute to the commission and the council which shall jointly resolve all outstanding issues concerning the division of assets and liabilities.

(e) For purposes of generating audited financial statements for inclusion in the higher education fund and state single audits, the division of all assets and liabilities shall be effective retroactively to the first day of July, two thousand eight.

(f) Any other disputes between an independent community and technical college and its former sponsoring institution, regarding their respective rights and responsibilities under this chapter of the code, which cannot be resolved by the governing boards, shall be resolved as follows:

(1) The matters in dispute shall be summarized in writing and submitted to the chancellors jointly for resolution;

(2) If the matters in dispute cannot be resolved by the chancellors within thirty days, they shall be submitted to the council and commission for resolution;

(3) If the commission and council jointly cannot reach a resolution following their first regularly scheduled meeting or within sixty days, whichever is sooner, the chairpersons of the commission and council respectively shall establish a three-person panel to hear the matters and issue a decision within thirty days:

(A) The three-person panel is comprised of one person appointed by the chairperson of the commission, one person
appointed by the chairperson of the council, and one person
appointed jointly by the two chairpersons.

(B) The decision rendered by the three-person panel is
binding on the governing boards, commission and council,
and may not be challenged in the courts of this state.

(g) Each former sponsoring institution and community
and technical college shall enter into a comprehensive
agreement to address the division of assets and liabilities and
the allocation of revenues and expenditures between former
sponsoring institutions and newly independent community
and technical colleges.

(h) Absent manifest injustice as determined jointly by the
council and commission, the following general principles
apply to the division of assets and liabilities and allocation of
revenues and expenditures between former sponsoring
institutions and the newly independent community and
technical colleges:

(1) For accounting purposes, the institution that assumes
responsibility for any asset also shall assume responsibility
for any associated liabilities.

(2) Although one institution may assume responsibility
for an asset and associated liabilities for accounting purposes,
both institutions shall agree on their respective
responsibilities for reducing and ultimately eliminating the
liability over time if the asset was originally acquired and/or
is being used for the benefit of both institutions.

(A) Any agreement to allocate system and institution
educational and general and auxiliary debt service payments
shall be consistent with the provisions of all applicable bond
covenants.
(B) Absent a controlling bond covenant or other agreement, debt service payments associated with bonded indebtedness presumptively shall be allocated based on the relative full-time equivalent student enrollment of the two institutions either as a whole or on the campus where the asset is located and may be adjusted annually to reflect enrollment changes at the two institutions.

(3) The institutions shall agree to allocate educational and general and auxiliary capital fees in excess of those needed to cover bonded indebtedness to ensure that assets of both institutions are maintained in proper repair and that the institutions assume responsibility for a reasonable share of the total costs of maintaining the facilities.

(4) The institutions shall develop a plan that ensures the financial stability of auxiliary enterprises, including, but not limited to, student housing, student centers, dining services, parking, and athletics through fiscal year two thousand twelve.

(A) If community and technical college students pay a mandatory athletics fee for the benefit of a former sponsoring institution, but receive no direct benefit from that fee, the community and technical college may phase out that fee over a five-year period.

(B) If certain community and technical college students were required to live in institution housing consistent with rules or policies in effect on the effective date of this section, the former sponsoring institution may continue to require these students to live in institution housing for at least one year.

(i) If either institution proposes to reduce the services that it provides or purchases from the other institution by more than ten percent in any one year and the reduction exceeds
two hundred thousand dollars, the institution shall obtain the approval of both the council and the commission before doing so. In evaluating the proposal, the council and commission shall consider the following:

(1) The benefit to be obtained for the institution seeking to reduce the services it provides or purchases;

(2) The impact of the proposed reduction on the institution currently providing the services;

(3) Any additional costs that might be incurred as a result of the reduction in services; and

(4) The adequacy of the transition plan.

(j) To the extent practicable, state financial systems shall be set up for higher education institutions which participate in shared services agreements to facilitate ease of processing while ensuring that data from the two institutions are readily segregable at the state level.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.


(a) The council is the sole agency responsible for administration of vocational-technical-occupational education and community and technical college education in the state. The council has jurisdiction and authority over the community and technical colleges and the statewide network of independently accredited community and technical colleges as a whole, including community and technical college education programs as defined in section two, article one of this chapter.
(b) The council shall propose rules pursuant to section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code to implement the provisions of this section and applicable provisions of article one-d of this chapter:

(1) To implement the provisions of article one-d of this chapter relevant to community and technical colleges, the council may propose rules jointly with the commission or separately and may choose to address all components of the accountability system in a single rule or may propose additional rules to cover specific components;

(2) The rules pertaining to financing policy and benchmarks and indicators required by this section shall be filed with the Legislative Oversight Commission on Education Accountability by the first day of October, two thousand eight. Nothing in this subsection requires other rules of the council to be promulgated again under the procedure set forth in article three-a, chapter twenty-nine-a of this code unless such rules are rescinded, revised, altered or amended; and

(3) The Legislature finds that an emergency exists and, therefore, the council shall propose an emergency rule or rules to implement the provisions of this section relating to the financing policy and benchmarks and indicators in accordance with section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code by the first day of October, two thousand eight. The emergency rule or rules may not be implemented without prior approval of the Legislative Oversight Commission on Education Accountability.

(c) The council has the following powers and duties relating to the authority established in subsection (a) of this section:
(1) Develop, oversee and advance the public policy agenda for community and technical college education for the purpose of accomplishing the mandates of this section, including, but not limited to, the following:

(A) Achieving the goals and objectives established in articles one and one-d of this chapter;

(B) Addressing the goals and objectives contained in the institutional compacts created pursuant to section seven, article one-d of this chapter; and

(C) Developing and implementing the master plan described in section five, article one-d of this chapter;

(2) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to develop and implement a financing policy for community and technical college education in West Virginia. The rule shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

(C) Establish a plan for strategic funding to strengthen capacity for support of community and technical college education; and

(D) Establish a plan that measures progress and provides performance-based funding to institutions which make significant progress in the following specific areas:
(i) Achieving the objectives and priorities established in article one-d of this chapter;

(ii) Serving targeted populations, especially working age adults twenty-five years of age and over;

(iii) Providing access to high cost, high demand technical programs in every region of the state;

(iv) Increasing the percentage of functionally literate adults in every region of the state; and

(v) Providing high quality community and technical college education services to residents of every region of the state.

(3) Create a policy leadership structure relating to community and technical college education capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards of the institutions under the council’s jurisdiction carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding each community and technical college and the statewide network of independently accredited
community and technical colleges as a whole accountable for accomplishing their missions and achieving the goals and objectives established in articles one, one-d, and three-c of this chapter;

(4) Develop for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting workforce and economic development and ensuring access to advanced education for the citizens of West Virginia;

(5) Provide statewide leadership, coordination, support, and technical assistance to the community and technical colleges and to provide a focal point for visible and effective advocacy for their work and for the public policy agendas approved by the commission and council.

(6) Review and adopt annually all institutional compacts for the community and technical colleges pursuant to the provisions of section seven, article one-d of this chapter;

(7) Fulfill the mandates of the accountability system established in article one-d of this chapter and report on progress in meeting established goals, objectives, and priorities to the elected leadership of the state;

(8) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to establish benchmarks and indicators in accordance with the provisions of this subsection;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress:

(A) In meeting state goals, objectives, and priorities established in articles one and one-d of this chapter;
(B) In carrying out institutional missions; and

(C) In meeting the essential conditions established in article three-c of this chapter;

(10) Collect and analyze data relating to the performance of community and technical colleges in every region of West Virginia and report periodically or as directed to the Legislative Oversight Commission on Education Accountability on the progress in meeting the goals and objectives established in articles one and one-d of this chapter.

Additionally, the council shall report annually during the January interim meetings on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates.

The annual report shall address at least the following:

(A) The performance of the community and technical college network during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the network as a whole in meeting the goals and objectives established in articles one and one-d of this chapter;

(B) The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority; and

(C) Recommendations of the council for statutory changes necessary or expedient to achieve established state goals and objectives.

(11) Establish a formal process for identifying needs for capital investments and for determining priorities for these
investments for consideration by the Governor and the Legislative as part of the appropriation request process. Notwithstanding the language in subdivision eleven, subsection a, section four, article one-b of this chapter, the commission is not a part of the process for identifying needs for capital investments for the statewide network of independently accredited community and technical colleges.

(12) Draw upon the expertise available within the Governor’s Workforce Investment Office and the West Virginia Development Office as a resource in the area of workforce development and training;

(13) Acquire legal services that are considered necessary, including representation of the council, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(14) Employ a chancellor for community and technical college education pursuant to section three of this article;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of section two, article four of this chapter;

(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council;

(17) Provide suitable offices in Charleston for the chancellor and other staff;
(18) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;

(19) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(20) Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor’s degree at a state institution of higher education;

(21) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as council members consider critical for the performance of their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in articles one and one-d of this chapter;
(22) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education;

(23) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(24) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter.

(25) Develop and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions:

(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions which achieve or make significant progress toward achieving established state objectives and priorities;

(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals objectives, and priorities established in article one-d of this chapter and its approved institutional compact.
(26) Administer and distribute the independently accredited community and technical college development account;

(27) Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high quality community and technical college education in all regions of the state;

(28) Foster coordination among all state-level, regional and local entities providing post-secondary vocational education or workforce development and coordinate all public institutions and entities that have a community and technical college mission;

(29) Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to article three-c of this chapter;

(30) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in articles one, one-d, and three-c of this chapter;

(31) Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;

(32) Provide a mechanism capable of serving two or more institutions to facilitate joint problem-solving in areas including, but not limited to the following:
(A) Defining faculty roles and personnel policies;

(B) Delivering high-cost technical education programs across the state;

(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and

(D) Providing opportunities for resource-sharing and collaborative ventures;

(33) Provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in all regions of the state;

(34) Assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each community and technical college is responsible;

(35) Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

(36) Serve aggressively as an advocate for development of a seamless curriculum;

(37) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulation between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve;

(38) Encourage the most efficient use of available resources;
(39) Coordinate with the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs;

(40) Jointly with the commission, approve and implement a uniform standard, as developed by the chancellors, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the State Board of Education and the State Superintendent of Schools;

(41) Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education.

(42) Develop a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program;

(43) Review and approve all institutional master plans for the community and technical colleges pursuant to section four, article two-a of this chapter;

(44) Propose rules for promulgation pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;
(45) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule transferred pursuant to rules adopted by the council and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules;

(46) Develop for inclusion in the higher education report card, as defined in section eight, article one-d of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;

(47) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Marshall Community and Technical College;

(48) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;

(49) Develop with the State Board of Education plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to the following:

(A) Policies to strengthen vocational-technical-occupational and adult basic education; and

(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;

(50) Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical
Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda.

In distributing funds the council shall use the following guidelines:

(A) The State Board of Education shall continue to be the fiscal agent for federal vocational education funding;

(B) The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under the provisions of article three-a, chapter twenty-nine-a of this code. The council shall first obtain the approval of the State Board of Education before proposing a rule;

(51) Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

(52) Coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;

(53) Analyze and report to the State Board of Education on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state;
Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state which emphasize the involvement of business, industry and labor organizations;

Promote public participation in the provision of vocational-technical-occupational education, adult basic education and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations;

Promote equal access to quality vocational-technical-occupational education, adult basic education and community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping and criminal offenders serving in correctional institutions;

Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;

Assume the powers set out in section nine of this article. The rules previously promulgated by the State College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to
the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(60) Pursuant to the provisions of subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(61) Determine when a joint rule among the governing boards of the community and technical colleges is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

(62) Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Any other policies the commission and council consider appropriate;

(63) In cooperation with the West Virginia Division of Highways, study a method for increasing the signage signifying community and technical college locations along the state interstate highways, and report to the Legislative Oversight Commission on Education Accountability regarding any recommendations and required costs; and
(64) Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.

(d) In addition to the powers and duties listed in subsections (a), (b) and (c) of this section, the council has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda for community and technical colleges:

(1) Planning and policy leadership including a distinct and visible role in setting the state’s policy agenda for the delivery of community and technical college education and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the community and technical college network as a whole or a geographical region thereof;

(3) Development and implementation of each community and technical college mission definition including use of incentive and performance funds to influence institutional behavior in ways that are consistent with achieving established state goals, objectives, and priorities;

(4) Academic program review and approval for the institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources for institutions delivering community and technical college education, including reviewing and approving institutional
operating and capital budgets and distributing incentive and performance-based funding;

(6) Acting as the agent to receive and disburse public funds related to community and technical college education when a governmental entity requires designation of a statewide higher education agency for this purpose;

(7) Development, establishment and implementation of information, assessment and internal accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators for community and technical colleges;

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs.

(9) Development, implementation and oversight of statewide and regionwide projects and initiatives related specifically to providing community and technical college education such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(10) Quality assurance that intersects with all other duties of the council particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(e) The council may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that any of the following conditions exist:
(1) The governing board has failed for two consecutive years to develop an institutional compact as required in section seven, article one-d of this chapter;

(2) The council has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the council, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the council is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(f) In addition to the powers and duties provided for in subsections (a), (b), (c) and (d) of this section and any others assigned to it by law, the council has those powers and duties necessary or expedient to accomplish the purposes of this article; and

(g) When the council and commission, each, is required to consent, cooperate, collaborate or provide input into the actions of the other the following conditions apply:

(1) The body acting first shall convey its decision in the matter to the other body with a request for concurrence in the action;

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within sixty days of the date when the request for concurrence is received; and
(3) If the receiving body fails to take final action within sixty days, the original proposal stands and is binding on both the commission and the council.

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-2C-1. Legislative findings; intent.
§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.

§18B-2C-1. Legislative findings; intent.

(a) Legislative findings. --

1 (1) The Legislature hereby finds that for nearly two decades legislation has been enacted having as a principal goal creation of a strong, effective system of community and technical education capable of meeting the needs of the citizens of the state. In furtherance of that goal, the Legislature has passed the following major pieces of legislation:

2 (A) Enrolled Senate Bill 420, passed during the regular session of one thousand nine hundred eighty-nine, reorganized the governance structure of public higher education and created the Joint Commission for Vocational-technical-occupational Education to bridge the gap between secondary and post-secondary vocational, technical, and occupational education;

3 (B) Enrolled Senate Bill 377, passed during the regular session of one thousand nine hundred ninety-three, adopted goals and objectives for public post-secondary education, addressed the needs of nontraditional students, directed the institutions to include an assessment of work force development needs in their master plans and established the resource allocation model and policies to aid governing
boards and institutions in meeting the established goals and objectives;

(C) Enrolled Senate Bill 547, passed during the regular session of one thousand nine hundred ninety-five, established goals and funding for faculty and staff salaries, required the governing boards to establish community and technical education with the administrative, programmatic and budgetary control necessary to respond to local needs and provided that community and technical college budgets be appropriated to a separate control account;

(D) Enrolled Senate Bill 653, passed during the regular session of two thousand, established the commission to develop a public policy agenda for higher education in conjunction with state leaders, set forth the essential conditions that must be met by each community and technical college in the state, and mandated that most component community and technical colleges move to independent accreditation.

(E) Enrolled Senate Bill 703, passed during the regular session of two thousand one, authorized the creation of a statewide community and technical college to provide leadership and technical support to the community and technical colleges to aid them in achieving independent accreditation, enhance their ability to serve the interests of the people of West Virginia, and focus attention on achieving established state goals.

(F) Enrolled House Bill 2224, passed during the regular session of two thousand three, created New River Community and Technical College of Bluefield State College as a multicampus institution from existing community and technical college components, branches and off-campus delivery sites in order to give greater cohesiveness, emphasis and priority to meeting the essential conditions pursuant to
section three, article three-c of this chapter and to provide greater access to high-quality programs in the institution's expanded service district.

(G) Enrolled Senate Bill 448, passed during the regular session of two thousand four, established the West Virginia Council for Community and Technical College Education as a separate coordinating agency with authority over state community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission.

(2) The Market Street Report, the McClenney Report, and the Implementation Board Report, cited in article two-b of this chapter, each reflects recent research and indicates that, while these legislative actions cited above have helped the state to make progress in certain areas of higher education, they have not offered a complete solution to the problems of community and technical colleges.

(b) Intent. -- Therefore, the intent of the Legislature in enacting these pieces of legislation is as follows:

(1) To provide logical steps in the process of developing strong institutions capable of delivering community and technical education to meet the needs of the state. Each act may be viewed as a building block added to the foundation laid by earlier legislation;

(2) To create a mechanism whereby the council, if necessary, can assure through its own direct action that the goals established in articles one, one-d, and three-c of this chapter are met; and

(3) To authorize the council to create the West Virginia Community and Technical College to serve the interests of the people of West Virginia by advancing the public policy
agenda developed pursuant to article two-b of this chapter. If the council makes a determination under the provisions of this section that it is necessary or expedient to create the statewide community and technical college, the following goals are the specific focus of the college and its governing board:

(A) To encourage development of a statewide mission that raises education attainment, increases adult literacy, promotes work force and economic development, and ensures access to post-secondary education for every region of the state;

(B) To provide oversight or governance of the community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission;

(C) To provide leadership, support and coordination; and

(D) To protect and expand the local autonomy and flexibility necessary for community and technical colleges to succeed.

§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.

(a) The council annually shall review and analyze all the state community and technical colleges, and any branches, centers, regional centers or other delivery sites with a community and technical college mission, to determine their progress toward meeting the goals, objectives, priorities, and essential conditions established in articles one, one-d and three-c of this chapter.
(b) The analysis required in subsection (a) of this section shall be based, in whole or in part, upon the findings made pursuant to the rule establishing benchmarks and indicators promulgated by the council pursuant to section six, article two-b of this chapter.

(c) Based upon their analysis in subsections (a) and (b) of this section, the council shall make a determination whether any one or more of the following conditions exists:

(1) A community and technical college required to do so has not achieved or is not making sufficient, satisfactory progress toward achieving the essential conditions, including independent accreditation;

(2) One or more of the public community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission requires financial assistance or other support to meet the goals and essential conditions set forth in this chapter;

(3) It is in the best interests of the people of the state or a region within the state to have a single, accredited institution which can provide an umbrella of statewide accreditation;

(4) One or more of the state community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission requests from the council the type of assistance which can best be delivered through implementation of the provisions of section four of this article. Institutional requests that may be considered by the council include, but are not limited to, assistance in seeking and/or attaining independent accreditation, in meeting the goals, priorities and essential conditions established in articles one, one-d and three-c of
this chapter, or in establishing and implementing regional networks.

(5) One or more state community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission has not achieved, or is not making sufficient, satisfactory progress toward achieving, the goals, objectives and essential conditions established in articles one, one-d, and three-c of this chapter; and

(6) The council determines that it is in the best interests of the people of the state or a region of the state to create a statewide, independently accredited community and technical college.

(d) The council may not make a determination subject to the provisions of this section that a condition does not exist based upon a finding that the higher education entity lacks sufficient funds to make sufficient, satisfactory progress.

(e) By the first day of December annually, the council shall prepare and file with the Legislative Oversight Commission on Education Accountability a written report on the findings and determinations required by this section, together with a detailed history of any actions taken by the council under the authority of this article.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH DOCTORAL-GRANTING PUBLIC UNIVERSITIES.

§18B-3-3. Relationship of governing boards to the commission and the council.

(a) Relationship between the commission and the governing boards. —
(1) The commission functions as a state-level coordinating board exercising its powers and duties in relation to the governing boards of Marshall University and West Virginia University only as specifically prescribed by law;

(2) The primary responsibility of the commission is to work collaboratively with the governing boards to research, develop and propose policy that will achieve the established goals and objectives set forth in this chapter and chapter eighteen-c of this code; and

(3) The commission has specific responsibilities which include, but are not limited to, the following:

(A) Advocating for public higher education at the state level; and

(B) Collecting and analyzing data, researching, developing recommendations, and advising the Legislature and the Governor on broad policy initiatives, use of incentive funding, national and regional trends in higher education and issues of resource allocation involving multiple governing boards.

(b) Relationship between the council and the governing boards. —

(1) The council maintains all powers and duties assigned to it by law or policy relating to the institution known as Marshall Community and Technical College, the institution known as The Community and Technical College at West Virginia University Institute of Technology and the institution known as West Virginia University at Parkersburg;

(2) The council functions as a coordinating board for the institutions under its jurisdiction which make up the
statewide network of independently-accredited community
and technical colleges. In addition to recognizing the
authority assigned by law to the council and abiding by rules
duly promulgated by the council relating to the community
and technical colleges, it is the responsibility of the
governing boards of Marshall University and West Virginia
University to exercise their authority and carry out their
responsibilities in a manner that is consistent with and
complementary to the powers and duties assigned by law or
policy to the community and technical colleges or to the
council;

(c) The governing boards shall work collaboratively with
the commission, the council and their staff to provide any and
all information requested by the commission or the council
in an appropriate format and in a timely manner.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE
SYSTEM.

§18B-3C-5. Appointment of community and technical college presidents.

§18B-3C-8. Legislative findings and intent; statewide network of independently accredited
community and technical colleges; operations and administration.

§18B-3C-12. Relationship between independent community and technical colleges and
former sponsoring institutions.

§18B-3C-13. Legislative intent; Pierpont Community and Technical College established
as independent state institution of higher education; governing board;
institutional organization, structure, accreditation status.

§18B-3C-14. Findings; intent; advanced technology centers established; administration;
boards of advisors.

§18B-3C-15. Transition oversight.

§18B-3C-5. Appointment of community and technical college presidents.

  (a) The administrative head of a community and technical
college is the president who is chosen pursuant to the terms
of section six, article one-b of this chapter.

  (b) Any individual employed as provost, president, or
divisional administrative head of a community and technical
college on the thirtieth day of June, two thousand eight, which institution becomes independent on the effective date of this section, continues as the administrative head of the institution and becomes the community and technical college president on the first day of July, two thousand eight, subject to the provisions of section six, article one-b of this chapter.

§18B-3C-8. Legislative findings and intent; statewide network of independently accredited community and technical colleges; operations and administration.

(a) Legislative findings. --

(1) The Legislature has enacted legislation, beginning with Enrolled Senate Bill No. 653, passed during the two thousand regular session, and continuing with Enrolled Senate Bill No. 703, passed during the two thousand one regular session, Enrolled House Bill No. 2224, passed during the two thousand three regular session, and Enrolled Senate Bill No. 448, passed during the two thousand four regular session, the purpose of which is to strengthen the state's community and technical colleges, clarify their core mission and establish essential conditions to be met, and ensure the most effective delivery of services to business, industry, and West Virginia citizens in every region of the state.

(2) The primary goal of the Legislature is to create a statewide network of independently accredited community and technical colleges that focuses on technical education, work force training, and lifelong learning for the Twenty-first Century, consistent with the goals, objectives, priorities and essential conditions established in articles one, one-d and three-c of this chapter.

(3) A necessary precedent to accomplishing the legislative goal is to change the way that leaders at all levels of education, including institutional governing boards, view
community and technical colleges. Specifically, that the mission of community and technical colleges is different from that of traditional four-year colleges in what they seek to accomplish and how they can achieve it effectively and that the state can not compete successfully in today's information-driven, technology-based economy if community and technical colleges continue to be viewed as add-ons or afterthoughts attached to the baccalaureate institutions.

(b) Legislative intent. --

(1) Therefore, it is the intent of the Legislature that the statewide network of independently-accredited community and technical colleges as a whole and each independent community and technical college individually provide the following types of services as part of the core institutional mission:

(A) Career and technical education certificate, associate of applied science, and selected associate of science degree programs for students seeking immediate employment, individual entrepreneurship skills, occupational development, skill enhancement and career mobility;

(B) Transfer education associate of arts and associate of science degree programs for students whose educational goal is to transfer into a baccalaureate degree program with particular emphasis on reaching beyond traditional college-age students to unserved or underserved adult populations;

(C) Developmental/remedial education courses, tutorials, skills development labs, and other services for students who need to improve their skills in mathematics, English, reading, study skills, computers and other basic skill areas;

(D) Work force development education contracted with business and industry to train or retrain employees;
(E) Continuing development assistance and education credit and noncredit courses for professional and self-development, certification and licensure, and literacy training; and

(F) Community service workshops, lectures, seminars, clinics, concerts, theatrical performances and other noncredit activities to meet the cultural, civic and personal interests and needs of the community the institution serves.

(2) It is further the intent of the Legislature that each community and technical college focus special attention on programmatic delivery of their core mission services to unserved and underserved populations to achieve established state objectives. These include the following as highest priorities:

(A) Increasing the number of adults age twenty-five and above who participate in post-secondary education;

(B) Developing technical programs that meet the documented occupational needs of West Virginia’s employers;

(C) Providing work force development programs by implementing the Adult Career Pathways Model, which provides opportunities for the following:

   (i) Adults to earn certifications through the completion of skill-sets;

   (ii) Ordered progression from skill-sets and certifications to one-year certificate programs and progression from one-year certificate degrees to Associate of Applied Science Degree programs, and

   (iii) Students to exit at any stage of completion in order to enter employment with the option of continuing the
pathway progression at a later time and/or on a part-time basis.

(D) Offering programs in various time frames other than the traditional semester delivery model and at different locations, including work sites, convenient to working adults;

(E) Providing technical programs in modules or "chunks", defined in competencies required for employment, and tied to certification and licensing requirements.

(F) Entering into collaborative programs that recognize high-quality training programs provided through labor unions, registered apprenticeships, and industry-sponsored training programs with the goal of enabling more adults to earn a college credential;

(G) Developing innovative approaches to improve the basic and functional literacy rates of West Virginians in all regions of the state;

(H) Developing "bridge programs" for disadvantaged youth and adults to enable them to acquire the skills necessary to be successful in education and training programs that lead to high-skills, high-wage jobs; and

(I) Providing access to post-secondary education through the delivery of developmental education for those individuals academically under-prepared for college-level work.

(c) In fulfillment of the purposes and intent defined in subsections (a) and (b) of this section, there is continued a statewide network of independently accredited community and technical colleges serving every region of the state. Each free-standing and independent community and technical college is strongly encouraged to serve as a higher education center for its region by brokering with other colleges,
universities and providers, in-state and out-of-state, both
public and private, to afford the most coordinated access to
needed programs and services by students, employers and
other clients, to achieve the goals, objectives, and essential
conditions established in articles one, one-d, and three-c of
this chapter, and to ensure the most efficient use of scarce
resources.

(d) Statewide network of independently accredited
community and technical colleges. --

(1) By the first day of July, two thousand nine, each
governing board of a community and technical college which
became independent on the first day of July, two thousand
eight, shall make a determination by majority vote of the
board whether to keep the current name for its respective
institution or to select a new name. If a governing board
chooses to select a new name, any reference in this code to
that institution by a name in use prior to the first day of July,
two thousand nine, means the institution under the name
designated by its board of governors.

(2) The statewide network of independently accredited
community and technical colleges is comprised of the
following independent state institutions of higher education
under the jurisdiction of the council:

(A) Blue Ridge Community and Technical College. --

Blue Ridge Community and Technical College is an
independently accredited state institution of higher education.
The president and the governing board of the community and
technical college are responsible for maintaining independent
accreditation and adhering to the essential conditions
pursuant to section three of this article.

(B) The Community and Technical College at West
Virginia University Institute of Technology. --
(i) The Community and Technical College at West Virginia University Institute of Technology is an independently accredited state institution of higher education which may maintain an association with West Virginia University Institute of Technology, a division of West Virginia University, or directly with West Virginia University, subject to the provisions of section twelve of this article. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(ii) West Virginia University Institute of Technology may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the governing boards of the community and technical college and West Virginia University Institute of Technology or directly with West Virginia University, as appropriate. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and West Virginia University Institute of Technology or West Virginia University related to program delivery under the terms of this section in effect on the first day of July, two thousand eight, shall continue in effect until the first day of July, two thousand nine, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress
toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(iii) Dual credit course delivery agreements. --

(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between West Virginia University Institute of Technology and The Community and Technical College at West Virginia University Institute of Technology relating to delivery of dual credit courses as defined in section two, article one of this chapter;

(II) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution.

(C) Eastern West Virginia Community and Technical College. --

Eastern West Virginia Community and Technical College is a free-standing state institution of higher education seeking independent accreditation. The president and the governing board of Eastern Community and Technical College are responsible for achieving independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(D) Marshall Community and Technical College. --
(i) Marshall Community and Technical College is an independently accredited state institution of higher education which may maintain an association with Marshall University subject to the provisions of section twelve of this article. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(ii) Marshall University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with Marshall Community and Technical College. The terms of the contract shall be negotiated between the governing boards of the community and technical college and Marshall University. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and Marshall University related to program delivery under the terms of this section in effect on the first day of July, two thousand eight, shall continue in effect until the first day of July, two thousand nine, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by Marshall Community and Technical College.

(iii) Dual credit course delivery agreements. --
(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between Marshall University and Marshall Community and Technical College relating to delivery of dual credit courses as defined in section two, article one of this chapter;

(II) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution.

(E) New River Community and Technical College. --

(i) New River Community and Technical College is an independently accredited state institution of higher education which may maintain an association with Bluefield State College subject to the provisions of section twelve of this article. The community and technical college is headquartered in Beckley and incorporates the campuses of Greenbrier Community College Center of New River Community and Technical College and Nicholas Community College Center of New River Community and Technical College.

(ii) The president and the governing board of New River Community and Technical College are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(iii) Bluefield State College may continue associate degree programs in areas of particular institutional strength
which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided through direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the governing boards of the community and technical college and Bluefield State College. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and Bluefield State College related to program delivery under the terms of this section in effect on the first day of July, two thousand eight, shall continue in effect until the first day of July, two thousand nine, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by New River Community and Technical College.

(iv) Bluefield State College may continue the associate of science degree in nursing which is an existing nationally accredited associate degree program in an area of particular institutional strength and which is closely articulated to the baccalaureate program and mission. The program is of a high-cost nature and can best be provided through direct administration by a baccalaureate institution. This program may not be transferred to New River Community and Technical College or any other community and technical college as long as the program maintains national accreditation and is seamlessly coordinated into the baccalaureate program at the institution.
(v) New River Community and Technical College participates in the planning and development of a unified effort involving multiple providers to meet the documented education and work force development needs in the region. Nothing in this subdivision prohibits or limits any existing, or the continuation of any existing, affiliation between Mountain State University, West Virginia University Institute of Technology and West Virginia University. The objective is to assure students and employers in the area that there is coordination and efficient use of resources among the separate programs and facilities, existing and planned, in the Beckley area.

(F) Pierpont Community and Technical College. --

(i) Pierpont Community and Technical College is an independent state institution of higher education seeking independent accreditation. The president and the governing board of Pierpont Community and Technical College, assisted by the president and governing board of Fairmont State University, are responsible for the community and technical college achieving independent accreditation and adhering to the essential conditions pursuant to sections three and thirteen of this article.

(ii) Fairmont State University may continue associate degree programs in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of Fairmont State University. The final contract may not be implemented until approved by the council except that any contract between the community and technical college
and Fairmont State University related to program delivery under the terms of this section in effect on the first day of July, two thousand eight, shall continue in effect until the first day of July, two thousand nine, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(iii) Dual credit course delivery agreements. --

(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between Fairmont State University and Pierpont Community and Technical College relating to delivery of dual credit courses as defined in section two, article one of this chapter;

(II) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution.

(G) Southern West Virginia Community and Technical College. -- Southern West Virginia Community and
Technical College is an independently-accredited, free-standing state institution of higher education. The president and the governing board of Southern West Virginia Community and Technical College are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(H) West Virginia Northern Community and Technical College. -- West Virginia Northern Community and Technical College is an independently-accredited, free-standing state institution of higher education. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(i) West Virginia State Community and Technical College. --

(i) West Virginia State Community and Technical College is an independently accredited state institution of higher education which may maintain an association with West Virginia State University subject to the provisions of section twelve of this article. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(ii) West Virginia State University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The
terms of the contract shall be negotiated between the
governing boards of the community and technical college and
West Virginia State University. The final contract may not
be implemented until approved by the council except that any
contract between the community and technical college and
West Virginia State University related to program delivery
under the terms of this section in effect on the first day of
July, two thousand eight, shall continue in effect until the
first day of July, two thousand nine, unless amended or
revoked before that date by mutual agreement of the contract
parties with approval by the council. Such a program shall be
evaluated according to the benchmarks and indicators for
community and technical college education developed by the
council. If the council determines that the program is making
insufficient progress toward accomplishing the benchmarks,
the program shall thereafter be delivered by the community
and technical college.

(iii) **Dual credit course delivery agreements.** --

(I) Nothing in this article alters or abrogates any
agreement in place on the effective date of this section
between West Virginia State University and West Virginia
State Community and Technical College relating to delivery
of dual credit courses as defined in section two, article one of
this chapter;

(II) The community and technical college may deliver
technical courses that are part of a certificate or associate
degree program as early entrance or dual credit courses for
high school students; and

(III) Subject to an agreement between the baccalaureate
institution and the community and technical college, the latter
may deliver early entrance and dual credit courses as defined
in section two, article one of this chapter to students in high
schools which are not served by the baccalaureate institution.
(J) West Virginia University at Parkersburg. --

(i) West Virginia University at Parkersburg is an independently accredited state institution of higher education which may maintain an association with West Virginia University subject to the provisions of section twelve of this article. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(ii) Any contract between the community and technical college and West Virginia University related to program delivery under the authority of the council or related to delivery of baccalaureate programs, in effect on the first day of July, two thousand eight, shall continue in effect unless amended or revoked by mutual agreement of the contract parties with approval by the council.

(iii) In recognition of the unique and essential part West Virginia University at Parkersburg plays in providing education services in its region, the community and technical college may continue delivering baccalaureate degree programs offered at the institution on the effective date of this section, may implement additional baccalaureate programs with the approval of the commission and is strongly encouraged:

(I) To continue and expand its role as a higher education center pursuant to subsection (c) of this section; and

(II) To broker from West Virginia University and other higher education institutions, as appropriate, additional baccalaureate level degree programs the community and technical college determines are needed in its service region.

(III) Any baccalaureate degree programs offered at the community and technical college shall be delivered under the
authority of the commission. The program shall be evaluated according to the benchmarks and indicators for baccalaureate education developed by the commission.

§18B-3C-12. Relationship between independent community and technical colleges and former sponsoring institutions.

(a) Intent and purposes. --

(1) It is the intent of the Legislature to establish community and technical colleges in every region of the state that meet the essential conditions of section three of this article and focus on achieving established state goals and objectives.

(2) This section defines the relationship between a community and technical college which was administratively linked to a sponsoring institution prior to the first day of July, two thousand eight.

(b) Where an independent community and technical college was linked administratively to a sponsoring state college or university, or was designated as a regional campus or a division of another accredited state institution of higher education, prior to the first day of July, two thousand eight the following conditions apply:

(1) The community and technical college shall be accredited separately from the former sponsoring institution;

(2) All state funding allocations for the community and technical college shall be transferred directly to the community and technical college;

(3) The former sponsoring institution and the community and technical college shall agree to the fees the former
sponsoring institution may charge for administrative
overhead costs.

(A) The fee schedule model agreed to by the institutions
shall delineate services to be provided and the fees to be
charged to the community and technical colleges for the
services;

(B) The fee schedule shall be based upon the reasonable
and customary fee for any service, shall bear a rational
relationship to the cost of providing the service.

(C) Any contract between a community and technical
college and its former sponsoring institution related to
provision of services pursuant to subsection (c) of this section
in effect on the first day of July, two thousand eight, shall
continue in effect until the first day of July, two thousand
nine, unless amended or revoked before that date by mutual
agreement of the contracting parties.

(D) The former sponsoring institution shall continue to
provide services pursuant to subsection (c) of this section as
the governing board of the community and technical college
considers appropriate under a negotiated contractual
arrangement until the first day of July, two thousand eleven
or the governing boards of both institutions mutually agree to
end the contract arrangement.

(4) An independent community and technical college and
the institution from which it obtains services may customize
the fee schedule model to fit their needs.

(5) Policies shall be formally established to ensure the
separation of academic and faculty personnel policies of the
community and technical college from those of the former
sponsoring institution. These policies include, but are not
limited to, appointment, promotion, workload and, if
appropriate, tenure; and
(c) The former sponsoring institution which was administratively linked to a community and technical college prior to the first day of July, two thousand eight, shall provide the following services subject to the provisions of subsection (b) of this section:

1. Personnel management;
2. Recordkeeping;
3. Payroll;
4. Accounting;
5. Legal services;
6. Registration;
7. Student aid;
8. Student records; and
9. Any other services determined to be necessary and appropriate by the board of governors of the former sponsoring institution and the board of governors of the community and technical college.

(d) Any disputes between an independent community and technical college and its former sponsoring institution, regarding their respective rights and responsibilities under this chapter of the code, which cannot be resolved by the governing boards, shall be resolved as follows:

1. The matters in dispute shall be summarized in writing and submitted to the chancellors jointly for resolution;
(2) If the matters in dispute cannot be resolved by the chancellors within thirty days, they shall be submitted to the council and commission for resolution;

(3) If the commission and council jointly cannot reach a resolution following their first regularly scheduled meeting or within sixty days, whichever is sooner, the chairpersons of the commission and council respectively shall establish a three-person panel to hear the matters and issue a decision within thirty days:

(A) The three-person panel is comprised of one person appointed by the chairperson of the commission, one person appointed by the chairperson of the council, and one person appointed jointly by the two chairpersons.

(B) The decision rendered by the three-person panel is binding on the governing boards, commission and council, and may not be challenged in the courts of this state.

(e) The governing board of the community and technical college and the council are responsible for the development of the community and technical college and for compliance with the essential conditions, all as required by this article.

(f) The president of the community and technical college has such responsibilities, powers and duties in the development of the community and technical college and in compliance with the essential conditions, as directed by the governing board or as are necessary for the proper implementation of the provisions of this act.

(g) Notwithstanding any other provision of this code to the contrary, the commission shall take necessary steps to ensure that institutional bonded indebtedness is secure and that each community and technical college assumes its fair share of any institutional debt acquired while it was part of the baccalaureate institution.
112 (h) The community and technical college is encouraged to secure academic services from the former sponsoring institution when it is in their best interests and beneficial to the students to be served. In determining whether or not to secure services from the former sponsoring institution, the community and technical college shall consider the following:

119 (1) The cost of the academic services;

120 (2) The quality of the academic services;

121 (3) The availability, both as to time and place, of the academic services; and

123 (4) Such other considerations as the community and technical college finds appropriate taking into account the best interests of the students to be served, the community and technical college, and the former sponsoring institution.

127 Nothing in this article prohibits any state institution of higher education from purchasing or brokering remedial or developmental courses from a community and technical college.

§18B-3C-13. Legislative intent; Pierpont Community and Technical College established as independent state institution of higher education; governing board; institutional organization, structure, accreditation status.

1 (a) The intent of the Legislature in enacting this section is to provide for the most effective education delivery system for community and technical education programs to the entire region to be served by Pierpont Community and Technical College and to focus the institutional mission on achieving state goals, objectives, priorities, and essential conditions as established in articles one, one-d, and three-c of this chapter.
(b) Pierpont Community and Technical College is established as an independent state institution of higher education. Any reference in this code to Fairmont State Community and Technical College or to Pierpont Community and Technical College, a division of Fairmont State University, means the independent state institution of higher education known as Pierpont Community and Technical College.

(c) Effective the first day of July, two thousand eight, the board of advisors for Pierpont Community and Technical College is the governing board for that institution subject to the provisions of article two-a of this chapter. The administrative head of Pierpont Community and Technical College on the thirtieth day of June, two thousand eight, is the president of the independent community and technical college subject to the provisions of section five of this article.

(d) In the delivery of community and technical college education and programs, Pierpont Community and Technical College shall adhere to all provisions set forth in this code and rules promulgated by the council for the delivery of education and programs, including, but not limited to, council review and approval of academic programs, institutional compacts, master plans and tuition and fee rates, including capital fees.

(e) Pierpont Community and Technical College shall pursue independent accreditation status and the board of governors of the community and technical college shall provide through contractual arrangement for the administration and operation of Pierpont Community and Technical College by Fairmont State University while the community and technical college seeks appropriate independent accreditation. The contractual arrangement may not be implemented until approved by the council and shall include provisions to ensure that the programs offered at
Pierpont Community and Technical College are accredited while independent accreditation is being sought. Fairmont State University shall continue to provide services to the community and technical college which the community and technical college or the council considers necessary or expedient in carrying out its mission under the terms of an agreement between the two institutions pursuant to the provisions of section twelve of this article.

(f) The council has the authority and the duty to take all steps necessary to assure that the institution acquires independent accreditation status as quickly as possible. If the community and technical college fails to achieve independent accreditation by the first day of July, two thousand eleven, the council shall sever any contractual agreement between Pierpont Community and Technical College and Fairmont State University and assign the responsibility for achieving independent accreditation to another state institution of higher education.

§18B-3C-14. Findings; intent; advanced technology centers established; administration; boards of advisors.

(a) Findings.--

(1) The Legislature finds that ninety percent of the high-demand, high-wage new economy occupations require education and training beyond high school. Technology has permeated every industry requiring higher skill levels for technician-level occupations. Technician skills, learning capacities and adaptability to changing technologies affect the viability both of individual employers and entire industries. Unless West Virginia takes immediate steps to produce additional skilled workers to replace the aging and retiring work force, the state faces a critical shortage of technician-level workers which it must have to ensure economic growth. State employers must have access to a
technically proficient work force able to keep pace with the changing nature of occupations in the global economy and educating and training this technician-level work force is a vital component in the state’s plan for economic development.

(2) The Legislature further finds that establishment of advanced technology centers will increase the capacity of West Virginia’s community and technical colleges to deliver state-of-the-art technical education and training. The centers will serve as models for the most effective delivery of technician-level education and training with the potential to develop programs of excellence that attract participants from outside the state adding to their value as an economic stimulus. The centers serve as catalysts for state and regional economic development by educating and training a highly skilled technical work force capable of meeting both the current and emerging needs of West Virginia employers.

(b) Legislative intent.

(1) It is the intent of the Legislature to establish advanced technology centers to provide advanced instruction capable of meeting the current and future demands of occupations requiring technical skills including the following:

(A) Addressing skills sets needed for emerging and high technology businesses and industries which are of vital importance to expanding the economy of the state;

(B) Training and retraining personnel for West Virginia’s new and existing business and industries;

(C) Providing instruction in strategic technical program areas that advances the economic development initiatives of the state and regions within the state by providing access to a skilled work force for companies expanding or locating in West Virginia;
(D) Providing a setting for collaboration in the delivery of technical programs among community and technical colleges, secondary career-technical education and baccalaureate institutions;

(E) Invigorating teaching by providing models for program delivery that can be shared and replicated at all state community and technical colleges; and

(F) Developing student interest in pursuing technical occupations through exposure to advanced technologies.

(2) It is further the intent of the Legislature that programming offered by the centers be driven by the needs of state and local employers and economic development considerations. Centers shall be constructed with the flexibility to accommodate various programs simultaneously and to react quickly to adjust programming as employer and economic development demands change. They are furnished with state-of-the-art equipment conducive to delivering advanced technology programs and to providing students with real-world experiences that reflect industry standards. Education and training at the centers includes delivery of credit and noncredit instruction, seminars, skill sets, industry recognized certifications, certificates and associate degree programs. Curricula is designed in modular and other innovative formats allowing for open entry and open exit, compressed time frames, skill upgrades, and easy transfer from career-technical centers and other education providers. Centers shall embrace and promote collaborative programming among community and technical colleges and other providers of education and training programs and serve as receiving sites for programs to be delivered by community and technical colleges utilizing distance education, simulation and other collaborative, innovative approaches to increase the capacity of the community and technical college network to deliver technical education.
(c) *Boards of Advisors. --*

(1) There is hereby established a board of advisors for each advanced technology center in the state specifically to provide advice, assistance and programmatic oversight to the president of the community and technical college, director of the center, and others involved in its operation in areas relevant to program delivery and general operation of the center. In order to be successful, each center must assertively to develop collaborative partnerships with employers, community and technical colleges in its service region, and local economic development entities. It is the responsibility of the board of advisors to promote this vital participation.

(A) For a center which has a single participating community and technical college in its service region, the board of governors of the institution is designated as the board of advisors for the center.

(B) For a center which has more than one participating community and technical college in its service region, the board of advisors consists of eleven members, of which a minimum of seven shall represent employers located in the region served by the center.

(i) The advisory board provides guidance to all governing boards and consists of the following members:

(I) Two members from the board of governors of each participating community and technical college which is located in the center’s service region, appointed by the board of governors of each institution.

(II) One member representing regional economic development entities, appointed by the council, with advice
(III) Sufficient at-large members appointed by the council, with advice from the governing boards of the appropriate community and technical colleges, to fill the remaining seats equal to a membership of eleven.

(ii) Members of an advisory board serve staggered terms of up to four years beginning on the first day of September, two thousand eight, except that five of the initial appointments to an advisory board are for terms of two years and six of the initial appointments are for terms of four years. Each member who qualifies under the provisions of this section may serve for no more than one additional term. The council shall fill a vacancy in an unexpired term of a member for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment.

(iii) The chancellor for community and technical college education shall call the first meeting of the board of advisors and shall serve as chairperson until a permanent chairperson is elected.

(iv) The president of each community and technical college located in the center’s service region shall make resources available for conducting the business of the center’s board of advisors. The presidents of the institutions shall work collaboratively to provide support for conducting board business.

(2) Each board of advisors, including each board of governors when sitting as a board of advisors, shall hold at least one regular meeting during each quarter of the fiscal year including an annual meeting in June for the purpose of electing a chairperson and other officers as the board considers appropriate.
(A) Additional meetings may be held at the call of the chairperson or upon written request of five or more members of the advisory board.

(B) Officers serve a term of one year beginning on the first day of July and ending on the thirtieth day of June, except for the fiscal year beginning on the first day of July, two thousand eight, terms begin on the first day of September, two thousand eight and end on the thirtieth day of June, two thousand nine.

(C) One of the members representing employers shall be elected to serve as chairperson at the annual meeting in June except, for the fiscal year beginning on the first day of July, two thousand eight, the chairperson and other officers shall be elected in September, two thousand eight, and their terms shall expire on the thirtieth day of June, two thousand nine. A member may not serve as chairperson for more than two consecutive terms.

§18B-3C-15. Transition oversight.

(a) The Legislative Oversight Commission on Education Accountability is charged with responsibility to monitor and oversee implementation of the policy changes required by this act.

(b) The responsibilities include, but are not limited to, the following:

(1) Reviewing the overall progress of the council, the commission and state institutions of higher education in implementing the provisions of this act;

(2) Monitoring the development of the rules related to financing policy and benchmarks and indicators pursuant to section six, article two-b of this chapter;
(3) Monitoring the development of the statewide master plan for community and technical college education and the institutional compacts pursuant to sections five and seven, article one-d of this chapter;

(4) Monitoring the development of the council’s state compact pursuant to section six, article one-d of this chapter; and

(5) Monitoring the changes in institutional relationships including development or changes in contractual arrangements for services pursuant to section twelve of this article and delivery of dual credit and baccalaureate-level courses;

c (c) The provisions of this section expire the thirtieth day of June, two thousand nine.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-3. Faculty salary policies; reductions in salary prohibited; salary increase upon promotion in rank.

(a) Each governing board shall establish and maintain a faculty salary policy that is competitive and which furthers the goals of attracting, retaining and rewarding high quality faculty.

(b) The salary of any full-time faculty member may not be reduced by the provisions of this article.

(c) Upon promotion in rank, each faculty member shall receive a salary increase of ten percent.
AN ACT to amend and reenact §18B-5-4 of the Code of West Virginia, 1931, as amended, relating to purchase or acquisition of materials, supplies, equipment, services and printing; and extending to the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education the authority to enter into lease-purchase agreements for capital improvements, including equipment.

Be it enacted by the Legislature of West Virginia:

That §18B-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

(a) The council, commission and each governing board, through the Vice Chancellor for Administration, shall purchase or acquire all materials, supplies, equipment, services and printing required for that governing board or the council or commission, as appropriate, and the state institutions of higher education under their jurisdiction, except the governing boards of Marshall University and West
Virginia University, respectively, are subject to the provisions of subsection (d) of this section.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with the provisions of this section. The rules shall assure that the council, commission and governing boards:

1. Do not preclude any person from participating and making sales thereof to the governing board or to the council or commission except as otherwise provided in section five of this article. Provision of consultant services such as strategic planning services does not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because the consultant services are rendered;

2. Establish and prescribe specifications, in all proper cases, for materials, supplies, equipment, services and printing to be purchased;

3. Adopt and prescribe such purchase order, requisition or other forms as may be required;

4. Negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

5. Advertise for bids on all purchases exceeding twenty-five thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices;

6. Post notices of all acquisitions and purchases for which competitive bids are being solicited in the purchasing
office of the specified institution involved in the purchase, at
least two weeks prior to making such purchases and ensure
that the notice is available to the public during business
hours;

(7) Provide for purchasing in the open market;

(8) Provide for vendor notification of bid solicitation and
emergency purchasing;

(9) Provide that competitive bids are not required for
purchases of twenty-five thousand dollars or less; and

(10) Provide for not fewer than three bids where bidding
is required. If fewer than three bids are submitted, an award
may be made from among those received.

(c) When a state institution of higher education submits
a contract, agreement or other document to the Attorney
General for approval as to form as required by this chapter
the following conditions apply:

(1) "Form" means compliance with the Constitution and
statutes of the State of West Virginia.

(2) The Attorney General does not have the authority to
reject a contract, agreement or other document based on the
substantive provisions therein or any extrinsic matter so long
as it complies with the Constitution and statutes of this state.

(3) Within fifteen days of receipt, the Attorney General
shall notify the appropriate state institution of higher
education in writing that the contract, agreement or other
document is approved or disapproved as to form. If the
contract, agreement or other document is disapproved as to
form, the notice of disapproval shall identify each defect that
supports the disapproval.
(4) If the state institution elects to challenge the disapproval by filing a Writ of Mandamus or other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs incurred.

(d) Pursuant to this subsection, the governing boards of Marshall University and West Virginia University, respectively, may:

(1) Purchase or acquire all materials, supplies, equipment, services and printing required for the governing board without approval from the Commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in subsection (f) of this section;

(2) Make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from these groups and if this would be the most financially advantageous manner of making the purchase;

(3) Select and acquire by contract or lease all grounds, buildings, office space or other space, and capital improvements, including equipment, the rental of which is necessarily required by the governing board; and

(4) Use purchase cards under terms approved for the commission, the council and governing boards of state institutions of higher education and participate in any expanded program of use as provided in subsection (w) of this section.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to the provisions of section six, article one of this chapter to govern and control
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(f) The council, commission or each governing board, through the Vice Chancellor for Administration, may issue a check in advance to a company supplying postage meters for postage used by that board, the council or commission and by the state institutions of higher education under their jurisdiction.

(g) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council or commission and delivery terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code apply to the competitive bids made pursuant to this section.

(h) The governing boards, council and commission shall maintain a purchase file, which shall be a public record and open for public inspection. After the award of the order or contract, the governing boards, council and commission shall indicate upon the successful bid that it was the successful bid and shall further indicate why bids are rejected and, if the mathematical low vendor is not awarded the order or contract, the reason therefor. A record in the purchase file may not be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the Legislative Auditor. All files, no matter the storage
method, shall be open for inspection by the Legislative Auditor upon request.

(i) The commission and council also jointly shall adopt rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that a person may not be employed as a buyer unless that person, at the time of employment, either is:

(1) A graduate of an accredited college or university; or

(2) Has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(j) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond shall be filed with the Secretary of State. The cost of any such bond shall be paid from funds appropriated to the applicable governing board or the council or commission.

(k) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be
encumbered and they may be entered into the state's centralized accounting system by the staff of the commission, council or governing boards to satisfy the requirements of article two, chapter five-a of this code and specifically sections twenty-six, twenty-seven and twenty-eight of said article to determine whether the amount of the purchase is within the commission's, council's or governing board's quarterly allotment, is in accordance with the approved expenditure schedule and otherwise conforms to the provisions of said article.

(l) The governing boards, council and commission may make requisitions upon the Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or commission, and the Auditor shall draw a warrant upon the Treasurer for such accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council or commission once every thirty days or more often if required by the State Auditor.

(m) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the council or commission in the name of the state and shall be approved as to form by the Attorney General. A contract which requires approval as to form by the Attorney General is considered approved if the Attorney General has not responded within fifteen days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds and certificates of insurance which use terms and conditions or standardized forms previously approved by the Attorney General and do not make substantive changes in the terms and conditions of the contract do not require approval as to form by the Attorney General. The Attorney General shall make a list of those changes which he or she considers to be substantive and the list, and any changes thereto, shall be
204 published in the State Register. A contract that exceeds the
dollar amount requiring competitive sealed bids in this
section shall be filed with the State Auditor. If requested to
do so, the governing boards, council or commission shall
make all contracts available for inspection by the State
Auditor. The governing board, council or commission, as
appropriate, shall prescribe the amount of deposit or bond to
be submitted with a bid or contract, if any, and the amount of
deposit or bond to be given for the faithful performance of a
contract.

214 (n) If the governing board, council or commission
purchases or contracts for materials, supplies, equipment,
services and printing contrary to the provisions of sections
four through seven of this article or the rules pursuant
thereto, such purchase or contract is void and of no effect.

219 (o) Any governing board or the council or commission,
as appropriate, may request the Director of purchases to make
available, from time to time, the facilities and services of that
department to the governing boards, council or commission
in the purchase and acquisition of materials, supplies,
equipment, services and printing and the director of
purchases shall cooperate with that governing board, council
or commission, as appropriate, in all such purchases and
acquisitions upon such request.

228 (p) Each governing board or the council or commission,
as appropriate, shall permit private institutions of higher
education to join as purchasers on purchase contracts for
materials, supplies, services and equipment entered into by
that governing board or the council or commission. Any
private school desiring to join as purchasers on such purchase
contracts shall file with that governing board or the council
or commission an affidavit signed by the president of the
institution of higher education or a designee requesting that
it be authorized to join as purchaser on purchase contracts of
that governing board or the council or commission, as
appropriate. The private school shall agree that it is bound by such terms and conditions as that governing board or the council or commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(q) Notwithstanding any other provision of this code to the contrary, the governing boards, council and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from cooperative buying groups, consortia, the federal government or from a federal contract and purchasing from the cooperative buying groups, consortia, federal government or from a federal government contract would be the most financially advantageous manner of making the purchase.

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution of higher education, except Marshall University and West Virginia University, shall be performed each fiscal year. The Joint Committee on Government and Finance shall conduct the performance audit and the governing boards, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or commission.

(1) The governing boards of Marshall University and West Virginia University, respectively, shall provide for independent performance audits of all purchasing functions and duties on their campuses at least once in each three-year period.

(2) Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.

(3) Copies of all appropriate documents relating to any audit performed by the governing boards of Marshall
University and West Virginia University shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.

(s) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of the provisions of section fifty-four, article three, chapter five-a of this code, also known as the Prompt Pay Act of 1990.

(t) Consultant services, such as strategic planning services, do not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(u) The commission or council may enter into lease-purchase agreements for capital improvements, including equipment, on behalf of or for the benefit of state institutions of higher education, the commission or council. After the commission or council, as appropriate, has granted approval for lease-purchase agreements by the governing boards, a governing board, may enter into lease-purchase agreements for capital improvements, including equipment, except the governing boards of Marshall University and West Virginia University may enter into lease-purchase agreements for the state institutions of higher education known as Marshall University and West Virginia University without seeking the approval of the commission or the council. Any lease-purchase agreement so entered shall constitute a special obligation of the State of West Virginia. The obligation under a lease-purchase agreement so entered may be from any funds legally available to the commission, council or the institution and must be cancelable at the option of the commission, council or the governing board or institution at the end of any fiscal year. The obligation, any assignment or
securitization thereof, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision thereof, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision thereof. Such facts shall be plainly stated in any lease-purchase agreement. Further, the lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the agreement as to form by the Attorney General of West Virginia. Proposals for any agreement shall be requested in accordance with the requirements of this section and any rules or guidelines of the commission and council. In addition, any lease-purchase agreement which exceeds one hundred thousand dollars total shall be approved as to form by the Attorney General of West Virginia. The interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also is exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing board or the president of the institution as a bank-qualified obligation.

(v) Notwithstanding any other provision of this code to the contrary, the commission, council and governing boards have the authority, in the name of the state, to lease, or offer to lease, as lessee, any grounds, buildings, office or other space in accordance with this paragraph and as provided below:

(1) The commission, council and governing boards have sole authority to select and to acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is necessarily required by the commission, council or
governing boards for the institutions under their jurisdiction. For state institutions of higher education other than Marshall University and West Virginia University, the Chief Executive Officer of the commission, council or an institution shall certify the following:

(A) That the grounds, buildings, office space or other space requested is necessarily required for the proper function of the commission, council or institution;

(B) That the commission, council or institution will be responsible for all rent and other necessary payments in connection with the contract or lease; and

(C) That satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings currently owned or leased by the commission, council or the institution. Before executing any rental contract or lease, the commission, council or a governing board shall determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair rental value.

(2) The commission, council and governing boards are authorized to enter into long-term agreements for buildings, land and space for periods longer than one fiscal year but not to exceed forty years. Any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting therefrom, pursuant to the provisions of this subsection shall be presented by the commission or council, as appropriate, to the Joint Committee on Government and Finance for prior review. Any such lease shall contain, in substance, all the following provisions:

(A) That the commission, council or governing board, as lessee, has the right to cancel the lease without further
obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;

(B) That the lease is considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds therefor or otherwise acts to impair the lease or cause it to be canceled; and

(C) That the lease is considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the commission, council or governing board before the end of the then-current fiscal year.

(3) The commission, council or institution which is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the commission, council or governing board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

(4) Leases and other instruments for grounds, buildings, office or other space, once approved by the commission, council or governing board, may be signed by the chief executive officer of the commission, council or institution. Any lease or instrument exceeding one hundred thousand dollars annually shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.
(5) The commission and council jointly may promulgate rules they consider necessary to carry out the provisions of this section. The governing boards of Marshall University and West Virginia University shall promulgate rules pursuant to section six, article one of this chapter to implement the provisions of this section.

(w) Purchasing card use may be expanded by the council, commission and state institutions of higher education pursuant to the provisions of this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and any institution under their respective jurisdictions using purchasing cards. The procedures shall ensure that each maintains:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with the provisions of article three, chapter twelve of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) By the first day of November, two thousand four, the council and commission jointly shall present the procedures to the Legislative Oversight Commission on Education Accountability for its adoption.

(3) Notwithstanding any other provision of this code to the contrary, if the Legislative Oversight Commission on Education Accountability adopts the procedures, the council, commission, and any institution authorized pursuant to subdivision (4) of this subsection, may use purchasing cards for:
(A) Travel expenses directly related to the job duties of the traveling employee, including fuel and food; and

(B) Any routine, regularly scheduled payment, including, but not limited to, utility payments and real property rental fees. The council, commission and each institution, annually by the thirtieth day of June, shall provide to the State Purchasing Division a list of all goods or services for which payment was made pursuant to this provision during that fiscal year.

(4) The commission and council each shall evaluate the capacity of each institution under its jurisdiction for complying with the procedures established pursuant to subdivision (3) of this subsection. The commission and council each shall authorize expanded use of purchasing cards pursuant to said subdivision for any such institution it determines has the capacity to comply.

CHAPTER 89

(Com. Sub. for H.B. 4434 - By Delegates M. Poling, Paxton, Frederick, Browning, Wysong, Williams, Ennis, Wells, Stephens, Tansill and Duke)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-5-11, relating to creating the energy and water savings revolving loan fund; requiring legislative rule; establishing fund administration criteria; authorizing fund investment; and limiting uses of funds.
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 §18B-5-11 to read as follows:

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.


(a) There is created in the State Treasury a special revolving loan fund known as the “Energy and Water Savings Revolving Loan Fund”. The fund is administered by the commission and used to effectuate the purposes of this section. The fund consists of moneys received from the following sources:

(1) All appropriations provided by the Legislature for energy and water savings revolving loans;

(2) Repayment of loans made to state institutions of higher education pursuant to this section;

(3) Any moneys available from external sources; and

(4) All interest and other income earned from investment of moneys in the fund.

(b) The commission shall utilize moneys in the fund to provide loans to state institutions of higher education under the jurisdiction of the commission or the council to finance projects that will achieve significant reductions in campus energy and water consumption and costs.
(c) The commission shall propose a rule for legislative approval in accordance with section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code to implement the provisions of this section. The rule shall provide at least the following:

1. Project information required in a loan application;
2. Criteria for evaluating loan applications;
3. A method for calculating the terms of loan repayment;
4. Other provisions the commission considers necessary to administer the program in accordance with this section.

(d) Projects shall be considered on a competitive basis. Highest priority is given to projects guaranteeing the greatest reductions in energy and water consumption and costs and the earliest loan repayments.

(e) Any balance, including accrued interest and any other returns, in the Energy and Water Savings Revolving Loan Fund at the end of each fiscal year shall not expire to the General Revenue Fund, but shall remain in the loan fund and be expended for the purposes provided by this section. The Commission may use up to four percent of the total loan amount in a fiscal year for administrative expenses incurred in that fiscal year.

(f) Fund balances may be invested with the state’s consolidated investment fund. Any earnings on the investments shall be used solely for the purpose defined in subsection (b) of this section.

(g) The Legislature finds that an emergency exists and, therefore, the commission shall propose an emergency rule to implement the provisions of this section in accordance
49 with section six, article one of this chapter and article three-a, 50 chapter twenty-nine-a of this code by the first day of October, 51 two thousand eight. The emergency rule may not be 52 implemented without prior approval of the Legislative 53 Oversight Commission on Education Accountability.

CHAPTER 90

(Com. Sub. for S.B. 682 - By Senators Plymale, Edgell, Unger, Bailey, Green, Hunter, Oliverio, Stollings, Wells, White, Guills and Hall)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §18B-10-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22-18 of said code, all relating to creating a special revenue fund known as the Community and Technical College Capital Improvement Fund; providing for depositing funds pledged to repay principal, interest and/or redemption premium on certain bonds authorized by the commission for community and technical college capital improvements; and allocating five million dollars to the Higher Education Policy Commission Community and Technical College Capital Improvement Fund for community and technical college education capital improvements.

Be it enacted by the Legislature of West Virginia:

That §18B-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29-22-18 of said code be amended and reenacted, all to read as follows:
CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) This section and any rules adopted by the commission, council or both, in accordance with this section and article three-a, chapter twenty-nine-a of this code, governs the collection, disposition and use of the capital and auxiliary capital fees authorized by section one of this article. The statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) Fees for full-time students. -- The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher education per semester. For institutions under its jurisdiction, a governing board may fix the fees at higher rates for students who are not residents of this state.

(c) Fees for part-time students. -- For all part-time students and for all summer school students, the governing boards shall impose and collect the fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same manner as any other fee collected at state institutions of higher education.
(d) There is continued in the State Treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from the students pursuant to section one of this article. The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which the fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest in land;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for the buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at the state
institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities.

(f) The governing boards, in their discretion, may use the moneys in the special capital improvements funds and special auxiliary improvement funds to finance the costs of the purposes set forth in this section on a cash basis. The commission, when singly or jointly requested by the governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of the purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any pledge of the special funds for the revenue bonds shall be a prior and superior charge on the special funds over the use of any of the moneys in the funds to pay for the cost of any of the purposes on a cash basis. Any expenditures from the special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in the order of priority agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected are presented to the Governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure.

(g) The revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the
amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in the special funds.

(h) The issuance of the revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have the other terms and provisions determined by the governing board receiving the proceeds and the commission. The revenue bonds shall be signed by the Governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance thereof, under the Great Seal of the State, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the commission or governing board determines is for the best interests of the state.

(i) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in the trust agreements or the resolutions authorizing the issuance of the bonds may enter into valid and legally binding covenants with the holders of the revenue bonds as to the custody, safeguarding and disposition of the proceeds of the revenue bonds, the moneys in the special funds, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under the provisions of this section; as to
the maintenance or revision of the amounts of the fees; as to
the extent to which swap agreements, as defined in
subsection (h), section two, article two-g, chapter thirteen of
this code shall be used in connection with the revenue bonds,
including such provisions as payment, term, security, default
and remedy provisions as the commission shall consider
necessary or desirable, if any, under which the fees may be
reduced; and as to any other matters or provisions which are
considered necessary and advisable by the commission or
governing boards in the best interests of the state and to
enhance the marketability of the revenue bonds.

(j) After the issuance of any revenue bonds, the fees at
the state institutions of higher education pledged to the
payment thereof may not be reduced as long as any of the
revenue bonds are outstanding and unpaid except under such
terms, provisions and conditions as shall be contained in the
resolution, trust agreement or other proceedings under which
the revenue bonds were issued. The revenue bonds are and
constitute negotiable instruments under the Uniform
Commercial Code of this state; together with the interest
thereon, be exempt from all taxation by the state of West
Virginia, or by any county, school district, municipality or
political subdivision thereof; and the revenue bonds may not
be considered to be obligations or debts of the state and the
credit or taxing power of the state may not be pledged
therefor, but the revenue bonds shall be payable only from
the revenue pledged therefor as provided in this section.

(k) Additional revenue bonds may be issued by the
commission or governing boards pursuant to this section and
financed by additional revenues or funds dedicated from
other sources. There is hereby created in the State Treasury
a special revenue fund known as the Community and
Technical College Capital Improvement Fund into which
shall be deposited the amounts specified in subsection (j),
section eighteen, article twenty-two, chapter twenty-nine of
this code. All amounts deposited in the fund shall be pledged
to the repayment of the principal, interest and redemption
premium, if any, on any revenue bonds or refunding revenue
bonds authorized by the commission for community and
technical college capital improvements.

(1) Funding of systemwide and campus-specific revenue
bonds under any other section of this code is continued and
authorized pursuant to the terms of this section. Revenues of
any state institution of higher education pledged to the
repayment of any revenue bonds issued pursuant to this code
shall remain pledged.

(m) Any revenue bonds for state institutions of higher
education proposed to be issued under this section or other
sections of this code first must be approved by the
commission.

(n) Revenue bonds issued pursuant to this code may be
issued by the commission or governing boards, either singly
or jointly.

(o) Fees pledged for repayment of revenue bonds issued
under this section or article twelve-b, chapter eighteen prior
to the effective date of this section shall be transferred to the
commission in a manner prescribed by the commission. The
commission may transfer funds from the accounts of
institutions pledged for the repayment of revenue bonds
issued prior to the effective date of this section or issued
subsequently by the commission upon the request of
institutions, if an institution fails to transfer the pledged
revenues to the commission in a timely manner.

(p) Effective the first day of July, two thousand four, the
capital and auxiliary capital fees authorized by this section
and section one of this article are in lieu of any other fees set
out in this code for capital and auxiliary capital projects to
benefit public higher education institutions. Notwithstanding
any other provisions of this code to the contrary, in the event
any capital, tuition, registration or auxiliary fees are pledged
to the payment of any revenue bonds issued pursuant to any
general bond resolutions of the commission, any of its
predecessors or any institution, adopted prior to the effective
date of this section, such fees shall remain in effect in
amounts not less than the amounts in effect as of that date,
until the revenue bonds payable from any of the fees have
been paid or the pledge of the fees is otherwise legally
discharged.

CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State Lottery Fund; appropriations and deposits;
not part of general revenue; no transfer of state
funds after initial appropriation; use and
repayment of initial appropriation; allocation of
fund for prizes, net profit and expenses; surplus;
State Lottery Education Fund; State Lottery
Senior Citizens Fund; allocation and
appropriation of net profits.

(a) There is continued a special revenue fund in the State
Treasury which shall be designated and known as the State
Lottery Fund. The fund consists of all appropriations to the
fund and all interest earned from investment of the fund and
any gifts, grants or contributions received by the fund. All
revenues received from the sale of lottery tickets, materials
and games shall be deposited with the State Treasurer and
placed into the State Lottery Fund. The revenue shall be
disbursed in the manner provided in this section for the
purposes stated in this section and shall not be treated by the
Auditor and Treasurer as part of the general revenue of the
state.
(b) No appropriation, loan or other transfer of state funds may be made to the commission or Lottery Fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses: Provided, That for the period beginning the first day of the month following the first passage of a referendum election held pursuant to section seven, article twenty-two-c of this chapter and for eighteen months thereafter, not more than seventeen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the Joint Committee on Government and Finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the State Treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the School Building Debt Service Fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, then satisfying the requirements for funds dedicated to the Education, Arts, Sciences and Tourism
Debt Service Fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, and then satisfying the requirements for funds dedicated to the Community and Technical College Capital Improvement Fund in subsection (j) of this section to retire the bonds for community and technical college capital improvements authorized to be issued pursuant to section eight, article ten, chapter eighteen-b of this code, any and all remaining funds in the State Lottery Fund shall be made available to pay debt service in connection with any revenue bonds issued pursuant to section eighteen-a of this article, if and to the extent needed for such purpose from time to time. The Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The Lottery Education Fund created in subsection (g) of this section; (2) the School Construction Fund created in section six, article nine-d, chapter eighteen of this code; (3) the Lottery Senior Citizens Fund created in subsection (k) of this section; and (4) the Division of Natural Resources created in section three, article one, chapter twenty of this code and the West Virginia Development Office as created in section one, article two, chapter five-b of this code, in accordance with subsection (l) of this section. No transfer to any account other than the School Building Debt Service Fund, the Education, Arts, Sciences and Tourism Debt Service Fund, the Community and Technical College Capital Improvement Fund, the Economic Development Project Fund created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, or any fund from which debt service is paid under subsection (c), section eighteen-a of this article may be made in any period of time in which a default exists in respect to debt service on bonds issued by the School Building Authority, the State Building Commission, the Higher Education Policy Commission, the Economic Development Authority or which are otherwise secured by lottery proceeds. No additional transfer may be made to any account other than the School Building Debt Service Account
and the Education, Arts, Sciences and Tourism Debt Service
Fund and the Community and Technical College Capital
Improvement Fund when net profits for the preceding twelve
months are not at least equal to one hundred fifty percent of
debt service on bonds issued by the School Building
Authority, the State Building Commission and the Higher
Education Policy Commission which are secured by net
profits.

(g) There is continued a special revenue fund in the State
Treasury which shall be designated and known as the Lottery
Education Fund. The fund shall consist of the amounts
allocated pursuant to subsection (f) of this section, which
shall be deposited into the Lottery Education Fund by the
State Treasurer. The Lottery Education Fund shall also
consist of all interest earned from investment of the Lottery
Education Fund and any other appropriations, gifts, grants,
contributions or moneys received by the Lottery Education
Fund from any source. The revenues received or earned by
the Lottery Education Fund shall be disbursed in the manner
provided below and may not be treated by the Auditor and
Treasurer as part of the general revenue of the state.
Annually, the Legislature shall appropriate the revenues
received or earned by the Lottery Education Fund to the state
system of public and higher education for these educational
programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month, as
long as revenue bonds or refunding bonds are outstanding,
the lottery director shall allocate to the School Building Debt
Service Fund created pursuant to the provisions of section
six, article nine-d, chapter eighteen of this code, as a first
priority from the net profits of the lottery for the preceding
month, an amount equal to one tenth of the projected annual
principal, interest and coverage ratio requirements on any and
all revenue bonds and refunding bonds issued, or to be
issued, on or after the first day of April, one thousand nine
hundred ninety-four, as certified to the lottery director in
accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor may the total allocation of the net profits to be paid into the School Building Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or eighteen million dollars. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the School Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the School Building Authority in favor of the bonds it issues which are secured by the net lottery profits. When the school improvement bonds, secured by profits from the lottery and deposited in the School Debt Service Fund, mature, the profits shall become available for debt service on additional school improvement bonds as a first priority from the net profits of the lottery or may at the discretion of the authority be placed into the School Construction Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-six, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the Education, Arts, Sciences and Tourism Debt Service Fund created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest
and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-six, as certified to the lottery director in accordance with the provisions of that section. In no event may the monthly amount allocated exceed one million dollars nor may the total allocation paid into the Education, Arts, Sciences and Tourism Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or ten million dollars. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Education, Arts, Sciences and Tourism Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed fifteen million dollars annually, may be granted by the State Building Commission in favor of the bonds it issues which are secured by the net lottery profits.

(j) Beginning on or before the twenty-eighth day of July, two thousand eight, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the Community and Technical College Capital Improvement Fund, created pursuant to section eight, article ten, chapter eighteen-b of this code, as a third priority from net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued or to be issued, on or after the first day of April, two thousand eight, as certified by the lottery director in accordance with the provisions of that section. In no event may the monthly amount allocated exceed five hundred
thousand dollars nor may the total allocation paid to the Community and Technical Capital Improvement Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or five million dollars. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Community and Technical College Capital Improvement Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(1) A third-in-priority lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not exceeding seven and a half million dollars annually, may be granted by the Higher Education Policy Commission in favor of the bonds it issues which are secured by the net lottery profits. When the bonds secured by the profits from the lottery and deposited in the Education, Arts, Sciences and Tourism Debt Service Fund as provided in subsection (i) of this section mature or are paid in full, the bonds issued by the Higher Education Policy Commission for which lottery profits are pledged as provided in this subsection shall be considered to have a second-in-priority lien on the net profits deposited in the State Lottery Fund.

(2) When the community and technical college capital improvement bonds secured by profits from the lottery and deposited in the Community and Technical College Capital Improvement Fund mature, the profits shall become available for debt service on additional community and technical college capital improvement bonds as a second priority from the net profits of the lottery.

(3) The Council for Community and Technical College Education shall approve all community and technical college capital improvement plans prior to the distribution of bond proceeds.
(k) There is continued a special revenue fund in the State Treasury which shall be designated and known as the Lottery Senior Citizens Fund. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the Lottery Senior Citizens Fund by the State Treasurer. The Lottery Senior Citizens Fund shall also consist of all interest earned from investment of the Lottery Senior Citizens Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Senior Citizens Fund from any source. The revenues received or earned by the Lottery Senior Citizens Fund shall be distributed in the manner provided below and may not be treated by the Auditor or Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Senior Citizens Fund to any senior citizens medical care and other programs it considers beneficial to the citizens of this state.

(l) The Division of Natural Resources and the West Virginia Development Office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the Division of Natural Resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.
CHAPTER 91

(Com. Sub. for S.B. 287 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-4, §18B-18A-5, §18B-18A-6, §18B-18A-7, §18B-18A-8, §18B-18A-9, §18B-18A-10, §18B-18A-11 and §18B-18A-12, all relating to public higher education; research; establishing the West Virginia Research Trust Fund; legislative findings; defining terms; creating special account in the State Treasury; providing for allocation of moneys; authorizing Marshall University and West Virginia University to establish directed research endowments; providing requirements for and administration of directed research endowments; authorizing use of investment earnings; prohibiting expenditure of principal in directed research endowments; providing criteria and restrictions for qualified private donations and qualified private donation pledges; establishing eligible uses of directed research endowment proceeds; requiring directed research endowment plans; establishing criteria and procedures for distribution of matching moneys from the West Virginia Research Trust Fund and providing for reallocation of moneys under certain conditions; requiring participating institutions to return unmatched moneys to the trust fund under certain circumstances; authorizing distribution of certain moneys to state colleges; directing and authorizing Higher Education Policy Commission to promulgate rules; and requiring annual reports.
Be it enacted by the Legislature of West Virginia:


ARTICLE 18A. DIRECTED RESEARCH ENDOWMENTS.

§18B-18A-1. Legislative findings; purpose; and intent.


§18B-18A-4. Directed research endowments.

§18B-18A-5. Qualified private donations.

§18B-18A-6. Eligible uses of directed research endowment proceeds.


§18B-18A-10. Distributions to state colleges.


§18B-18A-1. Legislative findings; purpose; and intent.

(a) The Legislature finds that the continued expansion of the nation’s economy is dependent upon the ability of its institutions of higher education to increase the quality, quantity and productivity of its citizens who are engaged in scientific and technical fields of study. Failure of the United States to compete in these areas may lead to lower standards of living, dependence upon foreign intellectual capital and international insecurity. The economic future of West Virginia is equally dependent upon the ability of Marshall University and West Virginia University, the state’s two doctoral-granting, public research universities, to promote, educate and train researchers and research support staff in these diverse fields of study.

The Legislature further finds that a recent emphasis on the creation of innovative curricula and the receipt of
significant private donations by Marshall University and West Virginia University has led to major expansions in certain areas of study, including energy, national security technology, environmental sciences, health and biomedical sciences, biometrics, biotechnology and nanotechnology. Despite these expansions, the additional investment of both private donations and state moneys is critical to recruiting world-class scientists, researchers, research staff, technicians and professional degree graduates, as well as providing funding for laboratories and scientific equipment.

(b) The purpose of the Legislature in enacting this article is to establish a state fund to be administered by the Higher Education Policy Commission to address the findings outlined in subsection (a) of this section. The fund will make public moneys available to the state’s two doctoral-granting public research universities to match qualified private donations and qualified private donation pledges; thereby creating an incentive for donors to support certain priority areas of study consistent with each participating institution’s long-range strategic plan for research. Creation of this fund promotes strategic private donations targeted to specific areas of research and creates a sustainable source of funding for research initiatives that are critical to achieving long-term goals including, but not limited to, the following:

(1) Research-based economic development and economic diversification; and

(2) Increased potential for patenting, licensing and related technology transfer and commercialization of scientific and technological research in the state.


(a) General -- For the purposes of this article, terms have the meaning ascribed to them in section two, article one of this chapter, unless the context in which the term is used
clearly requires a different meaning or a specific definition is provided in this section.

(b) Definitions --

(1) "Directed research endowment" or "research endowment" means an account established at or administered by a participating institution or its affiliated research corporation or foundation in accordance with the provisions of section four of this article;

(2) "Directed research endowment plan" or "research plan" means the strategies and procedures formally approved and adopted by a governing board of a participating institution pursuant to section seven of this article outlining how a participating institution proposes to use directed research endowment proceeds to meet established goals and objectives;

(3) "Directed research endowment proceeds" or "endowment proceeds" means those investment earnings accruing to a participating institution's directed research endowment and available for expenditure by a participating institution or its affiliated research corporation in accordance with the provisions of section four of this article;

(4) "Trust fund" means the special account designated as the West Virginia Research Trust Fund established in section three of this article;

(5) "Participating institution" means Marshall University or West Virginia University;

(6) "Qualified private donation" or "qualified donation" means any private donation, gift or bequest to a directed research endowment that meets the criteria set forth in section five of this article;
(7) "Qualified private donation pledge" or "qualified pledge" means any pledge, commitment or other agreement to give a private donation to a directed research endowment that is made pursuant to a written agreement between the donor and the institution or its affiliated research corporation or foundation and that meets the criteria set forth in section five of this article;

(8) "Foundation" means a corporation created, organized and located in West Virginia that meets the following conditions:

(A) Is organized and operated for educational purposes in support of one or more state institutions of higher education;

(B) Is designated by the board of governors of one or more state institutions of higher education to receive charitable contributions for educational purposes on behalf of the institution or institutions;

(C) Does not have any part of its earnings inuring to the benefit of any private shareholder or individual;

(D) Is not disqualified from tax exemption under 26 U.S. C. §501(c)(3) for any reason; and

(E) Does not participate or intervene in, on behalf of or in opposition to any political campaigns for public office;

(9) "Research corporation" means an organization created pursuant to the provisions of article twelve of this chapter; and

(10) "State college" means the West Virginia School of Osteopathic Medicine, Bluefield State College, Concord University, Fairmont State University, Glenville State

(a) There is created in the State Treasury a special fund to be known as the West Virginia Research Trust Fund which shall consist of any appropriations of moneys to the fund made by the Legislature, all earnings from investment of the fund and any unmatched portion of state moneys returned by a state institution of higher education.

(b) Expenditures from the trust fund shall be made for the purposes set forth in this article and are not subject to separate appropriation by the Legislature. Any balance, including accrued investment earnings on any unmatched portion of state moneys returned by a state institution of higher education in the trust fund at the end of each fiscal year shall not expire to the General Revenue Fund, but shall remain in the trust fund and be expended as provided by this article.

(c) In accordance with the provisions of section eight of this article, the commission shall make available seventy percent of moneys in this account to match qualified donations and qualified pledges to West Virginia University and thirty percent of the moneys to match qualified donations and qualified pledges to Marshall University.

(d) Investment earnings accruing in the account may be expended by the commission to provide matching research funds to state colleges in accordance with the provisions of section ten of this article.

§18B-18A-4. Directed research endowments.

(a) The governing board of each participating institution may create and administer or enter into an agreement with its
research corporation and/or foundation to administer one or
more directed research endowments to receive qualified
donations and matching state moneys allocated for
distribution to that institution.

(b) A research endowment consists of qualified donations
and matching moneys distributed by the commission from the
trust fund in accordance with the provisions of section eight
of this article.

(c) Subject to the following conditions, the governing
board of a participating institution or its research corporation
may invest moneys deposited into the research endowment
either directly or through a foundation subject to the
following conditions:

(1) Any interest or other investment earnings on the
moneys invested are retained by the participating institution
to be used for the purposes set forth in this article;

(2) Any investments authorized by this subsection are
made in accordance with and subject to the provisions of the
Uniform Prudent Investor Act codified as article six-c,
chapter forty-four of this code; and

(3) Any investments authorized by this subsection are
not subject to the provisions of section twelve-d, article one,
chapter twelve of this code.

(d) Investment earnings accruing to a participating
institution’s research endowment, hereinafter referred to as
endowment proceeds, may be expended by the governing
board of the participating institution or its research
corporation, subject to the provisions of section six of this
article and the following conditions:
(1) Endowment proceeds may be expended only for the eligible uses designated; and

(2) The principal of a research endowment may not be expended for any purpose.

(e) The governing board of a participating institution is exempt from liability for any loss or decrease in value of the assets or income of a directed research endowment, except as losses or decreases in value are shown to be the result of bad faith, gross negligence or intentional misconduct.

(f) The governing board of each participating institution shall promulgate a rule or rules for the administration of research endowments that fulfills the purposes and requirements of this article and section six, article one of this chapter.

§18B-18A-5. Qualified private donations.

(a) Private donations and pledges to a research endowment meet the criteria for designation as a qualified donation or qualified pledge under the following conditions:

(1) The donation or pledge is expressly and specifically restricted by the donor for one or more of the eligible uses designated in section six of this article; however, nothing in this subdivision prohibits a participating institution from designating unrestricted gifts or bequests, or any portion thereof, for use as a qualified donation;

(2) The individual donation or pledge is a minimum of fifty thousand dollars or is bundled with other qualified donations or qualified pledges to meet the fifty thousand-dollar threshold; and

(3) Donations or pledges may be accepted from individuals, partnerships, associations, public and private for-
profit and nonprofit corporations and nongovernmental foundations.

(b) The following may not be included as a qualified donation or a qualified pledge:

(1) Any donation or pledge received by a participating institution or its affiliated research corporation or foundation prior to the effective date of this article;

(2) Educational and general fees, auxiliary fees or other student fees generated by the participating institution;

(3) Proceeds from promissory notes, bonds, loans or other instruments evidencing an indebtedness or any other obligation of repayment by the governing board to the maker of the instrument;

(4) Any moneys or assets, other than qualified donations or qualified pledges, received from the participating institution’s affiliated research corporation or foundation; or

(5) Any other moneys received from the state or federal government.

(c) The president of each participating institution or his or her designee shall make the initial determination of whether a donation or pledge meets the criteria for qualified donations or qualified pledges as set forth in this section. The president shall also provide a report to the governing board at least once each fiscal year regarding the amount of qualified donations and qualified pledges the participating institution has received.

§18B-18A-6. Eligible uses of directed research endowment proceeds.
(a) Endowment proceeds may be expended by a participating institution or its affiliated research corporation for any of the following designated uses:

(1) To pay the base salaries of newly endowed department chairs, new professorship positions, new research scientists and new research staff positions, including, but not limited to, research technicians and support personnel, and to fund affiliated graduate or undergraduate student research fellowships.

All positions or fellowships shall be engaged primarily in one of the following areas of research:

(A) Energy and environmental sciences;

(B) Nanotechnology and materials science;

(C) Biological, biotechnological and biomedical sciences;

(D) Transportation technology and logistics;

(E) Biometrics, security, sensing and related identification technologies; or

(F) Gerontology; or

(2) To purchase basic infrastructure directly related to an area of research identified in subdivision (1) of this subsection, including, but not limited to, laboratory and scientific equipment, and other essential equipment and materials.

(b) Eligibility criteria regarding the expenditure of directed endowment proceeds to pay the base salaries of personnel, to fund student fellowships and to purchase basic infrastructure shall be established by rules of the commission promulgated pursuant to section eleven of this article.

(a) To facilitate the goals of this article and to ensure the prudent expenditure of state moneys, the governing board of each participating institution shall submit to the commission a directed research endowment plan.

(b) The research plan shall include, but is not limited to, the following:

1. An assessment of the participating institution’s current research initiatives, including any initiatives falling within an area of research identified in section six of this article;

2. An analysis of possible strategies to enhance current research initiatives;

3. An outline of the participating institution’s proposed uses of endowment proceeds, including identification of any specific disciplinary hires, collaborations or acquisitions currently under consideration;

4. A list of proposed uses contained in the research plan including the anticipated costs associated with each proposed use;

5. An analysis of the anticipated costs compared to the expected endowment proceeds available to the institution;

6. An evaluation of how the research plan furthers the purposes of this article and addresses the research needs of the institution;

7. Identification of the proposed uses for which alternative funding sources may be sought to enhance the comprehensive research initiatives contemplated by the participating institution. Alternative funding sources exclude
qualifies donations, matching moneys from the trust fund and
the endowment proceeds generated from the trust fund: and

(8) Notation of the amount allocated for distribution to
the participating institution pursuant to section three of this
article.

c) The governing board of each participating institution
shall submit its research plan to the commission prior to
submitting its first request for a distribution of matching
moneys from the trust fund.

§18B-18A-8. Distributions from West Virginia Research Trust
Fund.

(a) A participating institution seeking a distribution of
matching moneys from the trust fund first shall obtain
qualified donations and/or qualified pledges in an amount
equal to the amount of matching moneys requested for
distribution and shall submit a request to the commission
setting forth the following:

(1) The amount of qualified donations and/or qualified
pledges designated for use in requesting the distribution of
matching moneys from the trust fund and the amount of any
previous distributions of matching moneys from the trust
fund;

(2) The amount requested for distribution to the
participating institution pursuant to section three of this
article;

(3) An explanation of how the proposed use satisfies the
criteria for the eligible uses of endowment proceeds set forth
in section six of this article;

(4) An explanation of how the proposed use of the
endowment proceeds furthers the purposes of this article and
addresses the research needs of the institution as identified in
the research plan; and

(5) A designation of the applicable research endowment
into which the requested matching moneys are to be
deposited.

(b) The commission shall review each request for
distribution of matching money from the trust fund for
compliance with the provisions of this article and the rule
promulgated pursuant to section eleven of this article.

(c) Once the commission approves the request of a
participating institution, it shall distribute matching moneys
from those allocated to the institution in the trust fund to the
applicable research endowment in an amount equal to the
amount of qualified donations and/or qualified pledges.


(a) No later than five years from the effective date of this
article, each participating institution shall have deposited into
its research endowments an amount of qualified donations
equal to or greater than the total amount of moneys allocated
for distribution to the institution pursuant to the provisions of
subsection (c), section three of this article.

(1) If one of the participating institutions fails to have
deposited into its research endowments the requisite amount
of qualified donations by the end of this five-year period,
then any portion of the moneys allocated to the institution
that has not been distributed shall be reallocated for
distribution to the other participating institution pursuant to
the terms of this article.

(2) To be eligible to receive a distribution of reallocated
moneys pursuant to this subsection, the other participating
(3) If the other participating institution does not have excess qualified donations on deposit, the reallocated moneys shall be made available for distribution by the commission to state colleges in accordance with the provisions of section ten of this article.

(b) If any pledge previously used by a participating institution to obtain a distribution of matching moneys from the trust fund has not been paid in full within five years from the effective date of this article, then the institution shall return the unmatched portion of state moneys to the trust fund. These moneys shall be reallocated for distribution to the other participating institution or to the state colleges pursuant to the terms of this section and section ten of this article as applicable.

(c) If both participating institutions fail to have deposited into their respective research endowments the requisite amount of qualified donations within five years from the effective date of this article, then any moneys remaining in the trust fund that have not been distributed shall be made available for distribution by the commission to state colleges in accordance with the provisions of this article.

§18B-18A-10. Distributions to state colleges.

(a) The commission may use a portion of those moneys derived from investment earnings accruing to the trust fund in accordance with the provisions of section three of this article, as well as moneys that are not distributed to participating institutions in accordance with the provisions of section nine of this article, to distribute state matching
moneys to state colleges, as that term is defined in section two of this article.

(b) In the rules required by section eleven of this article, the commission shall establish procedures for the competitive application and review of requests from state colleges and criteria for the eligible use of moneys distributed pursuant to this section.

(c) To qualify for a distribution of state matching moneys pursuant to this section, a state college shall meet the following conditions:

(1) Obtain qualified donations in an amount equal to or greater than the amount of matching moneys requested for distribution from the trust fund; and

(2) Deposit the qualified donations and any matching moneys distributed from the trust fund into the accounts of the institution or its affiliated research corporation or foundation.

(d) State matching moneys may be expended only for a research-oriented initiative approved by the commission.


(a) By the first day of October, two thousand eight, the commission shall propose a rule for legislative approval in accordance with the provisions of section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code to implement the provisions and purposes of this article. The rule shall include the following:

(1) Documentation standards and review procedures to determine whether a donation or pledge meets the criteria of
a qualified donation or qualified pledge when initially received or when the terms of a qualified donation or a qualified pledge are materially altered;

(2) Eligibility criteria in accordance with the provisions of section six of this article for the expenditure of endowment proceeds to pay the base salaries of personnel, to fund research fellowships and to purchase basic infrastructure;

(3) Procedures to ensure that endowment proceeds are expended in compliance with the provisions of this article;

(4) A requirement for each participating institution to report on the total amount of qualified donations received, the investment earnings realized and any anticipated expenditures of the research endowment proceeds in its annual operating budget; and

(5) Procedures for the competitive application and review of requests from state colleges and criteria for the eligible use of moneys distributed pursuant to section ten of this article.

(b) The Legislature finds that an emergency exists and, therefore, the commission shall file a rule to implement the provisions of this article as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code. The rule is subject to the prior approval of the Legislative Oversight Commission on Education Accountability.


By the first day of January, two thousand ten, and annually thereafter, the commission shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Delegates and the Legislative Oversight Commission on Education Accountability.
5 Commission on Education Accountability detailing
6 implementation of the research endowments at each
7 participating institution, the amount of qualified donations
8 received by each participating institution in the preceding
9 fiscal year, the amount of any distributions made from the
10 trust fund and a description of the research and outcomes
11 supported by those moneys.

CHAPTER 92

(Com. Sub. for H.B. 4433 - By Delegates M. Poling, Paxton,
Crosier, Gall, Pethtel, Shaver, Williams, Wysong,
Stephens, Wells and Rowan)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §18C-3-1 of the Code of West
Virginia, 1931, as amended, relating to health education student
loan fund; and increasing the portion of a medical student loan
that may be cancelled under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §18C-3-1 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN
PROGRAMS.

§18C-3-1. Health Education Loan Program; establishment;
administration; eligibility and loan cancellation;
required report.
(a) For the purposes of this section, “Vice Chancellor for Administration” means the person employed pursuant to section two, article four, chapter eighteen-b of this code.

(b) There is continued a special revolving fund account administered by the Commission in the state treasury to be known as the Health Education Student Loan Fund which shall be used to carry out the purposes of this section. The fund consists of the following:

(1) All funds on deposit in the medical student loan fund in the state treasury or which are due or become due for deposit in the fund as obligations made under the previous enactment of this section;

(2) Those funds provided for medical education pursuant to the provisions of section four, article ten, chapter eighteen-b of this code;

(3) Appropriations provided by the Legislature;

(4) Repayment of any loans made under this section;

(5) Amounts provided by medical associations, hospitals or other medical provider organizations in this state, or by political subdivisions of the state, under an agreement which requires the recipient to practice his or her health profession in this state or in the political subdivision providing the funds for a predetermined period of time and in such capacity as set forth in the agreement; and

(6) Other amounts which may be available from external sources.

(c) Balances remaining in the fund at the end of the fiscal year do not expire or revert. All costs associated with administering this section shall be paid from the Health Education Student Loan Fund.
(d) The Vice Chancellor for Administration may utilize any funds in the Health Education Student Loan Fund for the purposes of the Medical Student Loan Program. The commission shall give priority for the loans to residents of this state, as defined by the commission. An individual is eligible for loan consideration if the individual meets the following conditions:

1. Demonstrates financial need;
2. Meets established academic standards;
3. Is enrolled or accepted for enrollment at the West Virginia University School of Medicine, the Marshall University School of Medicine, or the West Virginia School of Osteopathic Medicine in a program leading to the degree of medical doctor (M.D.) or doctor of osteopathy (D.O.);
4. Has not yet received one of the degrees provided in subdivision (3) of this subsection; and
5. Is not in default of any previous student loan.

(e) At the end of each fiscal year, any individual who has received a medical student loan and who has rendered services as a medical doctor or a doctor of osteopathy in this state in a medically underserved area or in a medical specialty in which there is a shortage of physicians, as determined by the Division of Health at the time the loan was granted, may submit to the commission a notarized, sworn statement of service on a form provided for that purpose. Upon receipt of the statement the commission shall cancel ten thousand dollars of the outstanding loan or loans for every full twelve consecutive calendar months of such service.

(f) No later than thirty days following the end of each fiscal year, the Vice Chancellor for Administration shall
62 prepare and submit a report to the commission for inclusion in the statewide report card required under section eight, article one-d, chapter eighteen-b of this code to be submitted to the Legislative Oversight Commission on Education Accountability established under section eleven, article three-a, chapter twenty-nine-a of this code. At a minimum, the report shall include the following information:

69 (1) The number of loans awarded;

70 (2) The total amount of the loans awarded;

71 (3) The amount of any unexpended moneys in the fund; and

73 (4) The rate of default during the previous fiscal year on the repayment of previously awarded loans.

CHAPTER 93

(Com. Sub. for S.B. 507 - By Senators Kessler, Hunter, Plymale, White and Minard)

[Passed March 5, 2008; in effect from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §3-1-20, §3-1-22, §3-1-29, §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended, all relating to general provisions and definitions for elections; requiring cards of instructions to voters to include notice as to effect of voting provisional ballot and right to request location of correct precinct; requiring posting of cards of instruction at voting places; requiring board of ballot commissioners to
provide election officials with a list of county precincts and voter registration records; eliminating provisions requiring election official trainees to be volunteers receiving credits for high school diploma and to be appointed by county commission or municipality where the election is held; clarifying that prohibition against using counting board in special elections is discretionary with the county commission; requiring poll clerk to notify prospective voter of effect of voting provisional ballot and of correct precinct in which to vote; and updating language relating to signatures to reflect use of electronic poll books and other electronic devices.

Be it enacted by the Legislature of West Virginia:

That §3-1-20, §3-1-22, §3-1-29, §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-20. Cards of instructions to voters; sample ballots; posting.
§3-1-22. County court clerks to provide election supplies; requirements for poll books and ballot boxes.
§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.
§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.
§3-1-41. Challenged and provisional voter procedures; counting provisional voters’ ballots; ballots of election officials.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

(a) The board of ballot commissioners of each county shall provide cards of general information which will include:

(1) The date of the election and the hours during which polling places will be open;

(2) Instruction for mail-in registrants and first-time voters;
(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 provisional ballot notice shall include a notification to voters of their rights as a provisional voter to inquire as to the correct precinct to cast a ballot and notification that if a ballot is cast in the incorrect precinct the ballot may not be counted at the canvass for that election. 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. The instructions regarding a provisional ballot shall be posted in the precinct in a highly visible location for voters to review.

(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.

§3-1-22. County court clerks to provide election supplies; requirements for poll books and ballot boxes.

The clerk of the county court of each county shall provide poll books, a list of all precincts within the county, tally sheets, ballot boxes, voting booths, registration records and forms, strong and durable envelopes upon which to make returns, blank forms for certifying returns and whatever further supplies are needed for holding the elections and making the returns thereof. The poll books shall bear upon each page the following heading: "Names of persons voting at precinct No. in the District of in the county of on this day of in the year." Such poll books shall have columns headed respectively: "Number of Voters," "Signature of Voter" and "Challenge of Voter," and shall have under the heading "Number of Voters" numbers in consecutive order to the bottom of each page. Forms for oaths of commissioners of election and poll clerks shall be written or printed on the poll books. Each ballot box shall be provided with two locks with different keys so that the key for one lock will not open the other and shall be so constructed as to be safely and securely closed and locked, with an opening in the lid of the box sufficient only for the passage of a single ballot.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

(a) For the purpose of this article:

(1) The term "standard receiving board" means those election officials charged with conducting the process of
voting within a precinct and consists of five persons, including one team of poll clerks, one team of election commissioners for the ballot box and one additional election commissioner: Provided, That if a municipal election is held at a time when there is no county or state election, the standard receiving board is to consist of four persons, including one team of poll clerks and one team of election commissioners for the ballot box;

(2) The term "expanded receiving board" means a standard receiving board as defined in subdivision (1) of this subsection and one additional team of poll clerks;

(3) The term "counting board" means those election officials charged with counting the ballots at the precinct in counties using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner;

(4) The term "team of poll clerks" or "team of election commissioners" means two persons appointed by opposite political parties to perform the specific functions of the office: Provided, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation; and

(5) The term “election official trainee” means an individual who is sixteen or seventeen years of age who meets the requirements of subdivisions (2), (3), (4), (5) and (6), subsection (a), section twenty-eight of this article.

(b) The composition of boards of election officials shall be as follows:

(1) In any primary, general or special election other than a presidential primary or presidential general election, each election precinct is to have one standard receiving board;
(2) In presidential primary and presidential general elections, each election precinct is to have one receiving board as follows:

(A) For precincts of less than five hundred registered voters, one standard receiving board; and

(B) For precincts of more than five hundred registered voters, one standard receiving board or, at the discretion of the county commission, one expanded receiving board.

(3) In any election conducted using paper ballots, counting boards may be allowed or required as follows:

(A) For any state, county or municipal special election, a counting board may be allowed at the discretion of the county commission;

(B) In a statewide primary or general election, one counting board is required for any precinct of more than four hundred registered voters and one counting board may be allowed, at the discretion of the county commission, for any precinct of at least two hundred but no more than four hundred registered voters; and

(C) In a municipal primary or general election, one counting board may be allowed, at the discretion of the municipal governing body, for any precinct of more than two hundred registered voters.

(c) For each primary and general election in the county, the county commission shall designate the number and type of election boards for the various precincts according to the provisions of this section. At least eighty-four days before each primary and general election the county commission shall notify the county executive committees of the two major political parties in writing of the number of
nominations which may be made for poll clerks and election commissioners.

(d) For each municipal election, the governing body of the municipality shall perform the duties of the county commission as provided in this section.

§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 designated location provided at 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 designated location 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 marked, 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, or by other means, 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) In accordance with instructions issued by the
Secretary of State, the clerk of the county commission shall
provide a form entitled "list of assisted voters", the form of
which list shall likewise be prescribed by the Secretary of
State. The commissioners shall enter the name of each voter
receiving assistance in voting the ballot, together with the
poll slip number of that voter and the signature of the person
or the commissioner from each party who assisted the voter.
If no voter has been assisted in voting, the commissioners
shall likewise make and subscribe to an oath of that fact on
the list.
(f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and so that the names of the poll clerks thereon are seen. The voter shall announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box to ascertain whether it is single, but without 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.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the "list of assisted voters", shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns. The clerk of the county commission shall make the oaths, affirmations and list available for public inspection and shall preserve them for a period of twenty-two months or until disposition is authorized or directed by the Secretary of State or court of record: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter.

(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in 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.

§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) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: Provided, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

(e) 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.

(f) 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.

(g) 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.

CHAPTER 94
(Com. Sub. for S.B. 495 - By Senators Kessler, Love,
Oliverio and Plymale)

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §3-1-46 of the Code of West
Virginia, 1931, as amended, requiring training programs for
election officials to be conducted within thirty days before an
election.

Be it enacted by the Legislature of West Virginia:
That §3-1-46 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-46. Training program for election officials.

(a) The Secretary of State in conjunction with the State Election Commission shall produce one or more audio-visual programs which explain and illustrate the procedures for conducting elections, the duties of the various election officials and the methods of voting on each voting system in use in the state.

(b) One copy of the appropriate training program shall be distributed to and kept and preserved by the clerk of the county commission of each county. The program shall be shown to all election officials before each election as part of their instructional program. The clerk of the county commission shall conduct an adequate number of sessions to train all election officials, shall schedule the regular sessions not less than seven days before each election and shall notify all election officials of the exact date, time and place such instructional program will be conducted.

(c) No person may serve as an election commissioner or poll clerk in any election unless he or she has attended the instructional program required by subsection (a) of this section within thirty days prior to an election. If an election official fails to attend the instructional program, another person shall be appointed in the election official’s place in the same manner as persons are appointed under the provisions of section thirty of this article to replace election officials refusing to serve. The clerk of the county commission shall conduct an additional instructional program within seven days prior to the election for any such person so appointed: Provided, That in cases of emergency, when no
person who has attended the instructional program for that election is available to fill a vacancy on the election board, the clerk of the county commission may appoint the substituted person as a commissioner or poll clerk notwithstanding that he or she has not received the instruction.

(d) The requirements of this section apply to all elections conducted by municipalities, except that the recorder or municipal clerk responsible for the election shall perform the duties of the clerk of the county commission defined in this section. The clerk of the county commission may assist the recorder or municipal clerk in conducting the instructional program.

(e) When the instructional program is not being used by the clerk for instructional purposes, it shall be available to any duly organized civic, religious, educational or charitable group without charge, except that the clerk shall require a cash deposit on such use in an amount to be determined by the Secretary of State.

(f) The Secretary of State shall cause the instructional program to be amended, edited or reproduced whenever he or she is of the opinion such revision is necessary in light of changes in the election laws of this state.

(g) No elected official may appear in any training program either in person or by visual image or by name.

(h) Every county clerk shall attend a training, to be conducted by the Secretary of State every two years, for the purpose of reviewing the election official training and receiving updates on election law matters.
AN ACT to amend and reenact §3-1A-6 of the Code of West Virginia, 1931, as amended, authorizing the Secretary of State to implement emergency procedures to ensure the integrity of the election process in times of natural disaster, terrorist attack, war or general emergency.

Be it enacted by the Legislature of West Virginia:

That §3-1A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-6. Powers and duties of Secretary of State; exercise of powers by appointees.

(a) The Secretary of State shall be the chief election official of the state. Except for those rules required by the provisions of section five of this article to be promulgated by the commission, the Secretary of State shall have the authority, after consultation with the State Election Commission, of which he or she is a member, to make, amend and rescind such orders and to promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, as may be necessary to standardize and
make effective the provisions of this chapter. All election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks shall abide by any orders that may be issued and any legislative rules that may be promulgated by the Secretary of State and the commission.

(b) The Secretary of State also shall have authority to require collection and report of statistical information and to require other reports by county commissions, clerks of county commissions and clerks of circuit courts.

(c) The Secretary of State shall also advise with election officials; furnish to the election officials a sufficient number of indexed copies of the current election laws of West Virginia and the administrative orders and rules issued or promulgated thereunder; investigate the administration of election laws, frauds and irregularities in any registration or election; report violations of election laws to the appropriate prosecuting officials; and prepare an annual report.

(d) The Secretary of State shall also have the power to administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the production of books, papers, records, registration records and other evidence and fix the time and place for hearing any matters relating to the administration and enforcement of this chapter, or the rules promulgated by the State Election Commission or by the Secretary of State as the chief election official of the state. In case of disobedience to a subpoena or subpoena duces tecum, he or she may invoke the aid of any circuit court in requiring the attendance, evidence and testimony of witnesses and the production of papers, books, records, registration records and other evidence.
(e) (1) The Secretary of State shall also have the power, after consultation with the Secretary of the Department of Military Affairs and Public Safety, to implement emergency procedures and rules to ensure that all eligible voters have the opportunity to cast a valid ballot and to uphold the integrity of an election in the event of natural disaster as declared by the Governor of this state, terrorist attack, war or general emergency, if any of which occur during or immediately preceding an election.

(2) For purposes of this subsection, a "general emergency" means circumstances preventing the casting of ballots in one or more voting precincts. The chief judge of the circuit court of the county where the casting of ballots is being prevented must declare by order that a general emergency exists."

(f) All powers and duties vested in the Secretary of State pursuant to this article may be exercised by appointees of the Secretary of State at his or her discretion, but the Secretary of State shall be responsible for their acts.

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CHAPTER 96

(Com. Sub. for S.B. 496 - By Senators Kessler, Oliverio, White, McKenzie and Plymale)

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §3-2-30 of the Code of West Virginia, 1931, as amended, relating to protecting certain information maintained in voter registration files.

Be it enacted by the Legislature of West Virginia:
That §3-2-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§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) Any person may examine the active, inactive, rejected and canceled voter registration records 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 may examine the 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 may 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 for examination and copying shall include all registration and voting information maintained in the file, but may not include the registrant’s telephone number, social security number or driver’s license number or nonoperator’s identification number issued by the Division of Motor Vehicles.
(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 registrant’s telephone number, social security number or driver’s license number or nonoperator’s identification number issued by the Division of Motor Vehicles. The clerk shall establish a written policy, posted within public view, listing the options for selection and sorting criteria and available data elements. The data elements shall include, at least:

1. The name, residence address, political party affiliation and status of the registrant;

2. The available formats of the lists; and

3. The times at which lists will be prepared. A copy of the county 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 registrant’s telephone number, social security number or driver’s license number or nonoperator’s identification number issued by the Division of Motor Vehicles.
(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 preparing 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 voter names, addresses or other information 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.
AN ACT to amend and reenact §3-3-5 of the Code of West Virginia, 1931, as amended, relating generally to voting an absentee ballot by electronic mail; allowing ballot to be transmitted to absentee voter by electronic mail; requiring absentee voter to return completed ballot in the same manner ballot was transmitted or by electronic mail; and specifying that ballots received via electronic mail are to be processed in the same manner as ballots submitted by facsimile.

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 ABSENTEEES.

§3-3-5. Voting an absentee ballot by mail, facsimile or electronic 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 or by electronic mail. If the ballot is transmitted by facsimile or by electronic mail pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit via facsimile or by electronic mail:

(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 or by electronic mail as provided in subdivision (2), subsection (e) of this section, the voter shall return the ballot in the same manner the ballot was received, except that the voter may return the ballot by United States mail, 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 or by electronic mail 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.

(l) 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 or by electronic mail 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 or by Electronic Mail" 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 or by electronic mail 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 or by electronic mail.

CHAPTER 98

(Com. Sub. for S.B. 494 - By Senators Kessler, Oliverio, White, Plymale and Jenkins)

[Passed March 5, 2008; in effect from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §3-4A-2, §3-4A-10, §3-4A-13, §3-4A-16, §3-4A-17, §3-4A-19, §3-4A-28 and §3-4A-33 of the Code of West Virginia, 1931, as amended, all relating to allowing election officials to use an electronic poll book containing voter registration information to verify that registered voters are eligible to vote in an election; defining terms; providing for storage, protection and maintenance of electronic poll books by county clerk; providing for use of electronic poll book to verify eligibility of voter; requiring election official to notify person not shown in electronic poll book to eligible to vote of the correct precinct; requiring preelection examination of electronic poll books; and requiring use of printed poll book if electronic poll book is not in working order.

Be it enacted by the Legislature of West Virginia:
That §3-4A-2, §3-4A-10, §3-4A-13, §3-4A-16, §3-4A-17, §3-4A-19, §3-4A-28 and §3-4A-33 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

§3-4A-2. Definitions.

§3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.

§3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners.

§3-4A-16. Delivery of vote-recording devices and electronic poll books; time, arrangement for voting.

§3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.

§3-4A-33. Tampering with vote-recording devices, electronic poll books, ballot labels, ballot or ballot cards, program decks, standard validation test decks or other automatic tabulating equipment; other dishonest practices; attempts; penalty.

§3-4A-2. Definitions.

1 As used in this article, unless otherwise specified:

2 (1) "Automatic tabulating equipment" means all apparatus necessary to electronically count votes recorded on ballots and tabulate the results;

3 (2) "Ballot" means a tabulating card or paper on which votes may be recorded by means of perforating or marking with electronically sensible ink or pencil or a screen upon which votes may be recorded by means of a stylus or by means of touch;

4 (3) "Central counting center" means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballots;
(4) "Electronic poll book" means an electronic device containing the same voter registration information maintained by the county clerk in a printed poll book.

(5) "Electronic voting system" is a means of conducting an election whereby votes are recorded on ballots by means of an electronically sensible marking ink, by perforating or are recorded on equipment that registers votes on a computer disk, or by touching a screen with a stylus or by means of touch, and votes are subsequently counted by automatic tabulating equipment at the central counting center;

(6) "Program deck" means the actual punch card deck or decks, or a computer program disk, diskette, tape or other programming media, containing the program for counting and tabulating the votes, including the "application program deck";

(7) "Application program deck" means the punch card deck or equivalent capacity in other program medias as provided, containing specific options used and necessary to modify the program of general application, to conduct and tabulate a specific election according to applicable law;

(8) "Standard validation test deck" means a group of ballots wherein all voting possibilities which can occur in an election are represented; and

(9) "Vote-recording device" means equipment in which ballot labels and ballots are placed to allow a voter to record his or her vote by perforating or equipment with a screen upon which votes may be recorded by means of a stylus or by means of touch.

§3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.
1 (a) When an electronic voting system is acquired by any
2 county commission, the vote-recording devices, where
3 applicable, and the tabulating equipment shall be
4 immediately placed in the custody of the county clerk and
5 shall remain in his or her custody at all times except when in
6 use at an election or when in custody of a court or court
7 officers during contest proceedings. The clerk shall see that
8 the vote-recording devices and the tabulating equipment are
9 properly protected and preserved from damage or
10 unnecessary deterioration and shall not permit any
11 unauthorized person to tamper with them. The clerk shall
12 also keep the vote-recording devices and tabulating
13 equipment in repair and of preparing the same for voting.

14 (b) When a county commission elects to acquire and use
15 electronic poll books in lieu of printed poll books, the clerk
16 of the county commission shall immediately take custody of
17 the electronic poll books, which shall remain in his or her
18 custody at all times except when in use at an election or when
19 in the custody of a court or court officers during contest
20 proceedings. The clerk shall ensure that the electronic poll
21 books are properly protected and preserved from damage or
22 unnecessary deteriorations and the clerk shall not permit any
23 unauthorized person to tamper with the electronic poll books.
24 The clerk shall also keep the electronic poll books in good
25 repair and the clerk shall prepare the electronic poll books for
26 election day.

§3-4A-13. Inspection of ballots, electronic poll books and vote-
recording devices; duties of county commission,
ballon commissioners and election commissioners;
records relating to ballots and vote-recording
devices; receipt of election materials by ballot
commissioners.

1 When the clerk of the county commission has completed
2 the preparation of the ballots and of any electronic poll books
3 and vote-recording devices as provided in sections eleven-a
and twelve-a of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and any electronic poll books and devices are ready for use.

(b) The members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place at which any vote-recording devices or electronic poll books and the ballots are stored, not later than five days before the day of the election, and shall inspect the devices, electronic poll books and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of the inspection shall be published, no less than three days in advance, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county involved.

(c) Any candidate and one representative of each political party on the ballot may be present during the examination. If the devices and electronic poll books and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts.

(d) The vote-recording devices, the electronic poll books and the ballots shall then be secured in double lock rooms. The clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices, electronic poll books and the ballots for transportation to the polls. Upon removal of the devices, the electronic poll books and the ballots, the clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the devices, the
electronic poll books and packages of ballots were found to be sealed when removed for transportation to the polls.

(e) Vote-recording devices used during the early voting period may be used on election day if retested in accordance with all the provisions of this section, including public notice between the close of early voting and prior to precinct placement for election day. Vote-recording devices containing a personal electronic ballot (PEB), a programable memory chip and a printed paper trail must comply with the applicable requirements of section twenty-six of this article.

(f) Not later than one day before the election, the election commissioner of each precinct previously designated by the ballot commissioners shall attend at the office of the clerk of the county commission to receive the necessary election records, books and supplies required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. The receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.

§3-4A-16. Delivery of vote-recording devices and electronic poll books; time, arrangement for voting.

The clerk of the county commission shall deliver or cause to be delivered each vote-recording device, electronic poll book and the package of ballots to the polling place where they are to be employed. The delivery shall be made not less than one hour prior to the opening of the polls and in the presence of the precinct election commissioners. At the time of the delivery the device and electronic poll books are to be
sealed to prevent any use prior to the opening of the polls 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 and the seal of the electronic poll book 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-17. Check of vote-recording devices and electronic poll
books before use; corrections; reserve vote-
recording devices.

(a) In counties utilizing an electronic voting system
where votes are to be recorded by means of perforating or by
touching a screen with a stylus or by means of touch before
permitting the first voter to vote, the election commissioners
shall examine the vote-recording devices to ascertain whether
the ballot labels are arranged as specified on the facsimile
diagram furnished to the precinct. If the ballot labels are
arranged incorrectly, the commissioners shall immediately
notify the clerk of the county commission of the foregoing
facts in writing, indicating the number of the device, and
obtain from the clerk a reserve vote-recording device and
thereafter proceed to conduct the election.
(b) Any reserve vote-recording device so used is to be prepared for use by the clerk or his or her duly appointed deputy and the reserve vote-recording device is to be prepared, inspected and sealed and delivered to the polling place wherein the seal is to be broken and the device opened 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 reserve vote-recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place. The vote-recording device found to have been with incorrect ballot labels is to be returned immediately to the custody of the clerk who shall then promptly cause the vote-recording device to be repaired, prepared and resealed in order that it may be used as a reserve vote-recording device if needed.

(c) In counties using electronic poll books, the election commissioners shall examine the electronic poll books to ascertain whether the poll books are in working order before allowing any voters to enter the polling location. If the electronic poll books are not in working order, the election commissioners shall contact the county clerk who shall immediately authorize a printed poll book to serve in place of the electronic poll book for that election. A printed poll book shall accompany the electronic poll book to each precinct.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

(a) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(b) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner
representing the party to which the voter belongs shall direct the voter to the vote-recording device or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated or for unaffiliated voters in accordance with section thirty-one, article two of this chapter.

(c) The poll clerk shall issue to each voter when he or she signs the poll book a printed card or ticket numbered to correspond to the number on the poll book of the voter and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.

(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote-recording devices, place them in the voting booths, examine them to see that they have the correct ballots or ballot labels, where applicable by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, the electronic poll books, if applicable, supplies, records and forms and post the sample ballots or ballot labels and instructions to voters. Upon ascertaining that all ballots, supplies, electronic poll books, if applicable, records and forms arrived intact, the election commissioners shall certify their findings in writing upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies are to be noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue the ballots in sequential order to each voter.
(e) Upon entering a precinct which is using an electronic poll book, each voter shall be verified by use of the electronic poll book to be a registered voter. If the voter is not registered according to the electronic poll book within that precinct, the poll clerk is to inform the voter of the proper precinct in which the voter is registered.

(f) Where applicable, each voter shall be instructed how to operate the vote-recording device before he or she enters the voting booth.

(g) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the poll books, at the time, write the word "spoiled" across the face of the ballot and place it in an envelope for spoiled ballots.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the poll books the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots are to be returned at the same time to the clerk of the county commission who shall count them and record the number. All unused ballots shall be stored with the other election materials and destroyed at the expiration of twenty-two months.
(h) Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail for not more than one year, or both.

(i) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election and shall deliver them to the clerk of the county commission who shall store them with the other election materials and destroy them at the expiration of twenty-two months.

(j) Where ballots are used, the voter, after he or she has marked his or her ballot, shall, before leaving the voting booth, place the ballot inside the envelope or sleeve provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope, if applicable, with the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked "spoiled" and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.

(k) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have
voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the poll books, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations or two special messengers of different registered party affiliations appointed by the clerk of the county commission, shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(l) The poll books, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.
(a) The vote-recording devices, electronic poll books, 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, electronic poll books, 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 or electronic poll books 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, electronic poll books, 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.

§3-4A-33. Tampering with vote-recording devices, electronic poll books, ballot labels, ballot or ballot cards, program decks, standard validation test decks or other automatic tabulating equipment; other dishonest practices; attempts; penalty.
(a) Any person not an election officer or other public official who shall tamper or attempt to tamper with any vote-recording device, electronic poll book, ballot label, ballot or ballot card, program deck, standard validation test deck or automatic tabulating equipment or in any way intentionally impair or attempt to impair their use and any person who shall be guilty of or shall attempt any dishonest practice upon any such devices or equipment, or with or by their use, shall be deemed guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than ten years or fined not less than five thousand dollars, or both.

(b) Any clerk of a county commission, county commissioner, ballot commissioner, election commissioner, or poll clerk, or any custodian, technician or other public official authorized to take part in the holding of an election or in preparing for an election, who, with intent to cause or permit any vote-recording device, electronic poll book, program deck, standard validation test deck or other automatic tabulating equipment to fail to record, test or tabulate correctly all votes cast thereon or tabulated therewith, tampers with or disarranges such device in any way, or any part or appliance thereof, or who causes or consents to the use of such device or equipment for vote recording, testing or tabulating at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted so that it will correctly record, test or tabulate all votes cast or who, with the purpose of defrauding or deceiving any voter or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear on said device or devices that the votes cast for one ticket, candidate or proposition, were cast for another ticket, candidate or proposition, removes, changes or mutilates any ballot, ballot card or ballot label on said device or any part thereof, or does any other thing intended to interfere with the validity or
37 accuracy of the election, shall be deemed guilty of a felony
38 and, upon conviction thereof, shall be confined in a
39 correctional facility for not less than one year nor more than
40 ten years, or fined not less than five thousand dollars or both.

CHAPTER 99

(S.B. 236 - By Senators Kessler, Hunter, Oliverio,
Plymale, White and Love)

[Passed March 5, 2008; in effect from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §3-5-15 and §3-5-16 of the Code of
West Virginia, 1931, as amended; and to amend and reenact
§3-6-8 and §3-6-9 of said code, all relating to removing
obsolete language relating to the role of circuit clerks in
elections.

Be it enacted by the Legislature of West Virginia:

That §3-5-15 and §3-5-16 of the Code of West Virginia, 1931,
as amended, be amended and reenacted; and that §3-6-8 and §3-6-9
of said code be amended and reenacted, all to read as follows:

Article
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING
PROCEDURES.

§3-5-15. Ascertaining and certifying primary election results.
§3-5-16. Return of supplies and certificates.
§3-5-15. Ascertaining and certifying primary election results.

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section.

When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(a) The receiving board shall ascertain from the poll books and record separately on the proper form the total number of voters of each party and nonpartisan voters who have voted.

(1) The number of provisional ballots of each party shall be counted and subtracted from the number of voters of the same party, which result should equal the number of ballots of that party deposited in the ballot box.

(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all provisional ballots, should equal the number of nonpartisan ballots deposited in the ballot box.
31 (3) The commissioners and clerks shall also report, over their signatures, the number of each type of ballots spoiled and the number of each type of ballots not voted.

34 (b) The procedure for counting ballots, whether performed throughout the day by the counting board, as provided in section thirty-three, article one of this chapter, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

39 (1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

41 (2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose without unfolding it. If properly signed, the commissioner shall announce which type of ballot it is and hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;

52 (3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots of each party and any nonpartisan ballot as they are removed and whenever the number of ballots of a particular party shall equal the number of voters entered on the poll book for that party minus the number of provisional ballots of that party, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same, or allowing anyone to examine or know the contents thereof, and the number of excess ballots of each party shall be recorded on the envelope;
(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose so as to show the number of votes received by each candidate for each office;

(5) When the votes have been read from a ballot, the ballot shall be immediately strung on a thread, with separate threads for each party's ballots and for nonpartisan ballots.

(c) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign three certificates of result, for each party represented, of the vote for all candidates of each party represented, on a form prescribed by the Secretary of State, giving the complete returns of the election at the polling place, which form shall include the following oath:

We, the undersigned commissioners and poll clerks of the primary election held at precinct No. ........ of ........ district of .......... County, W.Va., on the ........ day of ........, 20..., do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the .......... party, and the same is as follows:

The election officers shall enter the name of each office and the full name of each candidate on the ballot and the number of votes, in words and numbers, received by each. The election officers shall also enter the full name of every official write-in candidate for election to offices to be filled in the primary, except delegate to national convention, and the number of votes for each. Two of the certificates of result of election, for each party, shall be sealed in separately addressed envelopes, furnished for that purpose, and shall be disposed of by the precinct commissioners as follows: Two of the sealed envelopes containing the returns of each party shall be delivered to the clerk of the county commission who
shall, within forty-eight hours, mail one of the sealed returns for each precinct by certified mail to the Secretary of State. The one unsealed certificate shall be posted on the outside of the front door of the polling place.

(d) All ballots voted for candidates of each party shall be sealed in separate envelopes and the commissioners and clerks shall each sign across the seal.

§ 3-5-16. Return of supplies and certificates.

Immediately after completion of the count, tabulation and the posting of the certificate of result of the primary election in each precinct, one of the commissioners or poll clerks of each party at the precinct, designated for that purpose, shall return to the clerk of the county commission the ballot boxes, registration books and the several packages of ballots, poll books, tally sheets, certificates and all other election supplies and returns.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-8. Precinct returns; certificates; procedures.

As soon as the results are ascertained, the election officials shall make out and sign, under oath as provided in section fifteen, article five of this chapter, four certificates of result on a form prescribed by the Secretary of State, giving the complete returns of the election at the polling place, including the name of each office and the full name of every candidate on the ballot and the full name of every official write-in candidate for each office and the number of votes, in words and numbers, received by each, and the designation of
each issue on the ballot and the number of votes, in words
and numbers, for and against the issue.

The certificates shall be sealed and disposed of as
provided in section fifteen, article five of this chapter for
certificates of result of a primary election.

Immediately after the completion of the tabulation and
the posting of the certificate of result of the general election
in each precinct, the ballots, registration books, poll books,
tally sheets and other election supplies shall be sealed and
delivered to the clerk of the county commission as provided
in section sixteen, article five of this chapter.

§3-6-9. Canvass of returns; declaration of results; recounts;
recordkeeping.

(a) The commissioners of the county commission shall be
ex officio a board of canvassers and, as such, shall keep in a
well-bound book, marked "election record", a complete
record of all their proceedings in ascertaining and declaring
the results of every election in their respective counties.
They shall convene as the canvassing board at the courthouse
on the fifth day (Sundays excepted) after every election held
in their county, or in any district of the county, and the
officers in whose custody the ballots, pollbooks, registration
records, tally sheets and certificates have been placed shall
lay them before the board for examination. They may, if
considered necessary, require the attendance of any of the
commissioners, poll clerks or other persons present at the
election to appear and testify respecting the election and
make other orders as shall seem proper to procure correct
returns and ascertain the true results of the election in their
county; but in this case all the questions to the witnesses and
all the answers to the questions and evidence shall be taken
down in writing and filed and preserved. All orders made
shall be entered upon the record. They may adjourn, from
time to time, but no longer than absolutely necessary. When
a majority of the commissioners are not present, the meeting shall stand adjourned until the next day and so from day to day, until a quorum is present. All meetings of the commissioners sitting as a board of canvassers shall be open to the public. The board shall proceed to open each sealed package of ballots laid before them and, without unfolding them, count the number in each package and enter the number upon their record. The ballots shall then be again sealed carefully in a new envelope and each member of the board shall write his or her name across the place where the envelope is sealed. After canvassing the returns of the election, the board shall publicly declare the results of the election; however, they shall not enter an order certifying the election results for a period of forty-eight hours after the declaration.

(b) Within the 48-hour period, a candidate voted for at the election may demand the board to open and examine any of the sealed packages of ballots and recount them; but they shall seal the ballots again, along with the envelope above named, and the clerk of the county commission and each member of the board shall write his or her name across the places where it is sealed and endorse in ink, on the outside: "Ballots of the election held at precinct No._____, in the district of ________________, and county of ________________, on the ______ day of __________." In computing the 48-hour period as used in this section, Saturdays, Sundays and legal holidays shall be excluded: Provided, That at the end of the 48-hour period, an order shall be entered certifying all election results except for those offices in which a recount has been demanded.

(c) If a recount has been demanded, the board shall have an additional twenty-four hours after the end of the 48-hour period in which to send notice to all candidates who filed for the office in which a recount has been demanded of the date, time and place where the board will convene to commence the recount. The notice shall be served under the provisions
of subsection (d) of this section. The recount shall be set for no sooner than three days after the serving of the notice: Provided, That after the notice is served, candidates so served shall have an additional twenty-four hours in which to notify the board, in writing, of their intention to preserve their right to demand a recount of precincts not requested to be recounted by the candidate originally requesting a recount of ballots cast: Provided, however, That there shall be only one recount of each precinct, regardless of the number of requests for a recount of any precinct. A demand for the recount of ballots cast at any precinct may be made during the recount proceedings only by the candidate originally requesting the recount and those candidates who notify the board, pursuant to this subdivision, of their intention to preserve their right to demand a recount of additional precincts.

(d) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in writing to the candidate in person; or if the candidate is not found, by delivering the copy at the usual place of abode of the candidate and giving information of its purport, to the spouse of the candidate or any other person found there who is a member of his or her family and above the age of sixteen years; or if neither the spouse of the candidate nor any other person be found there and the candidate is not found, by leaving the copy posted at the front door of the place of abode. Any sheriff, thereto required, shall serve a notice within his or her county and make return of the manner and time of service; for a failure so to do, he or she shall forfeit twenty dollars. The return shall be evidence of the manner and time of service.

(e) Every candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of the recount in the event the result of the election is not changed by the recount; but the amount of the bond shall in no case exceed three hundred dollars.
(f) After the board of canvassers has made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, pollbooks, tally sheets and precinct certificates with the clerk of the county commission from whom they were received, who shall carefully preserve them for twenty-two months: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter. If there is no contest pending as to any election and their further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots. If there is a contest pending, they shall be destroyed as soon as the contest is ended.

(g) If the result of the election is not changed by the recount, the costs and expenses of the recount shall be paid by the party at whose instance the recount was made.

CHAPTER 100

(Com. Sub. for S.B. 746 - By Senator Facemyer)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

28 and §22-15A-29, all relating to implementing a takeback program for certain electronic devices with manufacturers; providing incentives for recycling certain electronics; providing an opportunity for counties and municipalities to increase recycling efforts; establishing a registration program for manufacturers of certain electronic goods; assessing registration fees; authorizing civil and administrative penalties; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:


ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.
§22-15A-24. Covered manufacturers; prohibited sales; effective date.
§22-15A-25. Manufacturer registration; registration fees; creating the Covered Electronic Devices Takeback Fund.
§22-15A-27. Civil actions and administrative fines; powers and duties of secretary.


1 Unless the context clearly indicates a different meaning or defined elsewhere in this chapter, as used in this article:

3 (1) "Beneficial use" means the use or reuse of whole waste tires or tire derived material which are reused in constructing retaining walls, rebuilding highway shoulders
and subbase, building highway crash attenuation barriers and
other civil engineering applications, feed hopper or watering
troughs for livestock, other agricultural uses approved by the
Department of Environmental Protection, playground
equipment, boat or truck dock construction, house or building
construction, go-cart, motorbike or race track barriers,
recapping, alternative daily cover or similar types of
beneficial applications: Provided, That waste tires may not be
reused as fencing, as erosion control structures, along stream
banks or river banks or reused in any manner where human
health or the environment, as determined by the Secretary of
the Department of Environmental Protection, is put at risk.

(2) “Brand” means the name, symbol, logo, trademark, or
other information that identifies a product rather than the
components of the product.

(3) "Collected for commercial purposes” means taking
solid waste for disposal from any person for remuneration
regardless of whether or not the person taking the solid waste
is a common carrier by motor vehicle governed by article
two, chapter twenty-four-a of this code.

(4) “Computer” means a desktop, personal computer or
laptop computer, including the computer monitor. Computer
does not include a personal digital assistant device, computer
peripheral devices such as a mouse or other similar pointing
device, a printer or a detachable keyboard.

(5) "Court” means any circuit, magistrate or municipal
court.

(6) “Covered electronic device” means a television,
computer or video display device with a screen that is greater
than four inches measured diagonally. “Covered electronic
device” does not include a video display device that is part of
a motor vehicle or that is contained within a household appliance or commercial, industrial or medical equipment.

(7) "Department" means the Department of Environmental Protection.

(8) "Litter" means all waste material, including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, covered electronic devices, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(9) "Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the secretary's rules promulgated pursuant to subsection (e), section three of this article.

(10) “Manufacturer” means a person that is the brand owner of a covered electronic device or television sold or offered for sale in this state by any means, including transactions conducted through retail sales outlets, catalogs or the internet.

(11) "Person" means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

(12) "Public area" means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county of this state or an area held open for unrestricted access by the general public.

(13) “Recyclable materials” means those materials that would otherwise become solid waste for disposal in a refuse
disposal system and which may be collected, separated or processed and returned to the marketplace in the form of raw materials or products.

(14) "Remediate or remediation" means to remove all litter, solid waste and tires located above grade at a site: 
Provided, That remediation does not include clean up of hazardous waste.

(15) “Television” means any telecommunication system device that can receive moving pictures and sound broadcast over a distance and includes a television tuner or a video display device peripheral to a computer in which the display contains a television tuner.

(16) "Secretary” means the Secretary of the Department of Environmental Protection.

(17) “Video display device” means an electronic device with an output surface that displays or is capable of displaying moving graphical images or visual representations of image sequences or pictures that show a number of quickly changing images on a screen to create the illusion of motion. Video display device includes a device that is an integral part of the display and cannot easily be removed from the display by the consumer and that produces the moving image on the screen. A “video display device” may use a cathode-ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, other image-projection technology or imaging display technologies.

(18) "Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use because of wear, damage or defect. A tire is no longer considered to be
suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

(19) "Waste tire monofill or monofill" means an approved solid waste facility where no solid waste except waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

(20) "Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling and/or marketing.

(21) "Waters of the state" means generally, without limitation, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands.

§22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.

(a) Litter pickup and removal. --

(1) Each county commission and the Regional Jail Authority may establish a jail or prison inmate program including a regular litter pickup work regimen under proper supervision pursuant to section four, article fifteen, chapter seventeen of this code. Funding for these programs shall be from the Litter Control Fund. Funding requirements may
include salaries for additional personnel needed for the program. The program may include the cooperative help of the Division of Highways or any other voluntary state, local, private, civic or public agency for personnel, equipment or materials in establishing a county or regionwide, continual program of inmate litter pickup. Upon final approval of the projected cost of the program for a given fiscal year, the secretary shall disburse the approved amount to the county or Regional Jail Authority. The funds will be used by the Authority to reimburse the county commission or Regional Jail Authority for its expenses related to the program and to pay other costs related to the use of inmates for litter pickup. Nothing contained herein shall preclude a county or counties from expending whatever additional funds its commission or commissions may deem appropriate from any other revenue source in furtherance of said program.

(2) All persons involved with litter pickup may separate identifiable recyclable materials from other litter collected. The funds resulting from the sale of those recyclable materials shall be returned to the Litter Control Fund.

(3) The county or regional solid waste authority may also contract with local governments, civic organizations or chief correctional officers in any county to implement litter pickup and removal pursuant to this act when the state offender workforce is not available. In such cases, the contract provisions shall require that identifiable recyclable materials shall be separated from other litter collected, with resulting funds returned to the Litter Control Fund. Priority shall be given to those contracts that maximize the use of community service hours by inmates and youth employment programs.

(b) Education. --

(1) The Department of Education in cooperation with the Department of Environmental Protection shall distribute
41 educational materials to the schools based on the goals of litter clean up and proper solid waste disposal, the rationale for the goals and how primary and secondary school students can contribute to the achievement of the goals. The Department of Education shall further incorporate this information into the curriculum of the public school system as appropriate.

48 (2) The Division of Highways and local governments shall conduct public awareness programs to notify the public of the provisions of this law and how they can participate, to inform them as to the rationale behind the provisions of this law, to advise them of other avenues for achievement of the noted goals and to encourage their participation.

54 (3) The Department of Environmental Protection and the Solid Waste Management Board shall provide technical assistance to local governments in the implementation of this law.

58 (c) Government recycling responsibilities. --

59 (1) All state agencies and regional planning councils may establish and implement aluminum container, glass and paper recycling programs at their public facilities. To the extent practicable, programs for other metals, plastics, covered electronic devices, rubber and other recyclable materials may be established and implemented. The moneys collected from the sale of such materials shall be deposited and accounted for in the Litter Control Fund pursuant to the authority of section four of this article.

68 (2) To further promote recycling and reduction of the waste stream, county and municipal governments shall consider the establishment of recycling programs as provided in this section in the operation of their facilities and shall evaluate the cost effectiveness of:
(A) Procedures that separate identifiable recyclable materials from solid waste collected; and

(B) Programs that provide for:

(i) The establishment of a collection place for recyclables at all landfills and other interim solid waste collection sites and arrangements for the material collected to be recycled;

(ii) Public notification of such places and encouragement to participate;

(iii) The use of rate differentials at landfills to facilitate public participation in on-site recycling programs.

(3) In preparing the recycling plan as required under this subsection, the county may address methods for the separate collection and recycling of covered electronic devices, including efforts by the county with manufacturers, recyclers, retailers or other local governments for the collection and recycling of covered electronic devices.

(d) Each affected agency and local government shall monitor and evaluate the programs implemented pursuant to this law.

(e) The secretary shall submit a report to the Speaker of the House and the President of the Senate not later than the first day of March, two thousand six, and every five years thereafter regarding the effectiveness of the programs authorized by this law.

§22-15A-24. Covered manufacturers; prohibited sales; effective date.

(a) This section, along with sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine of
this article apply to a manufacturer that manufactured an average of more than one thousand covered electronic devices per year in the three-year period immediately preceding the initial registration required in section twenty-five of this article.

(b) On or after the first day of July, two thousand nine, a manufacturer may not sell or lease or offer for sale or lease to any person in the state a new covered electronic device or television unless:

(1) The covered electronic device is labeled with the name of the manufacturer or the manufacturer’s brand label; and

(2) The manufacturer has registered with and submitted a registration fee to the secretary as provided in section twenty-five of this article.

(c) If a manufacturer is subject to the requirements of sections twenty-four, twenty-five and twenty-six of this article, a retailer may not sell or lease or offer for sale or lease to any person in the state a new covered electronic device unless the manufacturer has complied with the requirements of this section and sections twenty-five and twenty-six of this article.

§22-15A-25. Manufacturer registration; registration fees; creating the Covered Electronic Devices Takeback Fund.

(a) Each manufacturer wishing to sell or lease covered electronic devices shall register with the secretary no later than the first day of January, two thousand nine, and each year thereafter. The secretary shall provide a registration form which at a minimum shall include:
(1) The name, address and telephone number of the manufacturer;

(2) The brand names under which the manufacturer sells or offers for sale covered electronic devices or televisions in the state;

(3) Whether the manufacturer has implemented a takeback or recycling program for its covered electronic devices or televisions or both;

(4) If the manufacturer has implemented a takeback or recycling program for its covered electronic devices, the manufacturer must provide a toll-free number and website address that provides information about the takeback or recycling program, including a detailed description of how a person may return a covered electronic device for recycling, refurbishing or reuse.

(5) The secretary may request additional information necessary to further the goals of this program.

(b) One year after the implementation of the program and each year thereafter, the manufacturer must submit a report to the secretary on the implementation of the program during the prior year, including:

(1) The total weight of covered electronic devices received by the program from West Virginia during the prior year;

(2) The total number of covered electronic devices from West Virginia recycled, refurbished and reused during the prior year either by actual count or by using average product weights;
(3) The processes and methods used to recycle, refurbish or reuse the covered electronic devices received from West Virginia; and

(4) If the manufacturer has implemented a covered electronic device or television takeback program, be updated prior to any significant change in the program.

(c) The covered electronic device manufacturer registration fee is:

(1) Ten thousand dollars for the initial registration by the manufacturer that has not implemented a takeback program and is due no later than the first day of January, two thousand nine;

(2) Three thousand dollars for the initial registration by the manufacturer that has implemented a takeback program and is due no later than the first day of January, two thousand nine;

(3) Five thousand dollars for each subsequent annual registration by a manufacturer that did not have an implemented covered electronic device takeback program in the prior year; and

(4) Five hundred for each subsequent annual registration by a manufacturer that had implemented and maintained a covered electronic device takeback program in the prior year.

(d) All registration fees collected shall be deposited in a special account in the State Treasury to be known as the Covered Electronic Devices Takeback Fund which is to be administered by the secretary. Expenditures from the fund shall be for recycling grants to counties and municipalities for recycling or other programs that divert covered electronic devices from the waste stream and for the secretary’s
administrative expense in administering the requirements of sections twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight of this article. Expenditures are not authorized from collections but are to be made only in accordance with the appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand nine, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(e) The secretary shall review the registration submitted under this section. If the registration does not meet the requirements of this section and the rules adopted by the secretary, the secretary shall notify the manufacturer of the insufficiency.

(f) Within sixty days after receipt of a notice of insufficiency, the manufacturer shall submit a revised registration that addresses the insufficiencies noted by the secretary.

(g) The secretary shall maintain a list of registered covered electronic device manufacturers.

(h) The secretary shall publish the list of registered covered electronic device manufacturers online to provide retailers easy access to the manufacturers authorized to sell their products in this state.


(a) Before a manufacturer may offer a covered electronic device for sale or lease in this state, the manufacturer may:

(1) Adopt and implement a takeback program; and
(2) Affix a permanent, readily visible label to the covered electronic device or television with the manufacturer’s brand.

(b) The takeback program shall enable a consumer to recycle covered electronic devices or televisions without paying a separate recycling fee at the time of recycling and shall include provisions for:

(1) The manufacturer’s collection from a consumer of any covered electronic device that has reached the end of its useful life and is labeled with the manufacturer’s brand; and

(2) Recycling or reuse of covered electronic devices collected under subdivision (1) of this section.

(c) The collection of covered electronic devices provided under the takeback program must be reasonable, convenient and available to consumers in the state and designed to meet the collection needs of consumers in the state. Examples of collection methods that alone or combined meet the convenience requirements of this section include:

(1) A system by which the manufacturer or the manufacturer’s designee offers the consumer a system for returning covered electronic devices by mail at no charge to the consumer.

(2) A system using a physical collection site that the manufacturer or the manufacturer’s designee operates and to which the consumer may return covered electronic devices.

(3) A system using collection events held by the manufacturer or the manufacturer’s designee at which the consumer may return covered electronic devices.

(d) Collection services under this section may use existing collection infrastructure for handling covered
electronic devices and should encourage the inclusion of systems jointly managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers and other suitable operations. If a manufacturer or its designee offers a mail-back system as described in this section, either individually, by working together with a group of manufacturers or by working with others, it shall be deemed to meet the convenience requirements of this section.

(e) The takeback program shall include information for the consumer on how and where to return the manufacturer’s covered electronic device. The manufacturer shall include collection, recycling and reuse information on the manufacturer’s publicly available website. The manufacturer shall provide collection, recycling and reuse information to the secretary. The manufacturer may include collection, recycling and reuse information in the packaging or in the other materials that accompany the manufacturer’s covered electronic devices when the equipment is sold.

(f) If more than one person is a manufacturer of a certain brand of covered electronic devices as defined in section two of this article, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this article for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the covered electronic devices of that brand, the secretary may consider any of those persons to be the responsible manufacturer for purposes of sections twenty-four, twenty-five, twenty-six, and twenty-seven of this article.

§22-15A-27. Civil actions and administrative fines; powers and duties of secretary.
(a) Civil action. — In addition to being subject to injunctive relief under this article, a manufacturer who violates any provision of section twenty-four or twenty-five of this article or of any rule adopted pursuant to section twenty-four or twenty-five of this article is liable for a civil penalty not to exceed ten thousand dollars to be collected in a civil action brought by the secretary. Venue for such actions shall be in the circuit court of Kanawha County. Each day a violation occurs is a separate violation.

(b) Administrative action. — (1) In addition to any other remedies available at law and after an opportunity for a hearing which may be waived in writing by the person accused of a violation, the secretary may impose a penalty for violation of any provision of section twenty-four or twenty-five of this article or any rule adopted thereunder. The secretary’s decision may be appealed to the Environmental Quality Board.

(2) The penalty imposed on a person under this subsection shall be up to one thousand dollars for each violation, but not to exceed a total of fifty thousand dollars a year. Each day a violation occurs is a separate violation under this subsection.

(3) Any penalty imposed under this subsection is payable to the State of West Virginia and collectible in any manner provided by law for the collection of debts.

(4) Any penalty collected under this section shall be placed in the Covered Electronic Devices Takeback Fund.

(c) Powers and duties of secretary. — The secretary may conduct audits and inspections to determine compliance with the provisions of sections twenty-four and twenty-five of this article and may take enforcement action as provided herein. The secretary may remove a manufacturer from the

(a) The secretary may assess against any retailer that sells covered electronic devices not authorized for sale in this state a penalty up to five hundred dollars for each violation, but not to exceed five thousand dollars total for the year. The secretary’s decision may be appealed to the Environmental Quality Board.

(b) A fine under subsection (a) of this section may be assessed only after the retailer that committed the violation has been issued three warnings from the secretary regarding the violation.

(c) Each day on which a violation occurs or continues is a separate violation under this section.

(d) All penalties assessed under this section shall be deposited into the Covered Electronic Devices Takeback Fund.


The secretary shall propose for promulgation emergency and legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of sections twenty-four through twenty-eight, inclusive, of this article by the first day of January, two thousand nine.
CHAPTER 101

(H.B. 4038 - By Delegates Morgan, Martin, Argento, Beach, Caputo, Hartman, D. Poling, Staggers, Swartzmiller, Canterbury and Rowan)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §21-3C-1, §21-3C-2, §21-3C-7, §21-3C-8, §21-3C-11 and §21-3C-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-3C-10a, all relating to the Elevator Safety Act; requiring annual inspections of elevators; requiring elevator mechanics to be licensed by the Division of Labor; authorizing legislative rules; providing for fees; and providing civil and criminal penalties for noncompliance.

Be it enacted by the Legislature of West Virginia:

That §21-3C-1, §21-3C-2, §21-3C-7, §21-3C-8, §21-3C-11 and §21-3C-12 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-10a, all to read as follows:

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-1. Definitions.
§21-3C-2. Inspectors; application; certificates of competency.
§21-3C-7. Safety equipment.
§21-3C-8. Certificate of operation; renewal.
§21-3C-10a. License requirements for elevator mechanics; contractors license required; supervision of elevator apprentices required.
§21-3C-11. Disposition of fees; legislative rules.
§21-3C-12. Penalties.
§21-3C-2. Inspectors; application; certificates of competency.

(a) No person may serve as an inspector unless he or she successfully completes the examination for Qualified Elevator Inspector (QEI) from an examination organization approved by the commissioner and holds a certificate of competency for elevator inspections issued by the division.

(b) The application for elevator inspector shall be in writing, accompanied by a fee of ten dollars, upon a form furnished by the division. The applicant shall state his or her level of education, previous employers, the period of employment, the position held with each employer, and other information required by the division. The applicant shall also submit a copy of his or her QEI card, and a letter from one of his or her previous employers concerning his or her character and experience.

(c) Applications which contain any willfully submitted false or untrue information shall be rejected.

(d) The division shall issue a certificate of competency for elevator inspections to an applicant who successfully completes the examination and who complies with the requirements of this article and legislative rules promulgated by the division.

(e) Any person hired as a private inspector by a county or municipality shall possess a certificate of competency issued by the division.

(f) The division may hire division inspectors or enter into a contract for the services of a division inspector so long as the inspector has been certified competent by the division. The division may hire an inspector supervisor who shall supervise the inspection activities under this article.
§21-3C-7. Safety equipment.

1 Every passenger elevator shall be equipped, maintained and operated in a safe manner in accordance with legislative rules promulgated by the division as authorized by this article.

§21-3C-8. Certificate of operation; renewal.

1 A certificate of operation for any elevator may not be issued until the elevator has been inspected for safety and the inspection report filed with the division. The certificate of operation shall list the date of inspection and shall expire one year after the date of inspection. The certificate of operation shall be conspicuously posted in the elevator at all times. An expired certificate of operation shall be renewed in the manner that the prior certificate was obtained.

§21-3C-10a. License requirements for elevator mechanics; contractors license required; supervision of elevator apprentices required.

1 (a) On and after the first day of January, two thousand ten, no person may engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article in this state, unless he or she has a license issued by the Commissioner of Labor in accordance with the provisions of this article.

8 (b) A person licensed under this article must:

9 (1) Have in his or her possession a copy of the license issued pursuant to this article on any job on which he or she is performing elevator mechanic work; and
(2) Be, or be employed by, a contractor licensed pursuant to the provisions of article eleven, chapter twenty-one of this code.

(c) An elevator apprentice may work only under the direct supervision of a licensed elevator mechanic, as set forth in legislative rules promulgated pursuant to this article.

§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

1. Standards, qualifications and procedures for submitting applications, taking examinations, and issuing and renewing licenses, certificates of competency and certificates of operation;

2. Qualifications and supervision requirements for elevator apprentices;

3. Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before the first day of July, two thousand ten: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

4. Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God or work stoppage when the number of persons in the state holding memberships...
(5) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(6) Continuing education requirements;

(7) Reciprocity provisions;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: Provided, That in no event may the fees established for the issuance of certificates of operation exceed fifty dollars.

(c) All fees collected pursuant to the provisions of this article shall be deposited in an appropriated special revenue account hereby created in the State Treasury known as the "Elevator Safety Fund" and expended for the implementation and enforcement of this article: Provided, That amounts
collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

(e) The commissioner and his or her deputy commissioner or any compliance officer of the division as authorized by the commissioner may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.

§21-3C-12. Penalties.

(a) On and after the first day of January, two thousand ten, the commissioner may issue a cease and desist order to any person engaging in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article in this state without a license, or inspecting elevators or related conveyances covered by this article without a certificate of competency, or operating an elevator or related conveyance covered by this article without a certificate of operation.

(b) Any person who violates a cease and desist order is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For the first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;
(2) For the second offense, a fine of not less than five hundred dollars nor more than two thousand dollars, or confinement in jail for not more than six months, or both;

(3) For the third and subsequent offenses, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in jail for not less than thirty days nor more than one year.

c Each day that a person violates a cease and desist order or is otherwise not in compliance with the provisions of this article constitutes a separate offense.

d The Commissioner of Labor may institute proceedings in the circuit court of the county where the alleged violation of the provisions of this article occurred or are occurring to enjoin any violation of any provision of this article. A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the Commissioner of Labor and with any final decision of the Commissioner of Labor. The Commissioner of Labor shall be represented in all such proceedings by the Attorney General or his or her assistants.

CHAPTER 102

(S.B. 503 - By Senators Fanning, Kessler, Foster, Bailey, Wells, White, Plymale and McKenzie)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §22-1-6 of the Code of West Virginia, 1931, as amended, relating to authorizing the Secretary of the Department of Environmental Protection to
require solid waste facility permit applicants and specified others connected with applicants and permittees to furnish fingerprints for the purpose of conducting state and federal criminal history checks.

Be it enacted by the Legislature of West Virginia:

That §22-1-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protection.

(a) The secretary is the chief executive officer of the department. Subject to section seven of this article and other provisions of law, the secretary shall organize the department into such offices, sections, agencies and other units of activity as may be found by the secretary to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(b) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the secretary. The secretary
has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the department, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

1. That the department carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments and other instrumentalities of this state; and

2. That appropriate officers and employees of the department consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

In addition to other powers, duties and responsibilities granted and assigned to the secretary by this chapter, the secretary is authorized and empowered to:

1. Sign and execute in the name of the state by the Department of Environmental Protection any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the secretary to enter into agreements or contracts
and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the department is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the department is charged with enforcing;

(4) Require any applicant or holder of a permit to install, establish, modify, operate or close a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer, director or manager of the applicant or permittee; any person owning a five percent or more interest, beneficial or otherwise, in the applicant’s or permittee’s business; or any other person conducting or managing the affairs of the applicant or permittee or of the proposed licensed premises, in whole or in part. These fingerprints may be used to obtain and review any police record for the purposes set may be relevant pursuant to section five, article fifteen of this chapter, and to use the fingerprints furnished to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of the checks shall be provided to the secretary.
(5) Acquire for the state in the name of the Department of Environmental Protection by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the Department of Environmental Protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in property;

(6) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to the educational programs, training and instruction. Eligibility for participation by employees shall be in accordance with guidelines established by the secretary;

(7) Issue certifications required under 33 U. S. C.§1341 of the federal Clean Water Act and enter into agreements in accordance with the provisions of section seven-a, article eleven of this chapter. Prior to issuing any certification the secretary shall solicit from the Division of Natural Resources reports and comments concerning the possible certification. The Division of Natural Resources shall direct the reports and comments to the secretary for consideration; and

(8) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the secretary and the department, including, but not limited to, representing the secretary, any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call upon the Attorney
General for legal assistance and representation as provided by law.

(e) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the Governor.

(f) At the time of his or her initial appointment, the secretary must be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The secretary must have at least a bachelor's degree in a related field and at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the secretary will be responsible upon assumption of the office. The secretary may not be a candidate for or hold any other public office, may not be a member of any political party committee and shall immediately forfeit and vacate his or her office as secretary in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The secretary shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and is allowed and shall be paid necessary expenses incidental to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the secretary shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars, which executed oath and bond will be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from the department funds.
AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to the special reclamation tax; continuing the Special Reclamation Fund; establishing the Special Reclamation Water Trust Fund; continuing and reimposing a tax on clean coal mined for deposit into both funds; providing for the investment of moneys thereby deposited; requiring the secretary to look at alternative programs; and authorizing secretary to promulgate legislative rules implementing the alternative programs.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the
State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than one thousand dollars nor more than five thousand dollars for each acre or fraction of an acre: Provided, That the minimum amount of bond furnished for any type of reclamation bonding shall be ten thousand dollars. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: Provided, however, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c)(1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions of the Federal Land Bank or of the Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West Virginia or other states
and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge
of the operator's obligations to the state for the reclamation of
lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance
with the provisions of section twenty-three of this article.

(g) The Special Reclamation Fund previously created is
continued. The Special Reclamation Water Trust Fund is
created within the State Treasury into and from which
moneys shall be paid for the purpose of assuring a reliable
source of capital to reclaim and restore water treatment
systems on forfeited sites. The moneys accrued in both
funds, any interest earned thereon and yield from investments
by the State Treasurer or West Virginia Investment
Management Board are reserved solely and exclusively for
the purposes set forth in this section and section seventeen,
article one of this chapter. The funds shall be administered
by the secretary who is authorized to expend the moneys in
both funds for the reclamation and rehabilitation of lands
which were subjected to permitted surface mining operations
and abandoned after the third day of August, one thousand
nine hundred seventy-seven, where the amount of the bond
posted and forfeited on the land is less than the actual cost of
reclamation, and where the land is not eligible for abandoned
mine land reclamation funds under article two of this chapter.
The secretary shall develop a long-range planning process for
selection and prioritization of sites to be reclaimed so as to
avoid inordinate short-term obligations of the assets in both
funds of such magnitude that the solvency of either is
jeopardized. The secretary may use both funds for the
purpose of designing, constructing and maintaining water
treatment systems when they are required for a complete
reclamation of the affected lands described in this subsection.
The secretary may also expend an amount not to exceed ten
percent of the total annual assets in both funds to implement
and administer the provisions of this article and, as they
apply to the Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

(h)(1) For tax periods commencing on and after the first day of July, two thousand eight, every person conducting coal surface mining shall remit a special reclamation tax as follows: (A) For the initial period of twelve months, ending the thirtieth day of June, two thousand nine, seven and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund; (B) an additional seven cents per ton of clean coal mined, the proceeds of which shall be deposited in the Special Reclamation Fund. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply. The additional seven-cent tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon recommendation of the council pursuant to the provisions of section seventeen, article one of this chapter: Provided, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the Special Reclamation Program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(3) Prior to the thirty-first day of December, two thousand eight, the secretary shall:
(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

(4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

(i) This special reclamation tax shall be collected by the State Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code
is collected: *Provided,* That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

(j) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(k) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(l) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(m) At the beginning of each quarter, the secretary shall advise the State Tax Commissioner and the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.

(n) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the Federal Surface Mining Control and Reclamation Act, 30 U. S. C.§1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.
AN ACT to amend and reenact §22-6-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-21-14 of said code, all relating to clarifying the procedures for the placement of a liner through mined-out coal horizons.

Be it enacted by the Legislature of West Virginia:

That §22-6-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-21-14 of said code be amended and reenacted, all to read as follows:

Article 6. Office of Oil and Gas; Oil and Gas wells; Administration; Enforcement.

21. Coalbed Methane Wells and Units.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-20. Same -- When well is drilled through horizon of coalbed from which coal has been removed.

1. When a well is drilled through the horizon of a coalbed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coalbed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet beneath the horizon of the coalbed and extend not less than twenty feet above it. Within this liner,
which may be welded to the casing to be used, shall be centrally placed the largest-sized casing to be used in the well and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing: Provided, That the liner may extend back to the surface and serve as the freshwater or coal protection casing, if done in accordance with sections eighteen and twenty-one of this article, as applicable. If the liner is constructed in this manner, the next string of casing to be run into the well shall extend at least twenty feet below the coalbed. Cement shall be placed between that string of casing and the liner from the bottom of the casing to a point at least twenty feet above the coalbed. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coalbeds from which the coal has been removed, the liner shall be started not less than twenty feet below the lowest horizon penetrated and shall extend to a point not less than twenty feet above the highest horizon.

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-14. Protective devices required when a coalbed methane well penetrates workable coalbed; when a coalbed methane well is drilled through horizon of coalbed from which coal has been removed; notice of stimulation; results of stimulation.

(a) Except for those coalbeds which the coalbed methane operator proposes to complete for production of coalbed methane or where a ventilation hole is being converted to a well, when a well penetrates one or more workable coalbeds, the well operator shall run and cement a string of casing in the hole through the workable coalbed or beds in such a manner as will exclude all oil, gas or gas pressure as may be found in such coalbed or beds. Such string of casing shall be
circulated and cemented in such a manner as provided for in reasonable rules promulgated by the chief in accordance with the provisions of chapter twenty-nine-a of this code. After any such string of casing has been so run and cemented to the surface, drilling may proceed to the permitted depth.

(b) When a coalbed methane well is drilled through the horizon of a coalbed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coalbed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest-sized casing to be used in the well and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing: *Provided*, That the liner may extend back to the surface and serve as the freshwater or coal protection casing, if done in accordance with subsection (a) of this section and section twenty-one, article six of this chapter, as applicable. If the liner is constructed in this manner, the next string of casing to be run into the well shall extend at least twenty feet below the coalbed. Cement shall be placed between that string of casing and the liner from the bottom of the casing to a point at least twenty feet above the coalbed. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coalbeds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest horizon penetrated and shall extend to a point not less than twenty feet above the highest horizon penetrated.

(c) At least five days prior to the stimulation of any coal seam the well operator shall give the coal owner and operator notice of the date and time of stimulation and shall allow the
coal owner or operator to have an observer present at the site at the coal owner or operator's risk and cost. Within thirty days after stimulation is completed, the well operator shall certify the actual stimulation procedure used, including, but not limited to, the fluid injection rate, the injection pressure, the volume and components of fluid injected and the amount and components of the propping agent, if any.

(d) The chief may grant variances to the requirements of this section where the variance would promote the extraction of coalbed methane without affecting mine safety.

CHAPTER 105

(H.B. 4080 - By Delegates Pino, Blair, Guthrie, Reynolds, Walters and Frederick)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §44-6A-1, §44-6A-2, §44-6A-3, §44-6A-4, §44-6A-5, §44-6A-6, §44-6A-7 and §44-6A-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §44-6A-9 and §44-6A-10, all relating to funds held for charitable purposes by nonprofit, charitable institutions; repealing the Uniform Management of Institutional Funds Act (UMIFA); creating the Uniform Prudent Management of Institutional Funds Act (UPMIFA); standards of conduct in managing and investing institutional funds; appropriation of institutional funds for expenditures or accumulation; criteria for expenditure or accumulation of institutional funds; delegation to an external
agent for the purpose of managing and investing of institutional funds; modifying or releasing donor restrictions on management, investment, or purpose of funds; reviewing compliance; application to existing institutional funds; relation to the federal Electronic Signatures in Global and National Commerce Act; and uniformity in the application and construction of the act.

Be it enacted by the Legislature of West Virginia:

That §44-6A-1, §44-6A-2, §44-6A-3, §44-6A-4, §44-6A-5, §44-6A-6, §44-6A-7 and §44-6A-8 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 §44-6A-9 and §44-6A-10, all to read as follows:

ARTICLE 6A. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

§44-6A-1. Short title.

§44-6A-2. Definitions.


§44-6A-4. Appropriations for expenditure or accumulation of endowment fund; rules of construction.


§44-6A-6. Release or modification of restrictions on management, investment, or purpose.


§44-6A-8. Application to existing institutional funds.


§44-6A-10. Uniformity of application and construction.

§44-6A-1. Short title.

This article may be cited as the “Uniform Prudent Management of Institutional Funds Act.”

§44-6A-2. Definitions.

In this article:
(1) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) “Endowment fund” means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) “Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by or on behalf of an institution as an institutional fund.

(4) “Institution” means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes;

(B) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose;

(C) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated; and

(D) A community foundation or community trust.

(5) “Institutional fund” means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) Program-related assets;
(B) A fund held for an institution by a trustee that is not an institution, unless the fund is held exclusively for the benefit of either a community foundation or community trust by a bank, a trust company or other similar fiduciary; or

(C) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) “Program-related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

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

(9) “Community foundation” or “community trust” means an institution that has been established to attract contributions for the benefit of a particular community or area whose contributions are often received and maintained in the form of separate trusts or funds which are subject to varying degrees of control by the governing body of the community foundation or community trust and which the governing body in good faith believes meets the requirements of the regulations issued by the Internal Revenue Service, United States Department of Treasury, presently codified as 26 CFR 1.170A-9(e)(10) and (11), to qualify as a “publicly supported” organization and to be treated as a “single entity” rather than as an aggregation of separate funds.

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this article, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;
(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the fund to make distributions and to preserve capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund’s portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this article, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into
compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this article.

(6) A person that has special skills or expertise, or is selected in reliance upon the person’s representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

§44-6A-4. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. This section does not limit the authority of the institution to expend funds as permitted under other law, the terms of the gift instrument, or the charter of the institution. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets (regardless of their treatment for accounting purposes) until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) The duration and preservation of the endowment fund;

(2) The purposes of the institution and the endowment fund;

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this article, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent
person in a like position would exercise under similar circumstances, in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this article.

§44-6A-6. Release or modification of restrictions on management, investment, or purpose.

Without limiting the options otherwise available to an institution under applicable law, a restriction on the
management, investment, purpose or other provision of a gift to an institutional fund may be released or modified in any one or more of the following ways:

(1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor’s probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable,
impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney General, may release or modify the restriction, in whole or in part, if:

(A) The institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars;

(B) More than twenty years have elapsed since the fund was established, and

(C) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(5) If the terms of a gift instrument, either specifically or by being subject to the charter of the institution, confer a power on the institution to release or modify a restriction on the management or investment of an institutional fund or the particular charitable purpose or restriction on the use of the institutional fund, the institution shall have the power to so modify or terminate that restriction and the other provisions of this section shall not apply to that release or modification. A release or modification under this subsection may not allow a fund to be used for a purpose other than a charitable purpose of the institution.


Compliance with this article is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

§44-6A-8. Application to existing institutional funds.

This article applies to institutional funds existing on or established after the effective date of this article. As applied to institutional funds existing on the effective date of this

1 This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

§44-6A-10. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

CHAPTER 106

(Com. Sub. for H.B. 4524 - By Delegates Webster, Mahan, Long, Lane, Proudfoot and Brown)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §6B-2-1, §6B-2-2a, §6B-2-3a, §6B-2-4 and §6B-2-5 of said code; and to amend and reenact §6B-3-3c and §6B-3-4 of said code, all
relating generally to the ethical standards of public officers, employees and lobbyists; defining additional terms; providing compensation for telephonic participation in meetings; creating a procedure for replacing recused members of the Probable Cause Review Board; altering requirements for pending complaint against a candidate for public office is stayed; establishing a time-frame for candidates to waive stay provisions; clarifying the procedure for replacing recused members of the commission hearing a complaint; providing for exclusive appeal of decisions by the commission imposing sanctions to the circuit court of Kanawha County; permitting personal use of frequent traveler bonus points acquired on official government business; redefining and clarifying what constitutes a limited interest in a public contract; prohibiting public employees or officials from influencing contracts in which they have a financial interest; providing that full-time public officials and full-time public employees may not seek employment with or be employed by a vendor over whose public contract the public official or public employee exercises authority or control; providing a procedure for granting exceptions to the restriction on purchases of personal property from regulated persons and vendors; providing that public officials and employees may not decide matters regarding a vendor with whom the official or employee is seeking employment or has an agreement concerning future employment; providing standards for determining when public officials may or may not vote on matters involving a for-profit or not-for-profit business, including financial institutions, with whom either they or an immediate family member are associated; providing that lobbyists must complete an ethics training course during each two-year registration cycle; clarifying that notice of suspension of a lobbyist's lobbying privileges be sent to the affected lobbyist by certified mail; requiring lobbyist complete training prior to lobbying; and making technical corrections.

Be it enacted by the Legislature of West Virginia:
That §6B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §6B-2-1, §6B-2-2a, §6B-2-3a, §6B-2-4 and §6B-2-5 of said code be amended and reenacted; and that §6B-3-3c and §6B-3-4 be amended and reenacted, all to read as follows:

Article 1. Short Title; Legislative Findings; Purposes and Intent; Construction and Application of Chapter; Severability.

2. West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies; Code of Conduct for Administrative Law Judges.

3. Lobbyists.

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-3. Definitions.

As used in this chapter, unless the context in which used clearly requires otherwise:

(a) "Review Board" means the Probable Cause Review Board created by section two-a, article two of this chapter.

(b) "Business" means any entity through which business for-profit is conducted including a corporation, partnership, proprietorship, franchise, association, organization or self-employed individual.

(c) "Compensation" means money, thing of value or financial benefit. The term "compensation" does not include reimbursement for actual reasonable and necessary expenses incurred in the performance of one's official duties.

(d) "Employee" means any person in the service of another under any contract of hire, whether express or
implied, oral or written, where the employer or an agent of
the employer or a public official has the right or power to
control and direct such person in the material details of how
work is to be performed and who is not responsible for the
making of policy nor for recommending official action.

(e) "Ethics Commission" or "commission" means the
West Virginia Ethics Commission.

(f) "Immediate family", with respect to an individual,
means a spouse with whom the individual is living as
husband and wife and any dependent child or children,
dependent grandchild or grandchildren and dependent parent
or parents.

(g) "Ministerial functions" means actions or functions
performed by an individual under a given state of facts in a
prescribed manner in accordance with a mandate of legal
authority, without regard to, or without the exercise of, the
individual's own judgment as to the propriety of the action
being taken.

(h) "Person" means an individual, corporation, business
entity, labor union, association, firm, partnership, limited
partnership, committee, club or other organization or group
of persons, irrespective of the denomination given such
organization or group.

(i) "Political contribution" means and has the same
definition as is given that term under the provisions of article
eight, chapter three of this code.

(j) "Public employee" means any full-time or part-time
employee of any state, county or municipal governmental
body or any political subdivision thereof, including county
school boards.
(k) "Public official" means any person who is elected or appointed to any state, county or municipal office or position and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.


(m) "Respondent" means a person who is the subject of an investigation by the commission or against whom a complaint has been filed with the commission.

(n) "Thing of value", "other thing of value" or "anything of value" means and includes: (1) Money, bank bills or notes, United States treasury notes and other bills, bonds or notes issued by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3) promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment of money or the forbearance of money due or owing; (4) receipts given for the payment of money or other property; (5) any right or chose in action; (6) chattels real or personal or things which savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates, life estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in common,
partial interests, present or future interests, contingent or
vested interests, beneficial interests, leasehold interests or
any other interest or interests in realty of whatsoever nature;
(8) any promise of employment, present or future; (9)
donation or gift; (10) rendering of services or the payment
thereof; (11) any advance or pledge; (12) a promise of
present or future interest in any business or contract or other
agreement; or (13) every other thing or item, whether
tangible or intangible, having economic worth. "Thing of
value" ,"other thing of value" or "anything of value" shall not
include anything which is de minimis in nature nor a lawful
political contribution reported as required by law.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;
POWERS AND DUTIES; DISCLOSURE
OF FINANCIAL INTEREST BY PUBLIC
OFFICIALS AND EMPLOYEES;
APPEARANCES BEFORE PUBLIC
AGENCIES; CODE OF CONDUCT FOR
ADMINISTRATIVE LAW JUDGES.

§6B-2-1. West Virginia Ethics Commission created; members; appointment, term of
office and oath; compensation and reimbursement for expenses; meetings
and quorum.
§6B-2-3a. Complaints.
§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

§6B-2-1. West Virginia Ethics Commission created; members;
appointment, term of office and oath;
compensation and reimbursement for expenses;
meetings and quorum.

(a) There is hereby created the West Virginia Ethics
Commission, consisting of twelve members, no more than
seven of whom shall be members of the same political party.
The members of the commission shall be appointed by the Governor with the advice and consent of the Senate. Within thirty days of the effective date of this section, the Governor shall make the initial appointments to the commission. No person may be appointed to the commission or continue to serve as a member of the commission who holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions, or who is a candidate for any of those offices, who is employed as a registered lobbyist, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission. A member may contribute to a political campaign, but no member shall hold any political party office or participate in a campaign relating to a referendum or other ballot issue.

(b) At least two members of the commission shall have served as a member of the West Virginia Legislature; at least two members of the commission shall have been employed in a full-time elected or appointed office in state government; at least one member shall have served as an elected official in a county or municipal government or on a county school board; at least one member shall have been employed full-time as a county or municipal officer or employee; and at least two members shall have served part time as a member or director of a state, county or municipal board, commission or public service district and at least four members shall be selected from the public at large. No more than four members of the commission shall reside in the same congressional district.

(c) Of the initial appointments made to the commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section, three for a term ending four years after the effective date of this section and
three shall be for terms ending five years after the effective date of this section. Thereafter, terms of office shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation or removal in the membership of this commission, it shall be filled by appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments. No member shall serve more than two consecutive full or partial terms and no person may be reappointed to the commission until at least two years have elapsed after the completion of a second successive term.

(d) Each member of the commission shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia. A member may be removed by the Governor for substantial neglect of duty, gross misconduct in office or violation of this chapter, after written notice and opportunity for reply.

(e) The commission shall meet within thirty days of the initial appointments to the commission at a time and place to be determined by the Governor, who shall designate a member to preside at that meeting until a chairman is elected. At its first meeting, the commission shall elect a chairman and other officers as are necessary. The commission shall within ninety days after its first meeting adopt rules for its procedures.

(f) Seven members of the commission shall constitute a quorum, except that when the commission is sitting as a hearing board pursuant to section four of this article, then five members shall constitute a quorum. Except as may be otherwise provided in this article, a majority of the total membership shall be necessary to act at all times.
Members of the commission shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties: Provided, That to be eligible for compensation and expense reimbursement, the member must participate in a meeting or adjudicatory session: Provided, however, That the member is not eligible for expense reimbursement if he or she does not attend a meeting or adjudicatory session in person.

(h) The commission shall appoint an executive director to assist the commission in carrying out its functions in accordance with commission rules and with applicable law. The executive director shall be paid a salary fixed by the commission or as otherwise provided by law. The commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties. Counsel to the commission shall advise the commission on all legal matters and on the instruction of the commission may commence appropriate civil actions: Provided, That no counsel shall both advise the commission and act in a representative capacity in any proceeding.

(i) The commission may delegate authority to the chairman or executive director to act in the name of the commission between meetings of the commission, except that the commission shall not delegate the power to hold hearings and determine violations to the chairman or executive director.

(j) The principal office of the commission shall be in the seat of government but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be public unless: (1) They are required to be private by the provisions of this
chapter relating to confidentiality; or (2) they involve discussions of commission personnel, planned or ongoing litigation and planned or ongoing investigations.

(k) Meetings of the commission shall be upon the call of the chair and may be conducted by telephonic or other electronic conferencing: Provided, That telephone or other electronic conferencing and voting are not permitted when the commission is acting as a hearing board under section four of this article or when the Probable Cause Review Board meets to receive an oral response as authorized under subsection (d), section four of this article. Members shall be given notice of meetings held by telephone or other electronic conferencing in the same manner as meetings at which the members are required to attend in person. Telephone or other electronic conferences shall be electronically recorded and the recordings shall be retained by the commission in accordance with its record retention policy.


(a) There is hereby established a Probable Cause Review Board that shall conduct hearings to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred and, if so, to refer that investigation to the Ethics Commission. The Review Board is an autonomous board, not under the direction or control of the Ethics Commission. The Review Board will review complaints received or initiated by the Ethics Commission to make a threshold determination of whether probable cause exists to believe that a violation of the West Virginia Governmental Ethics Act has occurred.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint three persons as members of the Review Board, each of whom shall be a resident and citizen
of the state. Each member of the Review Board shall hold
office until his or her successor has been appointed and
qualified. At least one member of the board must be an
attorney licensed by the State of West Virginia and no more
than two members can belong to the same political party. The
members of the Review Board shall be appointed for
overlapping terms of two years, except that the original
appointments shall be for terms of one, two and three years,
respectively. Any member whose term expires may be
reappointed by the Governor. In the event a Review Board
member is unable to complete his or her term, the Governor
shall appoint a person with similar qualification to complete
that term. Each Review Board member shall receive the
same compensation and expense reimbursement as provided
to Ethics Commission members pursuant to section one of
this article. These and all other costs incurred by the Review
Board shall be paid from the budget of the Ethics
Commission.

(c) No person may be appointed to the Review Board or
continue to serve as a member of the Review Board who
holds elected or appointed office under the government of the
United States, the State of West Virginia or any of its
political subdivisions, or who is a candidate for any of such
offices, or who is a registered lobbyist, or who is otherwise
subject to the provisions of this chapter other than by reason
of his or her appointment to or service on the Review Board.
A Review Board member may contribute to a political
campaign, but no member shall hold any political party office
or participate in a campaign relating to a referendum or other
ballot issue.

(d) Members of the Review Board may recuse themselves
from a particular case upon their own motion, with the
approval of the Review Board, and shall recuse themselves,
for good cause shown, upon motion of a party. The
remaining members of the Review Board may, by majority
vote, select a temporary member to replace a recused
member: Provided, That the temporary member selected to
replace a recused member shall be a person who meets all
requirements for appointment provided by subsection (c),
section two-a of this article, and whose political affiliation is
the same as the recused member.

(e) The Ethics Commission shall propose, for approval by
the Review Board, any procedural and interpretative rules
governing the operation of the Review Board. The
commission shall propose these rules pursuant to article
three, chapter twenty-nine-a of the code.

(f) The Ethics Commission shall provide staffing and a
location for the Review Board to conduct hearings. The
Ethics Commission is authorized to employ and assign the
necessary professional and clerical staff to assist the Review
Board in the performance of its duties and commission staff
shall, as the commission deems appropriate, also serve as
staff to the Review Board. All investigations and proceedings
of the Review Board are deemed confidential as provided in
section four of this article and members of the Review Board
are bound to the same confidentiality requirements applicable
to the Ethics Commission pursuant to this article.

(g) The Review Board may subpoena witnesses, compel
their attendance and testimony, administer oaths and
affirmations, take evidence and require by subpoena the
production of books, papers, records or other evidence
needed for the performance of the Review Board's duties.

(h) Upon decision by the Review Board that probable
cause exists to believe that a violation of this chapter has
occurred, commission staff shall send notice to the
commission members of the Review Board's finding. After
an ethics complaint has been submitted to the Review Board
in accordance with section four of this article, the
commission may take no further action until it receives the Review Board's probable cause finding.

§6B-2-3a. Complaints.

(a) The commission may commence an investigation, pursuant to section four of this article, on the filing of a complaint duly verified by oath or affirmation, by any person.

(b) The commission may order the executive director to prepare a complaint, upon a majority affirmative vote of its members, if it receives or discovers credible information which, if true, would merit an inquiry into whether a violation of this article has occurred.

(c) (1) No complaint may be accepted or initiated by the commission against a public official or public employee during the sixty days before a primary or general election at which the public official or public employees is a candidate for elective office.

(2) If a complaint is pending against a public official or public employee who is also a candidate for public office, then the commission shall stay the processing of the complaint for the sixty day time period preceding the primary election or general election, or both, unless the candidate waives the stay in writing. If the commission receives a written waiver of the stay at least sixty days prior to the election, and if the Review Board has not yet ruled whether probable cause exists to believe there has been a violation of the Ethics Act, then the Review Board will process the complaint and make a probable cause determination at least thirty days prior to the election: Provided, That the stay provisions of this subdivision do not apply to complaints which have already been adjudicated by the commission and are pending on appeal.
(3) For purposes of this subsection, any provisions of this chapter setting time periods for initiating a complaint or for performing any other action are considered tolled until after the election at which the public official or public employee candidate stands for elective office.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the Executive Director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the commission or the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or agent of a political party acting in his or her official capacity may file a complaint for a violation of this chapter with the commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the commission under this section. Within fourteen days after the receipt of a complaint, the Executive Director shall refer the complaint to the Review Board created pursuant to section two-a of this article.

(b) Upon the referral of a complaint by the Executive Director pursuant to subsection (a) of this section, the Review Board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the Review Board to be insufficient in this regard, the Review Board shall dismiss the complaint.

(c) Upon a finding by the Review Board that the complaint is sufficient, the Executive Director shall give
notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked "Addressee only, personal and confidential". The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the Review Board and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(d) Within the 45-day period following the mailing of a notice of investigation, the Review Board shall proceed to consider (1) The allegations raised in the complaint; (2) Any timely received written response of the respondent; and (3) Any other competent evidence gathered by or submitted to the commission which has a proper bearing on the issue of probable cause. A respondent may appear before the Review Board and make an oral response to the complaint. The commission shall promulgate rules prescribing the manner in which a respondent may present his or her oral response. The commission may ask a respondent to disclose specific amounts received from a source and request other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter if the information sought is considered to be probative as to the issues raised by a complaint or an investigation initiated by the commission. Any information thus received shall be
confidential except as provided by subsection (e) of this section. If a person asked to provide information fails or refuses to furnish the information to the commission, the commission may exercise its subpoena power as provided in this chapter and any subpoena issued by the commission shall have the same force and effect as a subpoena issued by a circuit court of this state. Enforcement of any subpoena may be had upon application to a circuit court of the county in which the Review Board is conducting an investigation through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(e) All investigations, complaints, reports, records, proceedings and other information received by the commission and related to complaints made to the commission or investigations conducted by the commission pursuant to this section, including the identity of the complainant or respondent, are confidential and may not be knowingly and improperly disclosed by any current or former member or employee of the commission or the Review Board except as follows:

(A) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the commission with a copy of the Review Board's order and the statement of charges prepared pursuant to the provisions of subsection (g) of this section, the complaint and all reports, records, nonprivileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential.

(B) After a finding of probable cause, any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into
evidence at the hearing, as well as the commission's orders, are not confidential.

(C) The commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent's request.

(E) Where the commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

(2) If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission shall order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the commission.

(f) If the members of the Review Board fail to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the members of the Review Board. Copies of the order of dismissal shall be sent to the complainant and served upon the respondent forthwith. If the Review Board decides by a unanimous vote that there is probable cause to believe that a violation under this chapter has occurred, the members of the Review Board shall sign an
order directing the commission staff to prepare a statement of charges and assign the matter for hearing to the commission or a hearing examiner as the commission may subsequently direct. The commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The commission's review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent's agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(g) At least eighty days prior to the date of the hearing, the commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the commission, by legislative rule, directs.

(h) The commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The commission shall, by legislative rule, establish the general qualifications for hearing examiners. The legislative rule shall also contain provisions which ensure that the functions of a hearing examiner will be conducted in an impartial manner and describe the circumstances and procedures for disqualification of hearing examiners.

(i) A member of the commission or a hearing examiner presiding at a hearing may:

(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents,
examine witnesses and parties and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the Ethics Commission consistent with the provisions of this chapter.

(j) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall order a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency, the commission may provide a transcript without charge. Within fifteen days following the
hearing, either party may submit to the hearing examiner that
party's proposed findings of fact. The hearing examiner shall
thereafter prepare his or her own proposed findings of fact
and make copies of the findings available to the parties. The
hearing examiner shall then submit the entire record to the
commission for final decision.

(k) The recording of the hearing or the transcript of
testimony, as the case may be, and the exhibits, together with
all papers and requests filed in the proceeding, and the
proposed findings of fact of the hearing examiner and the
parties, constitute the exclusive record for decision by the
commission, unless by leave of the commission a party is
permitted to submit additional documentary evidence or take
and file depositions or otherwise exercise discovery.

(l) The commission shall set a time and place for the
hearing of arguments by the complainant and respondent, or
their respective representatives, and shall notify the parties
thereof. Briefs may be filed by the parties in accordance with
procedural rules promulgated by the commission. The
commission shall issue a final decision in writing within
forty-five days of the receipt of the entire record of a hearing
held before a hearing examiner or, in the case of an
evidentiary hearing held by the commission acting as a
hearing board in lieu of a hearing examiner, within twenty-
one days following the close of the evidence.

(m) A decision on the truth or falsity of the charges
against the respondent and a decision to impose sanctions
must be approved by at least seven members of the
commission.

(n) Members of the commission shall recuse themselves
from a particular case upon their own motion with the
approval of the commission or for good cause shown upon
motion of a party. The remaining members of the
commission may, by majority vote, select a temporary member to replace a recused member: Provided, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection (b), section one of this article, as the recused member.

(o) Except for statements made in the course of official duties to explain commission procedures, no member or employee or former member or employee of the commission may make any public or nonpublic comment about any proceeding previously or currently before the commission. Any member or employee or former member or employee of the commission who violates this subsection is subject to the penalties contained in subsection (e), section ten of this article. In addition, violation of this subsection by a current member or employee of the commission is grounds for immediate removal from office or termination of employment.

(p) A complainant may be assisted by a member of the commission staff assigned by the commission after a determination of probable cause.

(q) No employee of the commission assigned to prosecute a complaint may participate in the commission deliberations or communicate with commission members or the public concerning the merits of a complaint.

(r) (1) If the commission finds by evidence beyond a reasonable doubt that the facts alleged in the complaint are true and constitute a material violation of this article, it may impose one or more of the following sanctions:

(A) Public reprimand;

(B) Cease and desist orders;
(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed five thousand dollars per violation; or

(E) Reimbursement to the commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the commission for its costs under this paragraph shall be collected by the commission and deposited into the special revenue account created pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

(3) The commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(s) At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: Provided, That negotiations leading to a conciliation agreement, as well as information obtained by the commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(t) Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, only by the respondent and only upon the grounds
set forth in section four, article five, chapter twenty-nine-a of this code.

(u) (1) Any person who in good faith files a verified complaint or any person, official or agency who gives credible information resulting in a formal complaint filed by commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the commission for the actual costs of its investigation. In addition, the commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.

(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.
(v) (1) If at any stage in the proceedings under this section it appears to a Review Board, a hearing examiner or the commission that there is credible information or evidence that the respondent may have committed a criminal violation, the matter shall be referred to the full commission for its consideration. If, by a vote of two thirds of the members of the full commission, it is determined that probable cause exists to believe a criminal violation has occurred, the commission shall refer the matter to the appropriate county prosecuting attorney having jurisdiction for a criminal investigation and possible prosecution. Deliberations of the commission with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the referral of the matter to the prosecuting attorney results in a criminal conviction of the respondent, the commission may resume its investigation or prosecution of the ethics violation, but may not impose a fine as a sanction if a violation is found to have occurred.

(2) If fewer than two thirds of the full commission determine that a criminal violation has occurred, the commission shall remand the matter to the Review Board, the hearing examiner or the commission itself as a hearing board, as the case may be, for further proceedings under this article.

(w) The provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine, and within one year before the filing of a complaint: Provided, That the applicable statute of limitations for violations which occur on or after the first day of July, two thousand five, is two years after the date on which the alleged violation occurred.
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section. -- The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. -- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: Provided, That the official’s or employee’s participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is
based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts. -- (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred
upon the official or employee or his or her immediate family:

Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee:

Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;
(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and
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127 (D) The honorarium is not provided in exchange for any
promise or action on the part of the public official.

129 (4) Nothing in this section shall be construed so as to
prohibit the giving of a lawful political contribution as
defined by law.

132 (5) The Governor or his designee may, in the name of the
State of West Virginia, accept and receive gifts from any
public or private source. Any gift so obtained shall become
the property of the state and shall, within thirty days of the
receipt thereof, be registered with the commission and the
Division of Culture and History.

138 (6) Upon prior approval of the Joint Committee on
Government and Finance, any member of the Legislature
may solicit donations for a regional or national legislative
organization conference or other legislative organization
function to be held in the state for the purpose of deferring
costs to the state for hosting of the conference or function.
Legislative organizations are bipartisan regional or national
organizations in which the Joint Committee on Government
and Finance authorizes payment of dues or other membership
fees for the Legislature's participation and which assist this
and other state legislatures and their staff through any of the
following:

150 (A) Advancing the effectiveness, independence and
integrity of legislatures in the states of the United States;

152 (B) Fostering interstate cooperation and facilitating
information exchange among state legislatures;

154 (C) Representing the states and their legislatures in the
American federal system of government;

156 (D) Improving the operations and management of state
legislatures and the effectiveness of legislators and legislative
staff, and to encourage the practice of high standards of
conduct by legislators and legislative staff;

(E) Promoting cooperation between state legislatures in
the United States and legislatures in other countries.

The solicitations may only be made in writing. The
legislative organization may act as fiscal agent for the
conference and receive all donations. In the alternative, a
bona fide banking institution may act as the fiscal agent. The
official letterhead of the Legislature may not be used by the
legislative member in conjunction with the fund raising or
solicitation effort. The legislative organization for which
solicitations are being made shall file with the Joint
Committee on Government and Finance and with the
Secretary of State for publication in the State Register as
provided in article two of chapter twenty-nine-a of the code,
copies of letters, brochures and other solicitation documents,
along with a complete list of the names and last known
addresses of all donors and the amount of donations received.
Any solicitation by a legislative member shall contain the
following disclaimer:

"This solicitation is endorsed by [name of member]. This
endorsement does not imply support of the soliciting
organization, nor of the sponsors who may respond to the
solicitation. A copy of all solicitations are on file with the
West Virginia Legislature's Joint Committee on Government
and Finance, and with the Secretary of State and are available
for public review."

(7) Upon written notice to the commission, any member
of the Board of Public Works may solicit donations for a
regional or national organization conference or other function
related to the office of the member to be held in the state for
the purpose of deferring costs to the state for hosting of the
conference or function. The solicitations may only be made
in writing. The organization may act as fiscal agent for the
conference and receive all donations. In the alternative, a
bona fide banking institution may act as the fiscal agent. The
official letterhead of the office of the Board of Public Works
member may not be used in conjunction with the fund raising
or solicitation effort. The organization for which solicitations
are being made shall file with the Joint Committee on
Government and Finance, with the Secretary of State for
publication in the State Register as provided in article two of
chapter twenty-nine-a of the code and with the commission,
copies of letters, brochures and other solicitation documents,
along with a complete list of the names and last known
addresses of all donors and the amount of donations received.
Any solicitation by a member of the Board of Public Works
shall contain the following disclaimer: "This solicitation is
endorsed by (name of member of Board of Public Works.)
This endorsement does not imply support of the soliciting
organization, nor of the sponsors who may respond to the
solicitation. Copies of all solicitations are on file with the
West Virginia Legislature's Joint Committee on Government
and Finance, with the West Virginia Secretary of State and
with the West Virginia Ethics Commission and are available
for public review." Any moneys in excess of those donations
needed for the conference or function shall be deposited in
the Capitol Dome and Capitol Improvement Fund established
in section two, article four of chapter five-a of this code.

(d) Interests in public contracts. –

(1) In addition to the provisions of section fifteen, article
ten, chapter sixty-one of this code, no elected or appointed
public official or public employee or member of his or her
immediate family or business with which he or she is
associated may be a party to or have an interest in the profits
or benefits of a contract which the official or employee may
have direct authority to enter into, or over which he or she
may have control: Provided, That nothing herein shall be
construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, that nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed one thousand dollars in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than five thousand dollars.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public
officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) **Confidential information.** -- No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) **Prohibited representation.** -- No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the
293 interests of the government agency, without the consent of
294 the government agency: Provided, That this prohibition on
295 representation shall not apply when the client was not
296 directly involved in the particular matter in which the
297 professional employee represented the government agency,
298 but was involved only as a member of a class. The provisions
299 of this subsection shall not apply to legislators who were in
300 office and legislative staff who were employed at the time it
301 originally became effective on the first day of July, one
302 thousand nine hundred eighty-nine, and those who have since
303 become legislators or legislative staff and those who shall
304 serve hereafter as legislators or legislative staff.

305 (g) Limitation on practice before a board, agency,
306 commission or department. -- Except as otherwise provided
307 in section three, four or five, article two, chapter eight-a of
308 this code: (1) No elected or appointed public official and no
309 full-time staff attorney or accountant shall, during his or her
310 public service or public employment or for a period of one
311 year after the termination of his or her public service or
312 public employment with a governmental entity authorized to
313 hear contested cases or promulgate or propose rules, appear
314 in a representative capacity before the governmental entity in
315 which he or she serves or served or is or was employed in the
316 following matters:

317 (A) A contested case involving an administrative
318 sanction, action or refusal to act;

319 (B) To support or oppose a proposed rule;

320 (C) To support or contest the issuance or denial of a
321 license or permit;

322 (D) A rate-making proceeding; and

323 (E) To influence the expenditure of public funds.
(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person. Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by
legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons and vendors. -- (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.
Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with
whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) Members of the Legislature required to vote. -- Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) Limitations on Voting.

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which
(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months: Provided, That this limitation only applies if the total amount of the loan or loans exceeds fifteen thousand dollars.

(C) A personnel matter involving the public official’s spouse or relative;

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by the nonprofit.

(II) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued
stock in the publicly traded company and the value of the
stocks individually or jointly owned is less than ten thousand
dollars; and

(ii) Prior to casting a vote the public official discloses his
or her interest in the publicly traded company.

(3) For a public official’s recusal to be effective, it is
necessary to excuse him or herself from participating in the
discussion and decision-making process by physically
removing him or herself from the room during the period,
fully disclosing his or her interests, and recusing him or
herself from voting on the issue.

(k) Limitations on participation in licensing and rate-
making proceedings. -- No public official or employee may
participate within the scope of his or her duties as a public
official or employee, except through ministerial functions as
defined in section three, article one of this chapter, in any
license or rate-making proceeding that directly affects the
license or rates of any person, partnership, trust, business
trust, corporation or association in which the public official
or employee or his or her immediate family owns or controls
more than ten percent. No public official or public employee
may participate within the scope of his or her duties as a
public official or public employee, except through ministerial
functions as defined in section three, article one of this
chapter, in any license or rate-making proceeding that
directly affects the license or rates of any person to whom the
public official or public employee or his or her immediate
family, or a partnership, trust, business trust, corporation or
association of which the public official or employee, or his or
her immediate family, owns or controls more than ten
percent, has sold goods or services totaling more than one
thousand dollars during the preceding year, unless the public
official or public employee has filed a written statement
acknowledging such sale with the public agency and the
statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(i) Certain compensation prohibited. -- (1) A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a
publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) Certain expenses prohibited. -- No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or
The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.

ARTICLE 3. LOBBYISTS.

§6B-3-3c. Lobbyist training course.

§6B-3-4. Reporting by lobbyists.

§6B-3-3c. Lobbyist training course.

The commission shall provide a training course for registered lobbyists and prospective lobbyists at least twice each year regarding the provisions of the ethics code relevant to lobbyists. One such course shall be conducted during the month of January. In addition to the registration fees authorized in section three-a of this article, the commission may collect a reasonable fee established by legislative rule authorized pursuant to article three, chapter twenty-nine-a of this code from those attending lobbyist training, which is to be collected by the Ethics Commission and deposited pursuant to section six, article one of this chapter. To maintain registration and engage in lobbying activities, a lobbyist must complete one such training course during each two-year registration cycle as described in section three-a of
this article: Provided, That a lobbyist must attend such training course prior to engaging in lobbying activities.

§6B-3-4. Reporting by lobbyists.

(a) A registered lobbyist shall file with the commission reports of his or her lobbying activities, signed by the lobbyist. The reports shall be filed three times a year as follows:

(1) On or before the fifteenth day of May, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of January through the thirtieth day of April.

(2) On or before the fifteenth day of September, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of May through the thirty-first day of August;

(3) On or before the fifteenth day of January, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of September through the thirty-first day of December.

(b) If the date on which a lobbyist expenditure report is due falls on a Saturday, Sunday or legal holiday, the report will be considered timely filed if it is postmarked not later than the next business day. If a registered lobbyist files a late report, the lobbyist shall pay the commission a fee of ten dollars for each late day, not to exceed a total of two hundred fifty dollars. If a registered lobbyist fails to file a report or to pay the required fee for filing an untimely report, the commission may, after written notice sent by certified mail, return receipt requested, suspend the lobbyist's privileges as a registered lobbyist until the lobbyist has satisfactorily complied with all reporting requirements and paid the required fee.
(c)(1) Except as otherwise provided in this section, each report filed by a lobbyist shall show the total amount of all expenditures for lobbying activities made or incurred by on behalf of the lobbyist during the period covered by the report. The report shall also show subtotals segregated according to financial category, including meals and beverages; living accommodations; advertising; travel; contributions; gifts to public officials or employees or to members of the immediate family of a public official or employee; and other expenses or services.

(2) Lobbyists are not required to report the following:

(A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(B) Any expenses incurred for the lobbyist's own living accommodations;

(C) Any expenses incurred for the lobbyist's own travel to and from public meetings or hearings of the legislative and executive branches; or

(D) Any expenses incurred for telephone and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance.

(d) If a lobbyist is employed by more than one employer, the report shall show the proportionate amount of the expenditures in each category incurred on behalf of each of his or her employers.

(e) The report shall describe the subject matter of the lobbying activities in which the lobbyist has been engaged during the reporting period.

(f) If, during the period covered by the report, the lobbyist made expenditures or expenditures were made or
incurred on behalf of the lobbyist in the reporting categories of meals and beverages, living accommodations, travel, gifts or other expenditures, other than for those expenditures governed by subsection (g) of this section, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and the subject matter of the lobbying activity, if any: Provided, That a registered lobbyist who entertains more than one public official or public employee at a time with meals and beverages complies with the provisions of this section if he or she reports the names of the public officials or public employees entertained and the total amount expended for meals and beverages for all of the public officials or public employees entertained: Provided, however, That where several lobbyists join in entertaining one or more public officials or public employees at a time with meals and beverages, each lobbyist complies with the provisions of this section by reporting the names of the public officials or public employees entertained and his or her proportionate share of the total amount expended for meals and beverages for all of the public officials or public employees entertained. Under this subsection, no portion of the amount of an expenditure for a dinner, party or other function sponsored by a lobbyist's employer need be attributed to a particular public official or employee who attends the function if the sponsor has invited to the function all the members of: (1) The Legislature; (2) either house of the Legislature; (3) a standing or select committee of either house; or (4) a joint committee of the two houses of the Legislature. However, the amount spent for the function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subdivision (1), subsection (c) of this section: Provided further, That if the expenditure is for a function to which the entire membership of the Legislature has been invited, the lobbyist need only report that fact, the total amount of the expenditure and the subject matter of the lobbying activity.
(g) If, during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages, lodging, travel, gifts and scheduled entertainment for or on behalf of a particular public official or public employee in return for the participation of the public official or employee in a panel or speaking engagement at a meeting, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made and the total amount of the expenditures.

CHAPTER 107

(H.B. 4684 - By Delegate Palumbo)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7, §11-13X-8, §11-13X-10, §11-13X-11, §11-13X-12 and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment Act; specifying definitions; restricting qualification of expenditures to prevent qualification for more than one credit program; stating the amount of credit allowed in specified percentages; specifying review and certification of projects by the film office; specifying credit limitation and allocation of credit by the film office; specifying terms to be agreed by an eligible company; specifying duties of an eligible company upon completion of a qualified project; specifying forms and information to be filed by an eligible company with the film office; authorizing the transfer or sale of excess
credits; specifying criteria for recapture, elimination or reduction of credit; specifying liability of credit transferor and transferee; specifying tax credit review information to be provided to the Legislature; specifying disclosure of certain information by the Tax Commissioner; and making amendments retroactively applicable to taxable years beginning after the thirty-first day of December, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7, §11-13X-8, §11-13X-10, §11-13X-11, §11-13X-12 and §11-13X-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§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.


(a) General. -- When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

(b) Terms defined. --
(1) "Commercial exploitation" means reasonable intent for public viewing for the delivery medium used.

(2) "Direct production expenditure" means a transaction that occurs in the State of West Virginia or with a West Virginia vendor, and includes:

(A) Payment of wages, fringe benefits or fees for talent, management, or labor to a person who is a resident of West Virginia;

(B) Payment to a personal services corporation for the services of a performing artist if:

(i) The personal services corporation is subject to West Virginia income tax on those payments; and

(ii) The performing artist receiving payments from the personal services corporation is subject to West Virginia income tax; and

(C) Any of the following provided by a vendor:

(i) The story and scenario to be used by a qualified project;

(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 qualified project in accordance with generally accepted entertainment industry practices.

(3) "Eligible company" means a person or business entity engaged in the business of producing film industry productions.

(4) “Feature length” means in excess of forty minutes.

(5) "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;

(6) "Film industry production" means a qualified project intended for reasonable national or international commercial exploitation.

(7) “Film office” means the West Virginia Film Office, which is a division of the West Virginia Department of Commerce.

(8) "Postproduction expenditure" means a transaction that occurs in West Virginia or with a West Virginia vendor after the completion of principal photography, including editing and negative cutting, Foley recording and sound effects, automatic dialogue replacement (also known as ADR or dubbing), special effects or visual effects, including computer-generated imagery or other effects, scoring and
music editing, sound editing, beginning and end credits, soundtrack production, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments.

(9) "Qualified project" means a feature length theatrical or direct-to-video motion picture, a made-for-television motion picture, a commercial, a music video, commercial still photography, a television pilot program, a television series and a television mini-series that incurs a minimum of twenty-five thousand dollars in direct production expenditures and post-production expenditures, as defined by this subsection, in West Virginia. The term excludes news or current affairs programming, a weather or market program, an interview or talk show, a sporting event or show, an awards show, a gala, a production that solicits funds, a home shopping program, a program that primarily markets a product or service, political advertising or a concert production.

A qualified project may be produced on any single media or multimedia program 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;

(E) Is intended for reasonable commercial exploitation for the delivery medium used; and
(F) Does not contain content that portrays the State of West Virginia in a significantly derogatory manner.

(10) "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her designee.

§11-13X-4. Creation of the tax credit.

(a) An eligible 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 incurred in West Virginia that are directly attributable to the production in West Virginia of a qualified project and that occur in West Virginia or with a West Virginia vendor; and

(2) Postproduction expenditures incurred in West Virginia that are:

(A) Directly attributable to the production of a qualified project;

(B) For services performed in West Virginia.

(b) Expenditures utilized by an eligible company for purposes of calculating the tax credit authorized by this article shall in no event be utilized by the eligible company for the purpose calculating or qualifying investment for claiming the economic opportunity tax credit authorized by article thirteen-q of this chapter or the manufacturing investment tax credit authorized by article thirteen-s of this chapter.

§11-13X-5. Amount of credit allowed; limitation of the credits.

(a) Base allowance. –
(1) The amount of credit allowed to every eligible 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, there shall be an additional credit of five percent.

(b) Extra allowance for hiring of local workers. -- Any amount allowed in subsection (a) of this section shall be increased by an additional four percent if the eligible 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.

(c) Application of the credits. — The tax credit allowed under this section shall be applied to the eligible company's state tax liability 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 film office in any given West Virginia state fiscal year. The film office shall allocate the tax credits in the order the applications therefor are received.

(e) The additional five percent tax credit amount authorized pursuant to subdivision (2), subsection (a) of this section shall not be available with respect to expenditures attributable to a production for which the eligible company receives a tax credit pursuant to the federal new markets tax credit program.

§11-13X-6. Requirements for credit.

(a) In order for any eligible company to claim a tax credit under this article, it shall comply with the following requirements:
(1) If the qualified project contains production credits, the eligible company shall agree, upon request by the film office, to recognize the State of West Virginia with the following acknowledgment in the end credit roll: "Filmed in West Virginia with assistance of the West Virginia Film Industry Investment Act;"

(2) Apply to the film office on forms and in the manner the film office may prescribe; and

(3) Submit to the film office information required by the film office to demonstrate conformity with the requirements of this section and shall agree in writing:

(A) To pay all obligations the eligible company has incurred in West Virginia;

(B) 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 or production has taken place to notify the public of the need to file creditor claims against the eligible company by a specified date;

(C) That outstanding obligations are not waived should a creditor fail to file by the specified date; and

(D) To delay filing of a claim for the tax credit authorized by this article until the film office delivers written notification to the Tax Commissioner that the eligible company has fulfilled all requirements for the credit.

The film office shall determine the eligibility of the company and the qualification of each project, and shall report this information to the Tax Commissioner in a manner and at times the film office and the Tax Commissioner shall agree upon.
(b) Upon completion of a qualified project, the eligible company shall:

(1) File all required West Virginia tax reports and returns for all applicable tax years and pay any balance of West Virginia tax due;

(2) All claims for the tax credit shall be filed with an expense verification report prepared by an independent certified public accountant, utilizing "Agreed Upon Procedures" which are prescribed by the film office in accordance with generally accepted auditing standards in the United States. The certified public accountant will render a report as to the qualification of the credits, consistent with guidelines to be determined by the film office and approved by the Tax Commissioner; and

(3) An eligible company claiming an extra allowance for employing local workers shall submit to the film office documentation verifying West Virginia residency for all individuals claimed to qualify for the extra allowance. The documentation shall include the name, home address and telephone number for all individuals used to qualify for the extra allowance.

(c) If the requirements of this section have been complied with, the film office shall approve the film tax credit and issue to the Tax Commissioner a document granting the appropriate tax credit to the eligible company.

§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 companies and owners of eligible companies, as
(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;

(2) The expiration of the second taxable year after the taxable year in which the expenditures occurred. The tax credit remaining thereafter is forfeited; or

(3) The excess tax credit is transferred or sold.

(c) No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

(d) The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally granted by the film office.
(e) Any tax credit certificate issued in accordance with this article, which has been issued to an eligible company, and to the extent not previously claimed against the tax of the eligible company or the owner of the certificate, may be transferred or sold by such eligible company to another West Virginia taxpayer, subject to the following conditions:

(1) A single transfer or sale may involve one or more transferees, assignees, or purchasers. A transfer or sale of the credits may involve multiple transfers to one or more transferees, assignees, or purchasers;

(2) Transferors and sellers shall apply to the film office for approval of any transfer, sale, or assignment of the tax credit. Any amount of the tax credit that has been transferred or assigned shall be subject to the same limitations and conditions that apply to the eligible company's or seller's entitlement, use, and application of the credit. The application for sale, transfer, or assignment of the credit shall include the transferor's tax credit balance prior to transfer, the credit certificate number, the name of the seller, the transferor's remaining tax credit balance after transfer, if any, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate and any other information required by the film office.

(3) The Tax Commissioner shall not approve the transfer or assignment of a tax credit to a taxpayer if the seller or transferor has an outstanding tax obligation with the State of West Virginia in connection with any qualified project for any prior taxable year.

(f) The transferee, assignee, or purchaser shall apply such credits in the same manner and against the same taxes as the taxpayer eligible company originally awarded the credit.
(g) For purposes of this chapter, any proceeds received by the eligible company or transferor for its assignment or sale of the tax credits allowed pursuant to this section are exempt from the West Virginia consumers sales and service tax and use tax and from the corporate net income tax and personal income tax.

(h) Tax credits will be subject to recapture, elimination or reduction if it is determined by the Tax Commissioner that a taxpayer was not entitled to the credit, in whole or in part, in the tax year in which it was claimed by the taxpayer. Transferors, and transferees of sold, transferred or assigned tax credits bear joint and several liability for any tax, interest or penalty resulting from recapture, elimination or reduction of a credit claimed pursuant to this article.

(i) Failure to comply with this section will result in the disallowance of the tax credit until the taxpayers are in full compliance.


The burden of proof is on the eligible company claiming the credit allowed by this article to establish by clear and convincing evidence that the eligible company or credit transferee 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 film office 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 companies claiming the credit;
(2) The dollar amount of tax credit certificates issued to taxpayers;
(3) The number of new businesses created by the tax credit;
(4) The number of new jobs, if any, created by the tax credit;
(5) The amount of direct expenditures made on qualified projects; and
(6) The cost of the credit.

(b) Eligible companies claiming the credit shall provide any information the Tax Commissioner and the film office 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. However, notwithstanding the provisions of section five-d and five-s, article ten of this chapter, the Tax Department is hereby authorized to disclose to the film office and to the development office such tax information as may be necessary to compile the report required by this section and the report required by section twelve of this article.


The West Virginia 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.


(a) The credit allowed by this article shall be allowed upon eligible expenditures occurring after the thirty-first day of December, two thousand seven.

(b) The amendments to this article enacted in the year two thousand eight shall apply to all taxable years beginning after the thirty-first day of December, two thousand seven, and shall apply with retroactive effect with relation to taxable years beginning prior to the date of passage of such amendments.

CHAPTER 108

(Com. Sub. for H.B. 4150 - By Delegates Yost, Caputo, Klempa, Burdiss, Eldridge, Hutchins, Tucker, Reynolds, Rodighiero and D. Poling)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §1-6-1; to amend and reenact §7-3-2a of said code; and to amend and reenact §18-5-24 of said code, all relating to requiring that the purchase of United States flag or flags of the State of West Virginia only
be made from manufacturers in the United States when public funds are used.

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 §1-6-1; that §7-3-2a of said code be amended and reenacted; and that §18-5-24 of said code be amended and reenacted, all to read as follows:

Chapter
1. The State and Its Subdivisions.
7. County Commissions and Officers.
18. Education.

CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.

ARTICLE 6. STATE PURCHASE OF AMERICAN-MADE FLAGS.

§1-6-1. Purchasing requirements.

1. Any United States flag or flag of the State of West Virginia purchased with state funds must be manufactured in the United States.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 3. COUNTY PROPERTY.

§7-3-2a. County commissions to purchase and display flags.

1. The county commission of every county of the state shall purchase, out of its General Revenue Fund, a United States flag and a flag of the State of West Virginia, four feet by six feet in dimensions and of regulation bunting, or of other appropriate size and quality, for its courthouse, and shall
FLAGS 

require the flags to be displayed from the courthouse, or from
an appropriate nearby staff or pole, every day between the
hours of sunrise and sunset, except in inclement weather.
Each county commission shall also purchase a United States
flag and a flag of the State of West Virginia, and require the
flags to be displayed at all times in the circuit courtroom of
the county. Each county and any municipality therein may
purchase a POW-MIA flag to be displayed from its
courthouse or other governmental building alongside the state
flag and United States flag on Memorial Day, Armed Forces
Recognition Day and Veteran’s Day each year. The
custodian or other person in charge of the courthouse shall
display the flags as required by this section.

Any United States flag or flag of the State of West
Virginia purchased out of the general revenue of the county
must be manufactured in the United States.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-24. Purchase and display of United States flag; penalty
for failure to display.

Boards of education shall purchase United States flags,
four by six feet, of regulation bunting, for schools in its
district, and require the flags to be displayed from the schools
during the time the school is in session, except in inclement
weather. The teacher, custodian or other person in charge of
the building during the session is responsible for this flag
being displayed at the school.

Any United States flag or flag of the State of West
Virginia purchased out of the county board building fund
must be manufactured in the United States.
AN ACT to amend and reenact §29-22A-19 of the Code of West Virginia, 1931, as amended, relating to compulsive gambling; authorizing the Department of Health and Human Resources to bid and award contracts for treatment programs; requiring development of procedures; establishing contract requirements; requiring post award conferences; providing for performance monitoring; prohibiting interference with operation of program; prohibiting use of Lottery Commission logo on advertising media; and requiring annual report.

Be it enacted by the Legislature of West Virginia:

That §29-22A-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.


(a) There is hereby created and established a separate special account to be known as the "Compulsive Gambling Treatment Fund". The fund shall be appropriated from the Commission's administrative expense account and shall be
not less than one hundred fifty thousand dollars nor more than five hundred thousand dollars per fiscal year, as determined by the commission, as well as other amounts designated for in this chapter to provide funds for compulsive gambling treatment programs in the state.

(b) The Department of Health and Human Resources shall administer the grants and funds issued from the "Compulsive Gambling Treatment Fund".

(c) The Department of Health and Human Resources shall develop criteria consistent with this section which a treatment program for compulsive gamblers must meet in order to become eligible for a grant from the funds made available for treatment programs pursuant to this provision.

(d) The Department of Health and Human Resources is not subject to the purchasing requirements as set forth in the legislative rule of the Purchasing Division of the Department of Administration: Provided, That the Department of Health and Human Resources shall comply with all contract requirements set forth in this section.

(e) The Department of Health and Human Resources shall develop procedures for bidding and awarding the contract, which must include:

(1) The procedures to be followed for submitting bids and the procedures for making awards;

(2) The proposed general terms and conditions for the contract;

(3) The description of the commodities and services required for the contract, with sufficient clarity to assure that there is a comprehensive understanding of the project's scope
and requirements, including, but not limited to, the following elements:

(A) Services to be provided, including education, prevention, crisis intervention, outreach, assessment, referral and treatment for problem gamblers, and protocols for emergency treatment;

(B) Requirements for the business and professional licensing of providers, parameters for media-related advertising and public service announcements;

(C) Training, licensing, monitoring, evaluation and reporting requirements;

(D) Requirements for maintaining the confidentiality of the client population; and

(E) Rights to conduct financial and performance audits;

(4) A proposed time schedule commencement and completion of the contract;

(5) A budget for the contract;

(6) Requirements or restrictions for the subletting of specific portions of the contract, if any; and

(7) Requirements for professional liability and other insurance coverage.

(f) The Department of Health and Human Resources may award the contract based on low bid, best value, sole source or other basis, or may choose to reject all bids and reissue an invitation for bids: Provided, That the Department of Health and Human Resources shall document the basis of its
decisions under this subsection and shall report its decisions in the annual report required in subsection (j) of this section.

(g) The Department of Health and Human Resources shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. The agenda for the conference shall include, at a minimum, the introduction of all participants and identification of department and contractor key personnel, and discussion of the following items:

(1) The scope of the contract, including specifications of requirements set forth in the bid request;

(2) The contract terms and conditions, particularly any special contract provisions;

(3) The technical and reporting requirements of the contract;

(4) The contract administration procedures, including contract monitoring and progress measurement;

(5) The rights and obligations of both parties and the contractor performance evaluation procedures;

(6) An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;

(7) Potential contract problem areas and possible solutions;

(8) Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to outcomes achieved by the contractor; and
(9) An explanation of the limits of authority of the personnel of both the department and the contractor.

(h) The Department of Health and Human Resources shall develop a comprehensive and objective monitoring checklist which:

1. Measures treatment outcomes;
2. Monitors compliance with contract requirements; and
3. Assesses contractor performance on a quarterly and annual basis.

(i) The commission may not influence or interfere with the operation of the program or the advertising and marketing decisions of the contractor.

(j) The Department of Health and Human Resources may monitor contract performance, review compliance with the contract’s terms and conditions, request and review pertinent information in support of tendered invoices and conduct other investigation so as to enable it to properly assess whether the project’s objectives and the contract’s terms and conditions are being met. However, the Department of Health and Human Resources may not unduly influence or interfere with the operation of the program or the advertising and marketing decisions of the contractor.

(k) Once any contract to render services under a compulsive gambling treatment program is awarded pursuant to this section, the contract shall be administrated by the Department of Health and Human Resources, and the department shall maintain all records pertaining to each request for reimbursement and disbursement for under said contract for a minimum of five (5) years.
(l) The contractor may prominently promote, display or advertise the Compulsive Gambler’s Treatment Program, its purpose, its hotline or its program events in any location in which the Lottery Commission promotes, displays, advertises or conducts operations or in any other location: Provided, That the Lottery Commission’s name, logo or other indicia may not appear on any advertising, marketing or promotional material of the contractor.

(m) The Department of Health and Human Resources shall report annually to the Joint Committee on Government and Finance on the amount of program funds distributed, the amount of administrative fee retained by the department and its use of the fee, the number of persons served by the program, and on each requirement set forth in this section.

CHAPTER 110

(Com. Sub. for S.B. 736 - By Senator Caruth)

[Passed March 16, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §37-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §44A-1-8 of said code; and to amend and reenact §44A-3-5 of said code, all relating generally to appointment of guardians and conservators for persons under legal disability, including protected persons; clarifying the sale of real estate for persons under legal disability, including protected persons; authorizing background checks for persons seeking appointment as guardian or conservator; clarifying who may not be appointed guardian or
conservator; clarifying when a conservator appointment is exempted; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §37-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44A-1-8 of said code be amended and reenacted; and that §44A-3-5 of said code be amended and reenacted, all to read as follows:

Chapter

37. Real Property.
44A. West Virginia Guardianship and Conservatorship Act.

CHAPTER 37. REAL PROPERTY.

ARTICLE 1. LANDS OF PERSONS WITH LEGAL DISABILITY, AND LANDS HELD IN TRUST.


A guardian ad litem shall be appointed for minors under the age of eighteen, inmates and protected persons subject to the requirements of section five, article three, chapter forty-four-a of this code. The guardian ad litem shall answer the petition under oath, be present at any summary proceeding or hearing and inform the court whether the sale of property is in the best interests of the minor, inmate or protected person. Minors over the age of fourteen may answer in person as well.

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

Article

3. Guardianship and Conservatorship Administration.
ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-8. Persons and entities qualified to serve as guardian and conservator; default guardian and conservator; exemptions from conservator appointment.

(a) Any adult individual may be appointed to serve as a guardian, a conservator or both upon a showing by the individual of the necessary education, ability and background to perform the duties of guardian or conservator and upon a determination by the court that the individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person. The individual may not be employed by or affiliated with any public agency, entity or facility that is providing substantial services or financial assistance to the protected person.

(b) The court may, after first determining it to be in the best interest of the protected person, appoint coguardians, coconservators or both.

(c) Any person being considered by a court for appointment as a guardian or conservator shall provide information regarding any crime, other than traffic offenses, of which he or she was convicted and the court or mental hygiene commissioner may order a background check to be conducted by the state police or county sheriff. The court shall consider this information in determining the person’s fitness to be appointed a guardian or conservator.

(d) Any nonprofit corporation chartered in this state and licensed as set forth in subsection (e) of this section or a public agency that is not a provider of health care services to the protected person may be appointed to serve as a guardian, a conservator or both: Provided, That the entity is capable of providing an active and suitable program of guardianship or conservatorship for the protected person and is not otherwise
providing substantial services or financial assistance to the protected person.

(e) A nonprofit corporation chartered in this state may be appointed to serve as a guardian or conservator or as a limited or temporary guardian or conservator for a protected person if it is licensed to do so by the Secretary of Health and Human Resources. The secretary shall propose legislative rules, for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for the licensure of nonprofit corporations and shall provide for the review of the licenses. The rules shall, at a minimum, establish standards to assure that any corporation licensed for guardianship or conservatorship:

(1) Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

(2) Will respect and maintain the dignity and privacy of the protected person;

(3) Will protect and advocate the legal human rights of the protected person;

(4) Will assure that the protected person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;

(5) Will encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so;

(6) Does not provide educational, vocational, residential or medical services to the protected person; and
(7) Has written provisions in effect for the distribution of assets and for the appointment of temporary guardians and conservators for any protected persons it serves in the event the corporation ceases to be licensed by the Department of Health and Human Resources or otherwise becomes unable to serve as guardian.

(f) A duly licensed nonprofit corporation that has been appointed to serve as a guardian or as a conservator pursuant to the provisions of this article is entitled to compensation in accordance with the provisions of section thirteen of this article.

(g) Except as provided in section thirteen of this article, no guardian or conservator nor any officer, agent, director, servant or employee of any guardian or conservator may do business with or in any way profit, either directly or indirectly, from the estate or income of any protected person for whom services are being performed by the guardian or conservator.

(h) A person who has an interest as a creditor of a protected person is not eligible for appointment as either a guardian or conservator of the protected person, except that a bank or trust company authorized to exercise trust powers or to engage in trust business in this state may be appointed as a conservator if the court determines it is capable of providing suitable conservatorship for the protected person.

(i) The Secretary of the Department of Health and Human Resources shall designate the adult protective services division of the county of appointment, or another agency under his or her jurisdiction, to be appointed as guardian when there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve. The department may not refuse to accept the guardianship appointment when ordered by the court, but may not be appointed as conservator.
(j) The sheriff of the county in which a court has jurisdiction shall be appointed as conservator when there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve. The sheriff may not refuse to accept the conservatorship appointment when ordered by the court, but may not be appointed as guardian.

(k) A conservator shall not be appointed when the alleged protected person’s total assets are worth less than two thousand dollars or the alleged protected person’s income is: (1) From the Social Security Administration and a representative payee has been appointed to act in the best interest of the individual; (2) from Medicaid and the only income distributed to the individual is the personal account allotment; or (3) less than fifty dollars per month or six hundred dollars per year. In these instances, the guardian, representative payee or health care facility, if there is no other person or entity, shall manage the personal care account or assets.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-5. Sale or mortgage of real estate.

(a) A conservator shall not sell real estate and shall not be authorized to mortgage any real estate without approval of the court.

(b) Following a petition by the conservator for the sale or mortgage of real property, the court or mental hygiene commissioner shall appoint a guardian ad litem and set a hearing on the petition. The conservator shall personally serve the protected person and serve by certified mail all persons entitled to notice pursuant to the original petition at least thirty days prior to the hearing.
AN ACT to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to extending the termination date of the Hazardous Waste Management Fee Fund to the thirtieth day of June, two thousand ten.

Be it enacted by the Legislature of West Virginia:

That §22-18-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.


(a) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by section five, article XII of the Constitution of West Virginia. For the purposes of this section, the net proceeds of the fines, penalties and forfeitures shall be considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. All permit application fees collected under this article shall be paid into the State Treasury into a special fund designated the Hazardous Waste Management Fund. In making the appropriation for
defraying the cost of administering this article, the
Legislature shall first take into account the sums included in
that special fund prior to deducting additional sums as may
be needed from the fines, penalties and forfeitures collected
pursuant to this article.

(b) Effective on the first day of July, two thousand three,
there is imposed an annual certification fee for facilities that
manage hazardous waste, as defined by the federal Resource
Conservation and Recovery Act, as amended. The fee will be
set by rule promulgated by the secretary in accordance with
the provisions of article three, chapter twenty-nine-a of this
code. The rule shall be a product of a negotiated rule-making
process with the facilities subject to the rule. The rule shall,
at a minimum, establish different fee rates for facilities based
on criteria established in the rule. The total amount of fees
-generated shall raise no more funds than are necessary and
adequate to meet the matching requirements for all federal
grants which support the hazardous waste management
program, but shall not exceed seven hundred thousand dollars
per year.

(c) The revenues collected from the annual certification
fee shall be deposited in the State Treasury to the credit of the
Hazardous Waste Management Fee Fund, which is
continued. Moneys of the fund, together with any interest or
other return earned thereon, shall be expended to meet the
matching requirements of federal grant programs which
support the hazardous waste management program.
Expenditures from the fund are for the purposes set forth in
this article and are not authorized from collections, but are to
be made only in accordance with appropriation by the
Legislature and in accordance with the provisions of article
three, chapter twelve of this code and upon the fulfillment of
the provisions set forth in article two, chapter five-a of this
code. Amounts collected which are found, from time to time,
to exceed the funds needed for purposes set forth in this
article may be transferred to other accounts by appropriation
of the Legislature.

d) The fee provided for in subsection (b) of this section
and the fund established in subsection (c) of this section shall
terminate on the thirtieth day of June, two thousand ten. The
department shall, by the thirty-first day of December of each
year, report to the Joint Committee on Government and
Finance regarding moneys collected into the Hazardous
Waste Management Fee Fund and expenditures by the
agency, including any federal matching moneys received and
providing an accounting on the collection of the fee by type
of permit activity, funds being expended and current and
future projected balances of the fund.

CHAPTER 112

(Com. Sub. for S.B. 619 - By Senators Prezioso, Jenkins, Wells,
Hunter, Hall, Stollings, Plymale, Unger, Kessler, Foster and Love)

[Passed March 4, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §16-4D-2, §16-4D-3 and §16-4D-4
of the Code of West Virginia, 1931, as amended, all relating to
adding definitions for anticipated and unanticipated users of
external defibrillators; and limiting liability toward
unanticipated users who render aid.

Be it enacted by the Legislature of West Virginia:
That §16-4D-2, §16-4D-3 and §16-4D-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4D. AUTOMATED EXTERNAL DEFIBRILLATORS.

§16-4D-2. Definitions.
§16-4D-3. Early defibrillation programs.
§16-4D-4. Limitation on liability.

§16-4D-2. Definitions.

(a) "Anticipated operator" means any person trained in accordance with section three of this article who utilizes an automated external defibrillator which was placed through an early defibrillation program.

(b) "Automated external defibrillator", hereinafter referred to as AED, means a medical device heart monitor and defibrillator that: (1) Has undergone the premarket approval process pursuant to the Federal Food, Drug and Cosmetic Act, 21 U. S. C. §360, as amended; (2) is capable of recognizing the presence or absence of ventricular fibrillation; (3) is capable of determining, without intervention by the operator, whether defibrillation should be performed; and (4) upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

(c) "Early defibrillation program" means a coordinated program that meets the requirements of section three of this article and one that provides early public access to defibrillation for individuals experiencing sudden cardiac arrest through the use of an automated external defibrillator.

(d) "Emergency medical services (EMS)" means all services established by the Emergency Medical Services Act of 1973 in article four-c of this chapter, including, but not
limited to, the emergency medical services plan of the Department of Health and Human Resources providing a response to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury.

(e) "Entity" means a public or private group, organization, business, association or agency that meets the requirements of section three of this article. "Entity" does not include emergency medical services operational programs or licensed commercial ambulance services.

(f) "Medical director" means a duly licensed physician who serves as the designated medical coordinator for an entity's early defibrillation program.

(g) "Unanticipated operator" means any person rendering emergency medical care involving the use of an AED.

§16-4D-3. Early defibrillation programs.

1 An entity providing an early defibrillation program shall:

2 (1) Register the program with the Office of Emergency Medical Services, pursuant to article four-c of this chapter, identifying the placement of AEDs, training of anticipated operators, preplanned EMS system coordination, designation of a medical director, maintenance of AED equipment and reports of AED utilization;

2 (2) Require the anticipated operator of an AED to receive appropriate training in cardiopulmonary resuscitation, referred to as "CPR", in the operation of an AED and in the determination of advance directives from the American Heart Association, American Red Cross, any other nationally recognized course in CPR and AED or an AED and CPR training program approved by the Office of Emergency Medical Services;
(3) Maintain and test the AED in accordance with the manufacturer’s guidelines and keep written records of this maintenance and testing;

(4) Designate a medical director for the coordination of the program, which shall include, but not be limited to, training, coordinating with EMS, creating AED deployment strategies and reviewing each operation of an AED;

(5) Notify the local EMS system and public safety answering point or other appropriate emergency dispatch center of the existence of an entity’s early defibrillation program, the location of the program and the program’s plan for coordination with the EMS system;

(6) Provide that an operator of an AED who renders emergency care or treatment on a person experiencing cardiac arrest shall activate the EMS system as soon as possible and shall report the use of an AED to the program medical director; and

(7) Comply with the guidelines of the West Virginia Office of Emergency Medical Services regarding data collection and reporting.

§16-4D-4. Limitation on liability.

A person is not liable for civil damages as a result of any act or omission in rendering emergency medical care or treatment involving the use of an AED if the care or treatment does not amount to gross negligence and the following conditions are met:

(1) The person, entity, certified trainer or medical director of the early defibrillation program is in compliance with the provisions of section three of this article; and
(2) The person is an anticipated operator of an AED who gratuitously and in good faith rendered emergency medical care, pursuant to the requirements of section three of this article, other than in the ordinary course of the person's employment or profession; or

(3) The person is an unanticipated operator who gratuitously and in good faith rendered emergency medical care.

CHAPTER 113

(Com. Sub. for S.B. 645 - By Senators Kessler, Edgell and Helmick)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-SF-7, relating to exempting city and county hospitals subject to health care financial disclosure from the additional audit requirements for local government offices.

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 §16-5F-7, to read as follows:

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-7. Exempt from additional audits.

(a) Every covered facility and related organization required to file or publish reports as provided in this article
shall be exempt from the audits imposed upon local
government offices by article nine, chapter six of this code.

(b) Any covered facility and related organization exempt
under this section from the audit requirements and
obligations imposed upon local government offices by article
nine, chapter six of this code shall file a copy of its audited
financial statements with the State Auditor annually, within
a reasonable period of time following receipt of the audited
financial statements by the covered facility and related
organization.

CHAPTER 114

(Com. Sub. for H.B. 4418 - By Delegates Perdue, Hatfield,
Long, Boggs, Staggers, Varner and Hamilton)

[Passed March 4, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §16-5B-17,
relating to healthcare-associated infection reporting;
establishing an advisory panel; establishing panel
responsibilities; establishing limitations on use of information;
establishing that all hospitals shall report; establishing that the
Health Care Authority will make the data available to the
public and to Bureau of Public Health; providing an
implementation date for hospital reporting; and penalties.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5B-17, to read as follows:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-17. Healthcare-associated infection reporting.

1 (a) As used in this section, the following words mean:

2 (1) “Centers for Disease Control and Prevention” or “CDC” means the United States Department of Health and Human Services Centers for Disease Control and Prevention;

3 (2) “National Healthcare Safety Network” or “NHSN” means the secure Internet-based data collection surveillance system managed by the Division of Healthcare Quality Promotion at the CDC, created by the CDC for accumulating, exchanging and integrating relevant information on infectious adverse events associated with healthcare delivery.

4 (3) “Hospital” means hospital as that term is defined in subsection-e, section three, article twenty-nine-b, chapter sixteen.

5 (4) “Health care-associated infection” means a localized or systemic condition that results from an adverse reaction to the presence of an infectious agent or a toxin of an infectious agent that was not present or incubating at the time of admission to a hospital.

6 (5) “Physician” means a person licensed to practice medicine by either the board of medicine or the board of osteopathy.

7 (6) “Nurse” means a person licensed in West Virginia as a registered professional nurse in accordance with article seven, chapter thirty.
(b) The West Virginia Health Care Authority is hereby directed to create an Infection Control Advisory Panel whose duty is to provide guidance and oversight in implementing this section. The advisory panel shall consist of the following members:

(1) Two board-certified or board-eligible physicians, affiliated with a West Virginia hospital or medical school, who are active members of the Society for Health Care Epidemiology of America and who have demonstrated an interest in infection control;

(2) One physician who maintains active privileges to practice in at least one West Virginia hospital;

(3) Three infection control practitioners, two of whom are nurses, each certified by the Certification Board of Infection Control and Epidemiology, and each working in the area of infection control. Rural and urban practice must be represented;

(4) A statistician with an advanced degree in medical statistics;

(5) A microbiologist with an advanced degree in clinical microbiology;

(6) The Director of the Division of Disease Surveillance and Disease Control in the Bureau for Public Health or a designee; and

(7) The director of the hospital program in the office of health facilities, licensure and certification in the Bureau for Public Health.

(c) The advisory panel shall:
(1) Provide guidance to hospitals in their collection of healthcare-associated infections;

(2) Provide evidence-based practices in the control and prevention of healthcare-associated infections;

(3) Establish reasonable goals to reduce the number of healthcare-associated infections;

(4) Develop plans for analyzing infection-related data from hospitals;

(5) Develop healthcare-associated advisories for hospital distribution;

(6) Review and recommend to the West Virginia Health Care Authority the manner in which the reporting is made available to the public to assure that the public understands the meaning of the report; and

(7) Other duties as identified by the West Virginia Health Care Authority.

(d) Hospitals shall report information on healthcare-associated infections in the manner prescribed by the CDC National Healthcare Safety Network (NHSN). The reporting standard prescribed by the CDC National Healthcare Safety Network (NHSN), as adopted by the West Virginia Health Care Authority, shall be the reporting system of the hospitals in West Virginia.

(e) Hospitals who fail to report information on healthcare-associated infections in the manner and time frame required by the West Virginia Health Care Authority shall be fined the sum of five thousand dollars for each such failure.

(f) The Infection Control Advisory Panel shall provide the results of the collection and analysis of all hospital data
to the West Virginia Health Care Authority for public availability and the Bureau for Public Health for consideration in their hospital oversight and epidemiology and disease surveillance responsibilities in West Virginia.

(g) Data collected and reported pursuant to this act may not be considered to establish standards of care for any purposes of civil litigation in West Virginia.

(h) The West Virginia Health Care Authority shall report no later than January 15 of each year to the legislative oversight committee on health and human resources accountability, beginning in the year two thousand eleven. This yearly report shall include a summary of the results of the required reporting and the work of the advisory panel.

(i) The West Virginia Health Care Authority shall require that all hospitals implement and initiate this reporting requirement no later than the first day of July, two thousand nine.

CHAPTER 115

(H.B. 4513 - By Delegates Hatfield, Marshall, Long, Eldridge, Spencer, Fleischauer, Longstreth, Rodighiero, Rowan, Ashley and Border)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §16-22-3 of the Code of West Virginia, 1931, as amended, relating to the reimbursement of costs for newborn screenings by designated health insurers in the state.
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. 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) Newborn screenings shall be considered a covered benefit reimbursed to the birthing facilities by Public Employees Insurance Agency, the State Children's Health Insurance Program, the Medicaid program and all health insurers whose benefit package includes pregnancy coverage and who are licensed under chapter thirty-three of this code.

(d) 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.
CHAPTER 116

(H.B. 2503 - By Delegates Boggs, Stemple and Tansill)

[Passed March 4, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 10, 2008.]

AN ACT to amend and reenact §17B-2-1 of the Code of West Virginia, 1931, as amended, relating to the requirements for obtaining a state-issued identification card; and allowing persons who possess a valid driver's license to also possess an identification card.

Be it enacted by the Legislature of West Virginia:

That §17B-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

*§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

1 (a) A person, except those hereinafter expressly exempted, may not drive any motor vehicle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of the subdivision street is generally used by the public

*CLERK'S NOTE: This section was also amended by H.B. 4139 (Chapter 66), which passed subsequent to this act.
unless the person has a valid driver's license under the provisions of this code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, is not required to obtain any other license to exercise the privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule. Licenses shall be issued in different colors for those drivers under age eighteen, those drivers age eighteen to twenty-one and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups.

(c) Driver's licenses issued by the division shall be classified in the following manner:

(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years' driving experience and who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Motor Carrier Safety and Improvement Act of 1999 and subsequent rules, and have paid the required fee.

(2) Class D license shall be issued to those persons eighteen years and older with one year of driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule
and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur's license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone who is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section one, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E license for any person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided by this chapter and have paid the required fee, but who do not possess a Class A, B, C, D or E driver's license.

(5) All licenses issued under this section may contain information designating the licensee as a diabetic, organ donor or as deaf or hard of hearing and for other handicapped or disabled persons in accordance with criteria established by the division, if the licensee requests this information on the license.
(d) A person, except those hereinafter expressly exempted, may not drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of the subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under section seven-b of this article for motorcycle operation or has a valid motorcycle instruction permit.

(e)(1) An identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Has reached the age of two years. The division may also issue an identification card to a person under the age of two years for good cause shown;

(C) Has paid the required fee of two dollars and fifty cents per year for each year the identification card is issued to be valid: Provided, That the fee is not required if the applicant is sixty-five years or older or is legally blind; and

(D) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The identification card shall contain the same information as a driver's license except that the identification card shall be clearly marked as identification card. However, the division may issue an identification card with less information to persons under the age of sixteen. It may be renewed on application and payment of the fee required by this section.
(A) Every identification card issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant's birthday occurs in those years in which the applicant's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years nor more than seven years and shall be valid for a period of five years expiring in the month in which the applicant's birthday occurs and in a year in which the applicant's age is evenly divisible by five.

(B) Every identification card issued to persons who have not attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in the year in which the applicant attains the age of twenty-one years.

(C) Every identification card issued to persons under the age of sixteen shall expire on the day of the month designated by the commissioner in which the applicant's birthday occurs and shall be issued for a period of two years.

(3) The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars or confined in jail not more than six months, or both.
AN ACT to repeal §29-21-10, §29-21-11 and §29-21-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-21-3b; and to amend and reenact §29-21-6, §29-21-8, §29-21-9, §29-21-13 and §29-21-13a of said code, all relating to Public Defender Services generally; creating the Indigent Defense Commission; specifying members and their terms; specifying certain powers and duties of the Indigent Defense Commission; requiring submission of report to Legislature; requiring public defender corporations to submit monthly financial statements and reports; providing requirements for the creation, activation, merger or dissolution of public defender corporations; authorizing employment of certain attorneys; requiring consultation with judge; providing for the order of appointment of panel attorneys; establishing requirements for funding applications; requiring corporations to submit proposed budgets; authorizing amended funding contracts; authorizing executive director to establish guidelines for submission of claims and vouchers; establishing certain deadlines for submitting claims; providing for periodic payment of fees to panel attorneys; clarifying in-court work and meaning of separate cases; establishing limitations on reimbursement of certain expenses; requiring vouchers be reimbursed within a certain period; providing for interest accruing on late reimbursements; and giving preference to processing vouchers involving child abuse and neglect cases.
Be it enacted by the Legislature of West Virginia:

That §29-21-10, §29-21-11 and §29-21-12 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §29-21-3b; and that §29-21-6, §29-21-8, §29-21-9, §29-21-13 and §29-21-13a of said code be amended and reenacted, all to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.


(a) There is hereby established the Indigent Defense Commission to provide assistance to Public Defender Services with regard to the general policies and procedures of the agency, including, but not limited to, the opening, closing or merging of public defender offices throughout the state and the establishment of performance measures for the qualitative review of indigent defense.

(b) In order to demonstrate a collaborative approach to solving criminal justice problems, the commission shall consist of the Executive Director of Public Defender Services, who shall serve as chair, and the following members appointed by the Governor:

(1) One former or retired circuit judge;

(2) Three lawyers, one from each congressional district, who have significant experience in the defense of criminal cases or have demonstrated a strong commitment to quality representation of indigent defendants;
(3) One current chief public defender; and

(4) One nonlawyer with a demonstrated commitment to providing legal services to the indigent;

(5) One person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(6) One attorney with significant experience in the defense of juvenile delinquency and abuse and neglect cases.

(c) The commission shall meet at the times and places specified by the call of the chair: Provided, That the commission shall meet no less than four times each year. Members shall serve without compensation but may receive reimbursement of actual and necessary expenses for each day or portion thereof engaged in this discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) Of the initial appointments made to the commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section. Thereafter, terms of office shall be for four years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation or removal in the membership of this commission, it shall be filled by appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments. No member shall serve more than two consecutive full or partial terms and no person may be reappointed to the commission until at least
two years have elapsed after the completion of a second successive term.

(e) The appointed members of the commission serve four-year terms that shall coincide with the term of the Governor.

(f) The commission has the following powers and duties:

1. To develop standards regarding the qualifications and training for public defenders, assistant public defenders and staff;

2. To explore opportunities related to the training of appointed panel attorneys;

3. To evaluate, on an annual basis, the compensation and caseloads of public defenders and appointed panel attorneys;

4. To develop standards for providing and compensating expert witnesses, investigators and other persons who provide services related to legal representation under this article;

5. To study, monitor and evaluate existing standards for determining eligibility for legal representation under section sixteen of this article;

6. To study the feasibility and need of creating additional public defender corporations, the activation of public defender corporations and the formation of multicircuit or regional public defender corporations in accordance with the provisions of section eight of this article;

7. To study the potential for the dissolution of public defender corporations;
(8) To study, monitor, evaluate and make recommendations regarding the training, experience and background necessary for a public defender or panel attorney to competently represent indigent defendants in capital cases; and

(9) To monitor and make recommendations regarding the following activities of the board of directors of each public defender corporation receiving funding pursuant to this article:

(A) The appointment of the public defender and any assistant public defenders pursuant to subdivision (1), subsection (c), section fifteen of this article;

(B) The fixing of professional and clerical salaries pursuant to subdivision (2), subsection (c), section fifteen of this article; and

(C) The removal of any public defender, assistant public defender or other employee for misfeasance, malfeasance or nonfeasance pursuant to subdivision (3), subsection (c), section fifteen of this article.

(g) On or before the fifteenth day of January, two thousand nine the commission shall report to the Legislature its findings and recommendations on the feasibility and need for the creation of additional public defender corporations; the activation of public defender corporations; the formation of multicircuit or regional public defender corporations; or the dissolution of public defender corporations in accordance with the provisions of section eight of this article.


(a) Consistent with the provisions of this article, the agency is authorized to make grants to and contracts with public defender corporations and with individuals,
partnerships, firms, corporations and nonprofit organizations for the purpose of providing legal representation under this article and may make any other grants and contracts that are necessary to carry out the purposes and provisions of this article.

(b) The agency is authorized to accept, and employ or dispose of in furtherance of the purposes of this article, any money or property, real, personal or mixed, tangible or intangible, received by gift, devise, bequest or otherwise.

(c) The agency shall establish and the executive director or his or her designee shall operate a criminal law research center as provided in section seven of this article. This center shall undertake directly, or by grant or contract, to serve as a clearinghouse for information; to provide training and technical assistance related to the delivery of legal representation; and to engage in research, except that broad general, legal or policy research unrelated to direct representation of eligible clients may not be undertaken.

(d) The agency shall establish and the executive director or his or her designee shall operate an accounting and auditing division to require and monitor the compliance with this article by public defender corporations and other persons or entities receiving funding or compensation from the agency. The accounting and auditing division shall review all plans and proposals for grants and contracts and shall make a recommendation of approval or disapproval to the executive director. The accounting and auditing division shall prepare, or cause to be prepared, reports concerning the evaluation, inspection or monitoring of public defender corporations and other grantees, contractors, persons or entities receiving financial assistance under this article and shall further carry out the agency's responsibilities for records and reports as set forth in section eighteen of this article. The accounting and auditing division shall require
each public defender corporation to submit financial
statements monthly and to report monthly on the billable and
nonbillable time of its professional employees, including
time used in administration of the respective offices, so as to
close the time to similar time expended in nonpublic law
offices for similar activities. The accounting and auditing
division shall provide to the executive director assistance in
the fiscal administration of all of the agency's divisions.
This assistance shall include, but not be limited to, budget
preparation and statistical analysis.

(e) The agency shall establish and the executive director
or his or her designee shall operate an appellate advocacy
division for the purpose of prosecuting litigation on behalf
of eligible clients in the Supreme Court of Appeals. The
executive director or his or her designee shall be the director
of the appellate advocacy division. The appellate advocacy
division shall represent eligible clients upon appointment by
the circuit courts or by the Supreme Court of Appeals. The
division may, however, refuse the appointments due to a
conflict of interest or if the executive director has determined
the existing caseload cannot be increased without
jeopardizing the appellate division's ability to provide
effective representation. In order to effectively and
efficiently use the resources of the appellate division, the
executive director may restrict the provision of appellate
representation to certain types of cases. The executive
director may select and employ staff attorneys to perform the
duties prescribed by this subsection. The appellate division
shall maintain records of representation of eligible clients for
record purposes only.

§29-21-8. Public defender corporations; establishment thereof.

(a)(1) In each judicial circuit of the state, there is hereby
created a public defender corporation of the circuit:
Provided, That the executive director, with the approval of
the Indigent Defense Commission, may authorize the creation, merger or dissolution of a public defender corporation in a judicial circuit where the creation, merger or dissolution of such a public defender corporation would improve the quality of legal representation, assure the prudent and resourceful expenditure of state funds and further the purposes of this article: Provided, however, That prior to the creation, merger or dissolution of a public defender corporation in accordance with this subsection, the commission shall provide a report to the Legislature pursuant to subsection (g), section three-b of this article for approval of the creation, merger, or dissolution of any public defender corporation.

(2) The purpose of these public defender corporations is to provide legal representation in the respective circuits in accordance with the provisions of this article. A public defender corporation may employ full-time attorneys and employ part-time attorneys in whatever combination that the public defender corporation deems most cost effective.

(b) If the executive director, with the approval of the Indigent Defense Commission, determines there is a need to activate, merge or dissolve a corporation in a judicial circuit of the state, pursuant to subsection (a) of this section, the Indigent Defense Commission shall first consult with and give substantial consideration to the recommendation of the judge of a single-judge circuit or the chief judge of a multi-judge circuit.


(a) In each circuit of the state, the circuit court shall establish and maintain regional and local panels of private attorneys-at-law who are available to serve as counsel for eligible clients. An attorney-at-law may become a panel attorney and be enrolled on the regional or local panel, or
both, to serve as counsel for eligible clients by informing the court. An agreement to accept cases generally or certain types of cases particularly may not prevent a panel attorney from declining an appointment in a specific case.

(b) In all cases where an attorney-at-law is required to be appointed for an eligible client, the appointment shall be made by the circuit judge in the following order of preference:

(1) In circuits where a public defender office is in operation, the judge shall appoint the public defender office unless an appointment is not appropriate due to a conflict of interest or unless the public defender corporation board of directors or the public defender, with the approval of the board, has notified the court that the existing caseload cannot be increased without jeopardizing the ability of defenders to provide effective representation;

(2) If the public defender office is not available for appointment, the court shall appoint one or more panel attorneys from the local panel;

(3) If there is no local panel attorney available, the judge shall appoint one or more panel attorneys from the regional panel;

(4) If there is no regional panel attorney available, the judge may appoint a public defender office from an adjoining circuit if such public defender office agrees to the appointment;

(5) If the adjoining public defender office does not accept the appointment, the judge may appoint a panel attorney from an adjoining circuit; or

(6) If a panel attorney from an adjoining circuit is unavailable, the judge may appoint a panel attorney from any circuit.
(c) In any given case, the appointing judge may alter the order in which attorneys are appointed if the case requires particular knowledge or experience on the part of the attorney to be appointed: Provided, That any time a court, in appointing counsel pursuant to the provisions of this section, alters the order of appointment as set forth herein, the order of appointment shall contain the court's reasons for doing so.

§29-21-13. Approval of public defender corporation funding applications; funding; recordkeeping by public defender corporations.

(a) On or before the first day of May of each year, each active public defender corporation shall submit to the executive director and the commission a funding application and a proposed budget for the ensuing fiscal year. The accounting and auditing division shall review all funding applications and prepare recommendations for an operating plan and annual budget for each public defender corporation. The executive director shall review the funding applications and the accounting and auditing recommendations and shall, in consultation with the board of directors of each public defender corporation, prepare a plan for providing legal services, execute a funding contract for the fiscal year and commit funds for that purpose.

(b) Upon final approval of a funding application by the executive director, the approved budget shall be set forth in an approval notice. The total cost to the agency shall not exceed the amount set forth in the approval notice and the agency shall not be obligated to reimburse the recipient for costs incurred in excess of the amount unless and until a program modification has been approved in accordance with the provisions of this article. At the discretion of the executive director, when caseloads increase or unusual expenses occur, funding contracts may be amended during a fiscal year if necessary to provide cost effective representation.
(c) Funding of public defender corporations or other programs or entities providing legal representation under the provisions of this article shall be by annual grants disbursed in such periodic allotments as the executive director shall deem appropriate.

(d) All recipients of funding under this article shall maintain such records as required by the executive director.

§29-21-13a. Compensation and expenses for panel attorneys.

(a) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and upon completion of each case, exclusive of appeal, shall submit to the appointing court a voucher for services. Claims for fees and expense reimbursements shall be submitted to the appointing court on forms approved by the executive director. The executive director shall establish guidelines for the submission of vouchers and claims for fees and expense reimbursements under this section. Claims submitted more than ninety calendar days after the last date of service shall be rejected, unless for good cause, the appointing court authorizes in writing an extension: Provided, That claims where the last date of service occurred prior to the first day of July, two thousand eight, shall be rejected unless submitted prior to the first day of January, two thousand nine.

The appointing court shall review the voucher to determine if the time and expense claims are reasonable, necessary and valid, and shall forward the voucher to the agency with an order approving payment of the claimed amount or of a lesser sum the court considers appropriate.

(b) Notwithstanding any other provision of this section to the contrary, Public Defender Services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article.
(c) Notwithstanding any other provision of this section to the contrary, a panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the completion of the case where: (1) More than six months have expired since the commencement of the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by Public Defender Services during the case. The executive director, in his or her discretion, may authorize periodic payments where ongoing representation extends beyond six months in duration. The amounts of any fees or expenses paid to the panel attorney on an interim basis, when combined with any amounts paid to the panel attorney at the conclusion of the case, shall not exceed the limitations on fees and expenses imposed by this section.

(d) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended for services performed and expenses incurred subsequent to the effective date of this article:

1. For attorney's work performed out of court, compensation shall be at the rate of forty-five dollars per hour. For paralegal's work performed out of court for the attorney, compensation shall be at the rate of the paralegal's regular compensation on an hourly basis or, if salaried, at the hourly rate of compensation which would produce the paralegal's current salary, but in no event shall the compensation exceed twenty dollars per hour. Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses, preparation of pleadings and prehearing or pretrial research.

2. For attorney's work performed in court, compensation shall be at the rate of sixty-five dollars per hour. No compensation for paralegal's work performed in court shall
be allowed. In-court work includes, but is not limited to, all
time spent awaiting hearing or trial before a judge,
 magistrate, special master or other judicial officer.

(3) The maximum amount of compensation for out-of-
court and in-court work under this subsection is as follows:
For proceedings of any kind involving felonies for which a
penalty of life imprisonment may be imposed, the amount as
the court may approve; for all other eligible proceedings,
three thousand dollars unless the court, for good cause
shown, approves payment of a larger sum.

(e) Actual and necessary expenses incurred in providing
legal representation for proceedings of any kind involving
felonies for which a penalty of life imprisonment may be
imposed, including, but not limited to, expenses for travel,
transcripts, salaried or contracted investigative services and
expert witnesses, shall be reimbursed in an amount as the
court may approve. For all other eligible proceedings, actual
and necessary expenses incurred in providing legal
representation, including, but not limited to, expenses for
travel, transcripts, salaried or contracted investigative
services and expert witnesses, shall be reimbursed to a
maximum of one thousand five hundred dollars unless the
court, for good cause shown, approves reimbursement of a
larger sum.

Expense vouchers shall specifically set forth the nature,
amount and purpose of expenses incurred and shall provide
receipts, invoices or other documentation required by the
executive director and the State Auditor:

(1) (A) Reimbursement of expenses for production of
transcripts of proceedings reported by a court reporter is
limited to the cost per original page and per copy page as set
forth in section four, article seven, chapter fifty-one of this
code.
(B) (i) There shall be no reimbursement of expenses for
or production of a transcript of a preliminary hearing before
a magistrate or juvenile referee, or of a magistrate court trial,
where such hearing or trial has also been recorded
electronically in accordance with the provisions of section
eight, article five, chapter fifty of this code or court rule.

(ii) Reimbursement of the expense of an appearance fee
for a court reporter who reports a proceeding other than one
described in subparagraph (i) of this paragraph is limited to
twenty-five dollars. Where a transcript of a proceeding is
produced, there shall be no reimbursement for the expense of
any appearance fee.

(iii) Except for the appearance fees provided in this
paragraph, there shall be no reimbursement for hourly court
reporters' fees or fees for other time expended by the court
reporter, either at the proceeding or traveling to or from the
proceeding.

(C) Reimbursement of the cost of transcription of tapes
electronically recorded during preliminary hearings or
magistrate court trials is limited to one dollar per page.

(2) Reimbursement for any travel expense incurred in an
eligible proceeding is limited to the rates for the
reimbursement of travel expenses established by rules
promulgated by the Governor pursuant to the provisions of
section eleven, article eight, chapter twelve of this code and
administered by the Secretary of the Department of
Administration pursuant to the provisions of section forty-
eight, article three, chapter five-a of this code.

(3) Reimbursement for investigative services is limited to
a rate of thirty dollars per hour for work performed by an
investigator.
(f) For purposes of compensation under this section, an appeal from magistrate court to circuit court, an appeal from a final order of the circuit court or a proceeding seeking an extraordinary remedy made to the Supreme Court of Appeals shall be considered a separate case.

(g) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client for which services were rendered is one of several charges involving multiple warrants or indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as to enable the court to avoid a duplication of compensation for services rendered. The executive director shall refuse to requisition payment for any voucher which is not in conformity with the recordkeeping, compensation or other provisions of this article or the voucher guidelines established issued pursuant to subsection (a) of this section and in such circumstance shall return the voucher to the court or to the service provider for further review or correction.

(h) Vouchers submitted under this section after the first day of July, two thousand eight, shall be reimbursed within ninety days of receipt. Reimbursements after ninety days shall bear interest from the ninety-first day at the legal rate in effect for the calendar year in which payment is due.

(i) Vouchers submitted for fees and expenses involving child abuse and neglect cases shall be processed for payment before processing vouchers submitted for all other cases.
AN ACT to amend and reenact §62-11A-1 of the Code of West Virginia, 1931, as amended, relating to eliminating obsolete language requiring circuit clerks to handle and disburse certain inmate moneys.

Be it enacted by the Legislature of West Virginia:

That §62-11A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.


1 (a) When a defendant is sentenced or committed for a term of one year or less by a court of record having criminal jurisdiction, the court may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

6 (1) To work at his or her employment;

7 (2) To seek employment;
(3) To conduct his or her own business or to engage in other self-employment, including housekeeping and attending to the needs of his or her family;

(4) To attend an educational institution;

(5) To obtain medical treatment;

(6) To devote time to any other purpose approved of or ordered by the court, including participation in the litter control program of the county unless the court specifically finds that this alternative service would be inappropriate.

(b) Whenever an inmate who has been granted the privilege of leaving the jail under this section is not engaged in the activity for which the leave is granted, he or she shall be confined in jail.

(c) An inmate sentenced to ordinary confinement may petition the court at any time after sentence for the privilege of leaving jail under this section and may renew his or her petition in the discretion of the court. The court may withdraw the privilege at any time by order entered with or without notice.

(d) If the inmate has been granted permission to leave the jail to seek or take employment, the court's probation officers or, if none, the jail shall assist him or her in obtaining suitable employment and in making certain that employment already obtained is suitable. Employment shall not be deemed suitable if the wages or working conditions or other circumstances present a danger of exploitation or of interference in a labor dispute in the establishment in which the inmate would be employed.

(e) An inmate who is serving his or her sentence pursuant to this section shall be eligible for a reduction of his or her term for good behavior and faithful performance of duties in
the same manner as if he or she had served his or her term in ordinary confinement.

(f) The court shall not make an order granting the privilege of leaving the institution under this section unless it is satisfied that there are adequate facilities for the administration of such privilege in the jail or other institution in which the defendant will be confined.

(g) In every case wherein the defendant has been convicted of an offense, defined in section twelve, article eight, chapter sixty-one of this code or in article eight-b or eight-d of said chapter against a child, the defendant shall not live in the same residence as any minor child, nor exercise visitation with any minor child and shall have no contact with the victim of the offense: Provided, That the defendant may petition the court of the circuit wherein he or she was so convicted for a modification of this term and condition of this probation and the burden shall rest upon the defendant to demonstrate that a modification is in the best interest of the child.

CHAPTER 119

(Com. Sub. for S.B. 715 - By Senators Plymale and Minard)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §5-16-2 and §5-16-15 of the Code of West Virginia, 1931, as amended, all relating to the participation in the Public Employees Insurance Agency of certain retired employees; mandatory participation in Retiree
Health Benefit Trust Fund; requiring written certification from nonstate employers who opt out of the other post-employment benefits plan of the fund; providing that agency is not liable to provide benefit where employer opted out; and directing the finance board to study an oral health benefit to children of covered employees.

Be it enacted by the Legislature of West Virginia:

That §5-16-2 and §5-16-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.
§5-16-15. Optional dental, optical, disability and prepaid retirement plan and audiology and hearing-aid service plan.

§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.

6 (2) "Director" means the Director of the Public Employees Insurance Agency created by this article.

8 (3) "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 in the state retirement system and in the Public Employees Insurance Agency: 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 or a system approved by the director, 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 and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to article sixteen-d of this chapter. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-
§5-16-15. Optional dental, optical, disability and prepaid retirement plan and audiology and hearing-aid service plan.

(a) On and after the first day of July, one thousand nine hundred eighty-nine, the director shall make available to participants in the public employees insurance system: (1) A dental insurance plan; (2) an optical insurance plan; (3) a disability insurance plan; (4) a prepaid retirement insurance plan; and (5) an audiology and hearing-aid services insurance plan. Public employees insurance participants may elect to participate in any one of these plans separately or in combination. All actuarial and administrative costs of each plan shall be totally borne by the premium payments of the participants or local governing bodies electing to participate in that plan. The director is authorized to employ such administrative practices and procedures with respect to these optional plans as are authorized for the administration of other plans under this article. The director shall establish separate funds: (1) For deposit of dental insurance premiums and payment of dental insurance claims; (2) for deposit of optical insurance premium payments and payment of optical insurance claims; (3) for deposit of disability insurance premium payments and payment of disability insurance claims; and (4) for deposit of audiology and hearing-aid service insurance premiums and payment of audiology and hearing-aid insurance claims. Such funds shall not be supplemented by nor be used to supplement any other funds.

(b) The Finance Board shall study the feasibility of an oral health benefit for children of participants.
AN ACT to repeal §23-2C-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §23-2C-2 and §23-2C-10 of said code; and to amend and reenact §33-26-3, §33-26-5, §33-26-6, §33-26-8 and §33-26-12 of said code, all relating to an assigned risk plan and guaranty association account for workers' compensation insurance; defining terms; eliminating certain funds in the treasurer's office and transferring moneys in such funds to the Old Fund; eliminating the requirement that private carriers maintain an office in this state; providing for the establishment and operation of an assigned risk plan; making workers' compensation insurance applicable to the Insurance Guaranty Association Act; establishing a new account to be administered by the West Virginia Insurance Guaranty Association; modifying standards for paying duplicate claims; and providing that limits on benefits payable by the guaranty association are not applicable to obligations arising out of workers' compensation insurance.

Be it enacted by the Legislature of West Virginia:

That §23-2C-9 of the Code of West Virginia, 1931, as amended, be repealed; that §23-2C-2 and §23-2C-10 of said code be amended and reenacted; and that §33-26-3, §33-26-5, §33-26-6, §33-26-8 and §33-26-12 of said code be amended and reenacted, all to read as follows:
Chapter 23. Workers' Compensation.
33. Insurance.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.


(a) "Executive director" means the Executive Director of the West Virginia Workers' Compensation Commission as provided in section one-b, article one of this chapter.

(b) "Commission" means the West Virginia Workers' Compensation Commission as provided by section one, article one of this chapter.

(c) "Insurance Commissioner" means the Insurance Commissioner of West Virginia as provided in section one, article two, chapter thirty-three of this code.

(d) "Company" or "successor to the commission" means the employers' mutual insurance company created pursuant to the terms of this article.

(e) "Policy default" means a policyholder that has failed to comply with the terms of its workers' compensation insurance policy and is consequently without workers' compensation insurance coverage.

(f) "Workers' compensation insurance" means insurance which provides all compensation and benefits required by this chapter.
(g) "Insurer" includes:

1. A self-insured employer; and

2. A private carrier.

(h) "Industrial Council" means the advisory group established in section five of this article.

(i) "Mutualization Transition Fund" is a fund over which the State Treasurer is custodian. Moneys transferred or otherwise payable to the Mutualization Transition Fund shall be deposited in the State Treasury to the credit of the Mutualization Transition Fund. Disbursements shall be made from the Mutualization Transition Fund upon requisitions signed by the executive director, and, upon termination of the commission, the Insurance Commissioner, and shall be reasonably related to the legal, operational, consultative and human resource-related expenses associated with the establishment of the company and the transferring of personnel from the commission to the company.

(j) "New Fund" means a fund owned and operated by the commission and, upon termination of the commission, the successor organization of the West Virginia Workers' Compensation Commission and consists of those funds transferred to it from the Workers' Compensation Fund and any other applicable funds. New Fund includes all moneys due and payable to the Workers' Compensation Fund for the quarters ending the thirtieth day of September, two thousand five, and the thirty-first day of December, two thousand five, which have not been collected by the Workers' Compensation Fund as of the thirty-first day of December, two thousand five.

(k) "New Fund liabilities" means all claims payment obligations (indemnity and medical expenses) for all claims,
actual and incurred but not reported, for any claim with a date of injury or last exposure on or after the first day of July, two thousand five: *Provided*, That New Fund liabilities begin with claims payments becoming due and owing on said claims on or after the first day of January, two thousand six.

(l) “Old Fund” means a fund held by the State Treasurer's office consisting of those funds transferred to it from the Workers' Compensation Fund or other sources and those funds due and owing the Workers' Compensation Fund as of the thirtieth day of June, two thousand five, that are thereafter collected. The Old Fund and assets in the fund remain property of the state and do not novate or otherwise transfer to the company.

(m) “Old Fund liabilities” mean all claims payment obligations (indemnity and medical expenses), related liabilities and appropriate administrative expenses necessary for the administration of all claims, actual and incurred but not reported, for any claim with a date of injury or last exposure on or before the thirtieth day of June, two thousand five: *Provided*, That Old Fund liabilities include all claims payments for any claim, regardless of date of injury or last exposure, through the thirty-first day of December, two thousand five: *Provided, however*, That Old Fund liabilities include all claims with dates of injuries or last exposure prior to the first day of July, two thousand four, for bankrupt self-insured employers that had defaulted on their claims obligations which have been recognized by the commission in its actuarially determined liability number as of the thirtieth day of June, two thousand five.

(n) “Private carrier” means any insurer or the legal representative of an insurer authorized by the Insurance Commissioner to provide workers' compensation insurance pursuant to this chapter. The term does not include a
(o) “Uninsured Employer Fund” means a fund held by the State Treasurer's office consisting of those funds transferred to it from the Workers' Compensation Fund and any other source. Disbursements from the Uninsured Employer Fund shall be upon requisitions signed by the Insurance Commissioner, and as otherwise set forth in an exempt legislative rule promulgated by the Workers' Compensation Board of Managers.

(p) “Self-Insured Employer Guaranty Risk Pool” is a fund held by the State Treasurer's office consisting of those funds transferred to it from the guaranty pool created pursuant to 85 CSR 19 (2007) and any future funds collected through continued administration of that exempt legislative rule as administered by the Insurance Commissioner. Disbursements shall be made from the Self-Insured Employer Guaranty Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of the fund are as provided in 85 CSR 19 (2007).

(q) “Self-Insured Employer Security Risk Pool” is a fund held by the State Treasurer consisting of those funds paid into it through the Insurance Commissioner's administration of 85 CSR 19 (2007). Disbursement from the fund shall be made from the Self-Insured Employer Security Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of the fund are as provided in 85 CSR 19: Provided, That the liabilities are limited to those self-insured employers who default on their claims obligations after the termination of the commission.

(r) “Private Carrier Guaranty Fund” is a fund held by the State Treasurer's office consisting of funds deposited pursuant to this article. Disbursements shall be made from
the Private Carrier Guaranty Fund upon requisitions signed
by the Insurance Commissioner. The obligations of the fund
are as provided in this article. The Private Carrier Guaranty
Fund terminates on the thirtieth day of June, two thousand
eight, and any moneys remaining in the fund on the date of
its termination shall be transferred to the Old Fund.

(s) "Assigned Risk Fund" is a fund held by the State
Treasurer's office consisting of funds deposited pursuant to
this article. Disbursements shall be made from the Assigned
Risk Fund upon requisitions signed by the Insurance
Commissioner. The obligations of the fund are as provided
in this article. The Assigned Risk Fund terminates on the
thirtieth day of June, two thousand eight, and any moneys
remaining in the fund on the date of its termination shall be
transferred to the Old Fund.

(t) "Comprehensive financial plan" means the plan
compiled by the director for acceptance by the Insurance
Commissioner identifying and forecasting cash flows,
funding sources, debt terms and structures and scheduled
amortization and permanent resolution of all Old Fund
liabilities. The comprehensive financial plan shall provide
for the retirement of the revenue bonds authorized by article
two-d of this chapter and all realized and potential claims
against the Old Fund shall be fully reserved. The
comprehensive financial plan may include any other
information the Insurance Commissioner may require as a
basis for managing the post-transition fiscal soundness of the
Old Fund.

(u) "Voluntary market" means the workers' compensation
insurance market in which insurers voluntarily offer coverage
to applicants who meet the insurers' underwriting standards
or guidelines.

§23-2C-10. West Virginia adverse risk assignment.
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(a) The Insurance Commissioner shall provide for the development and administration of an assigned risk plan to provide workers' compensation insurance coverage to employers who are unable to procure coverage in the voluntary market.

(b) To qualify for coverage under the plan, an employer must have been categorically declined coverage by at least two insurers that are not affiliated with each other. The employer has the burden of establishing that at least two unaffiliated insurers are unwilling to provide coverage at any premium level that is reasonably related to the risk presented by the employer. The assigned risk plan may also provide for other reasonable qualifications and for the termination of coverage under the plan for specified reasons.

(c) Any employer that satisfies the requirements of subsection (b) of this section and other qualifications established in the plan shall be provided coverage at a premium level to be determined or approved by the Insurance Commissioner, which premiums shall be actuarially sound, consistent with classification and rate-making methodologies found in the insurance industry, and calculated to enable the plan to be self-sustaining and, to the greatest extent possible, able to operate without subsidies from employers and insurers in the voluntary market. Rates may not be excessive, inadequate or unfairly discriminatory.

(d) The Insurance Commissioner may designate any third party, including any private carrier or rating organization with substantial experience in developing and administering similar programs in other states, to develop and administer the assigned risk plan for a period of three years, and thereafter, shall contract with any qualified party, including the then current administrator, to continue the administration of the assigned risk plan: Provided, That the Insurance Commissioner must approve the plan prior to the
plan becoming operative. The plan established pursuant to this section shall require that all private carriers participate as a condition of their authority to transact business in this state.

(e) In the event the plan incurs a deficit in one or more policy years, the Insurance Commissioner may assess all private carriers providing workers’ compensation insurance in voluntary market funds as are necessary to cover the deficits. The assessments shall result in an equitable distribution of costs among private carriers based upon premiums received by the private carriers in the private market. Assessments made upon the policies of each private carrier pursuant to this section may be collected by each carrier in the form of a surcharge.

CHAPTER 33. INSURANCE.

ARTICLE 26. WEST VIRGINIA GUARANTY ASSOCIATION ACT.

§33-26-5. Definitions.
§33-26-6. Creation of the association.
§33-26-12. Nonduplication of recovery.


1 This article applies to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty and ocean marine insurance.

§33-26-5. Definitions.

1 As used in this article:

2 (1) “Account” means any one of the three accounts created by section six of this article.
(2) "Association" means the West Virginia Insurance Guaranty Association created under section six of this article.

(3) "Commissioner" means the Insurance Commissioner of West Virginia.

(4) "Covered claim" means an unpaid claim, including one for unearned premiums other than retrospective premiums or other premiums subject to adjustment after the date of liquidation, which arises out of and is within the coverage of an insurance policy to which this article applies and which policy is in force at the time of the occurrence giving rise to the unpaid claims if the insurer issuing the policy becomes an insolvent insurer after the effective date of this article and the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state. "Covered claim" does not include: (i) Any amount in excess of the applicable limits of coverage provided by an insurance policy to which this article applies; nor (ii) any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise from an insolvent insurer or the insured of an insolvent insurer to the extent of coverage under the insured's policy.

(5) "Insolvent insurer" means an insurer:

(A) Licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(B) Against whom an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction in the insurer's state of domicile or of this state.

(6) "Member insurer" means any person who:
insurers separately for each account amounts necessary to pay the obligations of the association under subdivision (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section thirteen of this article and other expenses authorized by this article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. Provided, That farmers mutual insurance companies that do not issue workers’ compensation insurance policies may not be assessed to pay for the obligations of the association payable from the workers’ compensation insurance account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any one year on any account an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon after that as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect the amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member
insurer if they are chargeable to the account for which the assessment is made.

(d) Shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases and judgments may be properly contested.

(e) Shall notify persons as the commissioner directs under subsection (2), section ten of this article.

(f) Shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(g) Shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this article.

(2) The association may:

(a) Employ or retain persons that are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this article in accord with the plan of operation.

(c) Sue or be sued.
(d) Negotiate and become a party to contracts that are necessary to carry out the purpose of this article.

(e) Perform other acts that are necessary or proper to effectuate the purpose of this article.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to an account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

§33-26-12. Nonduplication of recovery.

1 (1) Any person having a claim against a solvent insurer under any provision in an insurance policy other than a policy of an insolvent insurer, which is also a covered claim, is required to exhaust first his or her right under the solvent insurer's policy. Any amount payable on a covered claim under this article shall be reduced by the amount of any recovery under the solvent insurer's policy.

(2) Any person having a claim which may be recovered under more than one Insurance Guaranty Association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he or she shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this article shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.
AN ACT to amend and reenact §33-3-1 of the Code of West Virginia, 1931, as amended, relating to allowing an insurer to collect premiums and otherwise service certain policies after its license is no longer in effect.

Be it enacted by the Legislature of West Virginia:

That §33-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.

(a) No person may act as an insurer and no insurer may transact insurance in West Virginia except as authorized by a valid license issued by the commissioner, except as to the transactions as are expressly otherwise provided for in this chapter.

(b) No license is required for an insurer, formerly holding a valid license, to enable it to investigate and settle losses under its policies lawfully written in West Virginia while the
license was in effect, and as authorized by the commissioner, to collect premiums, pay applicable servicing commissions to agents of record and otherwise service such policies, or to liquidate the assets and liabilities of the insurer as may have resulted from its former authorized operations in West Virginia: Provided, That nothing in this section allows an insurer to issue new policies or renew policies of insurance or collect premiums on those policies unless the insurer is authorized by a valid license issued by the commissioner, except as to the transactions that are otherwise allowed in this chapter.

(c) An insurer not transacting new insurance business in West Virginia but collecting premiums on and servicing of policies in force as to residents of or risks located in West Virginia, and where the policies were originally issued on nonresidents of or risks located outside of this state, is transacting insurance in West Virginia for the purpose of premium and annuity tax requirements but is not required to have a license therefor.

(d) A domestic insurer or a foreign insurer from offices or by personnel or facilities located in this state may not solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting license granted to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this state.

(e) Any officer, director, agent, representative or employee of any insurer who willfully authorizes, negotiates, makes or issues any insurance contract in violation of this section is subject to the provisions set forth in article forty-four of this chapter.