FOREWORD

These volumes contain the Acts of the First Regular Session and the First and Second Extraordinary Sessions of the 79th Legislature, 2009.

First Regular Session, 2009

The First Regular Session of the 79th Legislature convened on January 14, 2009, and following the election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 4th day of November, 2008, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 11, 2009, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 11, 2009. The Legislature adopted Senate Concurrent Resolution 68, extending the regular session until and including June 6, 2009. Senate Concurrent Resolution 83 was then adopted, providing for an adjournment of the Legislature until May 26, 2009, and the Legislature adjourned sine die on May 31, 2009.

Bills totaling 2,113 were introduced in the two houses during the session (1,340 House and 773 Senate). The Legislature passed 227 bills, 110 House and 117 Senate.

The Governor vetoed twenty House bills (Com. Sub. for H. B. 2423, Relating to the Board of Medical Imaging and Radiation Therapy Technology; Com. Sub. for H. B. 2535, Creating a tax credit for certain solar energy systems; Com. Sub. for H. B. 2701, Relating to an escape of any person from the custody of the Division of Juvenile Services; Com. Sub. for H. B. 2771, Relating to the West Virginia Alcohol and Drug-Free Workplace Act; H. B. 2920,

There were 206 Concurrent Resolutions introduced during the session, 123 House and 83 Senate, of which 33 House and 16 Senate were adopted. There were 25 House Joint Resolutions and 13 Senate Joint Resolutions introduced, proposing amendments to the State
Constitution, none of which were adopted. The House introduced 51 House Resolutions, and the Senate introduced 60 Senate Resolutions, of which 43 House and 58 Senate were adopted.

The Senate failed to pass 60 House bills passed by the House, and 86 Senate bills failed passage by the House.

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First Extraordinary Session, 2009

The Proclamation calling the Legislature into Extraordinary Session on May 31, 2009, contained fifteen items for consideration.

The Legislature passed all 15 bills, 6 House and 9 Senate. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die June 2, 2009.

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Second Extraordinary Session, 2009

The Proclamation calling the Legislature into Extraordinary Session on June 15, 2009, contained nineteen items for consideration.

The Legislature passed 6 bills, all of which were Senate bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die on June 17, 2009.

[V]
Third Extraordinary Session, 2009

The Proclamation calling the Legislature into Extraordinary Session on August 11, 2009, contained seven items for consideration.

The Legislature passed 2 bills, 1 House and 1 Senate. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die on August 12, 2009.

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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Sergeant at Arms—Oce Smith, Fairmont
Doorkeeper—John Roberts, Hedgesville

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<td>Cliff Moore (D)</td>
<td>Thorpe</td>
<td>77th - 79th</td>
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<td>John H. Scott (R)</td>
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<td>Virginia Mahan (D)</td>
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<td>Sally Sasman (D)</td>
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<td>William R. Wooton (D)</td>
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[XXXVI]
MEMBERS OF THE HOUSE OF DELEGATES, Continued

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<td>Michael Caputo (D)</td>
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<td>Ruth Rowan (R)</td>
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<td>Jonathan Miller (R)</td>
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<td>Tiffany Lawrence (D)</td>
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1 Appointed January 9, 2009, to fill the vacancy created by the death of the Honorable Bill Proudfoot.

(D) Democrats ........................................... 71

(R) Republicans ......................................... 29

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

### REGULAR SESSION, 2009

---

### OFFICERS

- **President** – Earl Ray Tomblin, Chapmanville
- **Clark** – Darrell E. Holmes, Charleston
- **Sergeant at Arms** – Howard Wellman, Bluefield
- **Doorkeeper** – Billy L. Bevino, Charleston

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### Districts

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<th>District</th>
<th>Name</th>
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<th>Legislative Service</th>
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<td>First</td>
<td>Edwin J. Bowman (D)</td>
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<td>Jack Yost (D)</td>
<td>Wellsburg</td>
<td>(House 76⁺ - 78⁺); 79⁺</td>
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<td>Larry J. Edgell (D)</td>
<td>New Martinsburg</td>
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<td>J. Frank Deem (R)</td>
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<td>(House 52⁺ - 56⁺, 57⁺ - 62⁺, 64⁺ - 65⁺; (House 69⁺); 72⁺ - 79⁺</td>
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<td>Dan Foster (D)</td>
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<td>Brooks F. McCabe, Jr. (D)</td>
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</table>

(D) Democrats ........................................... 26
(R) Republicans ........................................... 8

TOTAL .................................................. 34

[XXXVIII]
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2009

STANDING

AGRICULTURE

Argento (Chair), Tabb (Vice Chair), Beach, Boggs, Campbell, Caputo, Eldridge, Guthrie, Hall, Manypenny, Martin, Morgan, Moye, M. Poling, Rodighiero, Swartzmiller, Wells, Williams, Evans (Minority Chair), Canterbury (Minority Vice Chair), Anderson, Border, Ireland, C. Miller and Romine.

BANKING AND INSURANCE

Moore (Chair of Banking), Reynolds (Vice Chair of Banking), Perry (Chair of Insurance), Shook (Vice Chair of Insurance), Frazier, Hartman, Hunt, Hutchins, Iaquinta, Louisos, Mahan, Manchin, Michael, Miley, Shaver, Skaff, Williams, Wooton, Azinger (Minority Chair of Banking), Schoen (Minority Vice Chair of Banking), Ashley (Minority Chair of Insurance), Walters (Minority Vice Chair of Insurance), Andes, Carmichael and J. Miller.

CONSTITUTIONAL REVISION

Fleischauer (Chair), Hutchins (Vice Chair), Brown, Caputo, Doyle, Ferro, Frazier, Guthrie, Hatfield, Hunt, Kominar, Marshall, Moore, Morgan, Staggers, Varner, Wells, Webster, Overington (Minority Chair), Romine (Minority Vice Chair), Blair, Ellem, Lane, McGeehan and Sobonya.

EDUCATION

M. Poling (Chair), Paxton (Vice Chair), Beach, Crosier, Ennis, Fragale, Lawrence, Louisos, Moye, Perry, Pethtel, Rodighiero,
HOUSE OF DELEGATES COMMITTEES

Shaver, Smith, Stowers, Walker, Williams, Duke (Minority Chair), Sumner (Minority Vice Chair), Andes, Canterbury, Ireland, Romine, Rowan and Shott.

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

Barker (Chair of Energy, Industry and Labor), Shaver (Vice Chair of Energy, Industry and Labor), Kominar (Chair of Economic Development and Small Business), Craig (Vice Chair of Economic Development and Small Business), Brown, Butcher, Caputo, Fleischauer, Guthrie, Klempa, Mahan, Manypenny, Martin, Marshall, Paxton, Skaff, Walker, Sobonya (Minority Chair of Energy, Industry and Labor), C. Miller (Minority Vice Chair of Energy, Industry and Labor), Blair (Minority Chair of Economic Development and Small Business), Andes (Minority Vice Chair of Economic Development and Small Business), Hamilton, McGeehan, Schoen and Shott.

FINANCE

White (Chair), Campbell (Vice Chair), Craig, Doyle, Eldridge, Guthrie, Iaquinta, Klempa, Kominar, Mahan, Manchin, Marshall, Perdue, Phillips, M. Poling, Reynolds, Spencer, Varner, Anderson (Minority Chair), Carmichael (Minority Vice Chair), Ashley, Blair, Border, Evans and Walters.

GOVERNMENT ORGANIZATION

Morgan (Chair), Stephens (Vice Chair), Argento, Boggs, Butcher, Cann, Givens, Hall, Hartman, Hatfield, Manypenny, Martin, D. Poling, Skaff, Staggers, Swartzmiller, Talbott, Ross, C. Miller (Minority Chair), Porter (Minority Vice Chair), Azinger, Cowles, Rowan, McGeehan and J. Miller.
HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Perdue (Chair), Hatfield (Vice Chair), Campbell, Eldridge, Fleischauer, Lawrence, Manypenny, Marshall, Moore, Moye, Perry, Phillips, D. Poling, Rodighiero, Spencer, Staggers, Susman, Wooton, Border (Minority Chair), J. Miller (Minority Vice Chair), Andes, Carmichael, Lane, C. Miller and Rowan.

JUDICIARY

Webster (Chair), Miley (Vice Chair), Barker, Brown, Caputo, Ferro, Fleischauer, Frazier, Hunt, Hutchins, Longstreth, Michael, Moore, Shook, Susman, Tabb, Wells, Wooton, Ellem (Minority Chair), Lane (Minority Vice Chair), Hamilton, Overington, Schoen, Schadler and Sobonya.

NATURAL RESOURCES

Talbott (Chair), Crosier (Vice Chair), Argento, Beach, Caputo, Craig, Eldridge, Fragale, Guthrie, Hall, Manypenny, Martin, Moye, Phillips, Rodighiero, Shaver, Swartzmiller, Varner, Hamilton (Minority Chair), Anderson (Minority Vice Chair), Duke, Ellem, Evans, Ireland and Romine.

PENSIONS AND RETIREMENT

Spencer (Chair), Pethtel (Vice Chair), Givens, Reynolds, Williams, Canterbury and Duke.

POLITICAL SUBDIVISIONS

Manchin (Chair), Beach (Vice Chair), Cann, Doyle, Fragale, Hartman, Lawrence, Longstreth, Louisos, Miley, D. Poling, Ross, Susman, Tabb, Varner, Williams, Sumner (Minority Chair), Cowles

[XLI]
HOUSE OF DELEGATES COMMITTEES

(Minority Vice Chair) Anderson, Duke, Ellem, J. Miller, Schadler and Shott.

ROADS AND TRANSPORTATION

Martin (Chair), Klempa (Vice Chair), Argento, Barker, Butcher, Craig, Crosier, Ennis, Ferro, Hall, Kominar, Michael, Shook, Smith, Stephens, Stowers, Walker, Wells, Schadler (Minority Chair), Canterbury (Minority Vice Chair), Armstead, Cowles, Evans, Porter and Rowan.

COMMITTEE ON SENIOR CITIZEN ISSUES

Williams (Chair), Ennis (Vice Chair), Argento, Butcher, Hatfield, Longstreth, Manchin, Manypenny, Marshall, Moore, Moye, Perdue, Pethtel, D. Poling, Ross, Spencer, Stephens, Susman, Rowan (Minority Chair), Evans (Minority Vice Chair), Azinger, Duke, Hamilton, Shott and Sumner.

RULES

Thompson (Chair), Boggs, Caputo, Fragale, Hatfield, Marshall, Morgan, Paxton, M. Poling, Talbott, Varner, Webster, White, Anderson, Armstead, Border, Carmichael and Overington.

VETERANS’ AFFAIRS AND HOMELAND SECURITY

Iaquinta (Chair of Veterans’ Affairs), Longstreth, (Vice Chair of Veterans’ Affairs), Swartzmiller (Chair of Homeland Security), Moye (Vice Chair of Homeland Security), Cann, Ennis, Ferro, Fleischauer, Givens, Hatfield, Hutchins, Paxton, Pethtel, Spencer, Staggers, Smith, Stephens, Stowers, Azinger (Minority Chair of Veterans’ Affairs), Porter (Minority Vice Chair Veterans’ Affairs), Ireland (Minority Chair of Homeland Security), Ashley (Minority Vice Chair of Homeland Security), Armstead, Sumner and Walters.

[XLII]
HOUSE OF DELEGATES COMMITTEES

JOINT COMMITTEES

ENROLLED BILLS

Wells (Cochair), Fragale, Staggers and Overington.

GOVERNMENT AND FINANCE

Thompson (Cochair), Boggs, Caputo, Webster, White, Armstead and Border.

GOVERNMENT OPERATIONS

Morgan (Cochair), Argento, Stephens, Rowan and Schoen.

LEGISLATIVE RULE-MAKING REVIEW

Brown (Cochair), D. Poling (Vice Cochair), Miley, Talbott, Overington, Sobonya, Thompson (ex officio).

PENSIONS AND RETIREMENT

Spencer (Cochair), Pethtel (Vice Cochair), Givens, Reynolds, Stephens, Canterbury and Duke.

STATUTORY LEGISLATIVE COMMITTEES

COMMISSION ON ECONOMIC DEVELOPMENT

Kominar (Cochair), Barker (Vice Cochair), Campbell, Craig, Klempa, D. Poling, M. Poling, Webster, White, Blair, Carmichael and Hamilton.

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HOUSE OF DELEGATES COMMITTEES

COMMISSION ON INTERSTATE COOPERATION

Doyle (Cochair), Guthrie (Vice Cochair).

COMMISSION ON SPECIAL INVESTIGATIONS

Thompson (Cochair), Boggs, White, Ellem and Lane.

FOREST MANAGEMENT REVIEW COMMISSION

Michael (Cochair), Hartman, Williams and Romine.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

M. Poling (Cochair), Doyle, Fragale, Paxton, Perry and Sumner.

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

Perdue (Cochair), Hatfield, Moore, Moye, Staggers, Border, Thompson (ex officio).

LEGISLATIVE OVERSIGHT COMMISSION ON STATE WATER RESOURCES

Manchin (Cochair), Mahan, Miley, Perdue and Schadler.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT

Kominar (Cochair), Barker, Klemka and Hamilton.
LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

Perry (Cochair), Boggs, Morgan, Ross and Ellem.
COMMITTEES OF THE SENATE
Regular Session, 2009

STANDING

AGRICULTURE

Senators White (Chair), Williams (Vice Chair), Helmick, Laird, Minard, Palumbo, Snyder, Unger, K. Facemyer, Guills and Sypolt.

BANKING AND INSURANCE

Senators Minard (Chair), Jenkins (Vice Chair), Chafin, Fanning, Green, Helmick, Kessler, McCabe, Palumbo, Prezioso, Deem, K. Facemyer and Hall.

CONFIRMATIONS

Senators Stollings (Chair), Chafin (Vice Chair), Bowman, Green, Minard, Plymale, Prezioso, Hall and Sypolt.

ECONOMIC DEVELOPMENT

Senators Browning (Chair), Unger (Vice Chair), D. Facemire, Helmick, Kessler, McCabe, Oliverio, Snyder, Stollings, Wells, Williams, Caruth, K. Facemyer and Hall.

EDUCATION

Senators Plymale (Chair), Wells (Vice Chair), Browning, Edgell, Foster, Green, Laird, Oliverio, Stollings, Unger, White, Barnes, Boley and Guills.

ENERGY, INDUSTRY AND MINING

Senators Green (Chair), D. Facemire (Vice Chair), Fanning, Helmick, Jenkins, Kessler, Minard, Stollings, Williams, Yost, Deem, Guills and Sypolt.

[XLVI]
SENATE COMMITTEES

FINANCE

Senators Helmick (Chair), McCabe (Vice Chair), Bowman, Chafin, Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, Unger, Wells, White, Boley, K. Facemyer, Guills and Sypolt.

GOVERNMENT ORGANIZATION

Senators Bowman (Chair), Snyder (Vice Chair), Browning, Foster, Kessler, McCabe, Minard, Palumbo, White, Williams, Yost, Boley, Caruth and Sypolt.

HEALTH AND HUMAN RESOURCES

Senators Prezioso (Chair), Stollings (Vice Chair), Browning, Foster, Jenkins, Laird, Palumbo, Snyder, Unger, Yost, Boley, Guills and Hall.

INTERSTATE COOPERATION

Senators Jenkins (Chair), Snyder (Vice Chair), Browning, Palumbo, Wells, Caruth and Sypolt.

JUDICIARY

Senators Kessler (Chair), Oliverio (Vice Chair), Browning, Chafin, Foster, Jenkins, Laird, Minard, Palumbo, Snyder, Stollings, Williams, Yost, Barnes, Caruth, Deem and Hall.

LABOR

Senators Oliverio (Chair), Williams (Vice Chair), Bowman, Foster, Green, Snyder, White, Yost, Barnes, Deem and Guills.
SENATE COMMITTEES

MILITARY

Senators Wells (Chair), Yost (Vice Chair), Edgell, D. Facemire, Laird, Oliverio, Williams, Boley and Sypolt.

NATURAL RESOURCES

Senators Fanning (Chair), Laird (Vice Chair), Bowman, Edgell, D. Facemire, Helmick, McCabe, Prezioso, Unger, White, Barnes, Deem and K. Facemyer.

PENSIONS

Senators Foster (Chair), Edgell (Vice Chair), McCabe, Oliverio, Plymale, Deem and Hall.

RULES

Senators Tomblin (Chair), Bowman, Chafin, Fanning, Helmick, Kessler, Plymale, Prezioso, Boley and Caruth.

TRANSPORTATION AND INFRASTRUCTURE

Senators Unger (Chair), Jenkins (Vice Chair), D. Facemire, Fanning, Plymale, Stollings, White, Barnes and K. Facemyer.

JOINT COMMITTEES

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SENATE COMMITTEES

GOVERNMENT AND FINANCE

Senators Tomblin (Cochair), Chafin, Helmick, Kessler, Plymale, Caruth and Deem.

GOVERNMENT OPERATIONS

Senators Bowman (Cochair), Helmick, McCabe, Snyder and Barnes.

LEGISLATIVE RULE-MAKING REVIEW

Senators Minard (Cochair), Snyder (Vice Cochair), Prezioso, Unger, Boley, K. Facemyer and Tomblin (ex officio).

PENSIONS AND RETIREMENT

Senators Foster (Cochair), McCabe (Vice Cochair), Edgell, Oliverio, Plymale, Deem and Hall.

RULES

Senators Tomblin (Cochair), Chafin and Caruth.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

Senators Browning (Cochair), Helmick, Kessler, McCabe, Oliverio, Plymale, Prezioso, Stollings, Unger, Barnes, Caruth and K. Facemyer.

COMMISSION ON INTERSTATE COOPERATION

Senators Jenkins (Cochair), Foster (Vice Cochair), Minard, Stollings, Wells, Caruth, Sypolt and Tomblin (ex officio).
SENATE COMMITTEES

COMMISSION ON SPECIAL INVESTIGATIONS

Senators Tomblin (Cochair), Chafin, Helmick, Boley and Caruth.

FOREST MANAGEMENT REVIEW COMMISSION

Senators Helmick (Cochair), Bowman, D. Facemire, Williams and K. Facemyer.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

Senators Plymale (Cochair), Wells, Edgell, Green, Unger and Boley.

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

Senators Prezioso (Cochair), Foster, Jenkins, Stollings, Unger, Boley, Caruth and Tomblin (ex officio).

LEGISLATIVE OVERSIGHT COMMISSION ON STATE WATER RESOURCES

Senators Unger (Cochair), Green (Vice Cochair), Fanning, Helmick and Hall.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT

Senators McCabe (Cochair), Kessler, Stollings and Deem.

[L]
SENATE COMMITTEES

LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

Senators White (Cochair), Green, Laird, Yost and Barnes.

[LI]
AN ACT to amend and reenact §29A-2-6 of the Code of West Virginia, 1931, as amended, relating to filing agency rules with the Secretary of State under the administrative procedures act; requiring all rules to be filed with the Secretary of State electronically beginning July 1, 2011; allowing for exemptions to the requirement; requiring legislative rules to implement the provisions of the requirement; and authorizing a voluntary pilot program to electronic filing of proposed rules.

Be it enacted by the Legislature of West Virginia:

That §29A-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE REGISTER.

§29A-2-6. Format and numbering of agency rules filed in State Register; electronic filing required beginning July 1, 2011; pilot project.
(a) Each proposed rule filed by an agency requiring a notice to be published in the State Register in accordance with the provisions of section five, article three of this chapter shall include as its initial provisions: (1) A statement identifying such rule as a legislative rule, an interpretive rule or a procedural rule, as the case may be; (2) a statement of such section, article and chapter of this code to which such rule or any part thereof relates; and (3) a statement of the section, article and chapter of this code or any other provision of law which provides authority for the promulgation of such rule. The agency shall be estopped from relying on any authority for the promulgation of such rule which is not stated therein in accordance with the requirements of this subdivision.

(b) Each rule when filed, to be finally effective, shall have attached thereto an abstract of its promulgation history prepared by the agency showing the date of the filing in the State Register of the content of, or notice of any procedure relating to, action necessary under this chapter to cause such rules to be finally effective: Provided, That any error or omission in such abstract shall not affect the validity of any rule or action in respect thereto.

(c) The Secretary of State shall prescribe by legislative rule a standard size, format, numbering and indexing for rules to be filed in the State Register, and may prescribe procedural or interpretive rules to clarify and interpret the provisions in this section. The Secretary of State shall refuse to accept for filing any rules which do not comply with the specific provisions of this section. The Secretary of State may also refuse to accept any rules which do not comply with the rules issued pursuant to this section.

(d) Unless and until the Secretary of State prescribes otherwise by rule issued and made effective under the provisions of subsection (c) of this section, each rule filed in paper form in the State Register shall be on white paper
measuring eight and one-half inches by eleven inches, typewritten and single-spaced, with a one inch margin at the top, bottom and each side of each page, and shall be reproduced photographically, or by xerography or other duplication process. The Secretary of State may grant specific exceptions to such requirements in the case of maps, diagrams and exhibits, if the same may not be conveniently folded and fastened with the other pages of rules and in the case of rules which incorporate a rule or regulation of a federal agency or other organization which could not be submitted in the standard size and format except at undue expense. Materials submitted for inclusion in the State Register shall be fastened on the left side by two or more fasteners attached through holes suitable for insertion into ring binders.

(e)(1) Beginning July 1, 2011, unless otherwise authorized by the Secretary of State, all agencies, boards and commissions having rulemaking authority, shall file the provisions of and attachments to all proposed rules required to be filed with the Secretary of State, and any associated documents that are required to be published in the State Register, exclusively in a electronic format. The Secretary of State may exempt an agency, board or commission from this requirement upon the Secretary of State’s determination that the filer is without the means to electronically file the documents and to require electronic filing would place an unreasonable burden on the agency, board or commission.

(2) On or before July 1, 2010, the Secretary of State shall propose for promulgation legislative rules to establish a uniform system for the electronic filing required by the provisions of this section and to otherwise implement those provisions.

(3) During the calendar year 2010, through procedural rules, the Secretary of State may institute a limited pilot
project through which proposed new rules or amendments to existing rules may be filed electronically by any agency, board or commission under agreement with the Secretary of State. Participation by any agency, board or commission in the pilot project is voluntary.

CHAPTER 2

(Com. Sub. for S.B. 472 - By Senators Unger, Green, Caruth and Stollings)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §17-22-1, §17-22-6, §17-22-7, §17-22-8, §17-22-9, §17-22-10, §17-22-11 and §17-22-13 of the Code of West Virginia, 1931, as amended, all relating to amending restrictions on outdoor advertising of businesses located on real property owned or leased by the business advertised.

Be it enacted by the Legislature of West Virginia:

That §17-22-1, §17-22-6, §17-22-7, §17-22-8, §17-22-9, §17-22-10, §17-22-11 and §17-22-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-1. Legislative finding.
§17-22-6. Purchase or condemnation; powers of Commissioner of Highways; payment to claimants.
§17-22-7. Exceptions to prohibited signs; standards for excepted signs.
§17-22-1. Legislative finding.

The Legislature hereby finds and declares: (a) That outdoor advertising is a legitimate, commercial use of private property adjacent to roads and highways; (b) that outdoor advertising is an integral part of the business and marketing function and an established segment of the national economy which serves to promote and protect private investments in commerce and industry; and (c) that the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to federal-aid interstate and primary highways should be regulated in order to protect the public investment in such highways, to promote the recreational value of public travel, to preserve natural beauty and to promote the reasonable, orderly and effective display of such signs, displays and devices.

The Legislature further finds and declares that fiscal actualities reflect that the people of the State of West Virginia would suffer economically if the state failed to participate fully in the allocation and apportionment of federal-aid highway funds, more specifically that a reduction in federal-aid highway funds would necessitate increased local taxation to support and maintain the highway program and system, and that it is the intention of this bill, among other things, to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to federal-aid interstate and primary highways declared by the Congress of the United States, in Title 23, United States Code, and that the economic benefit resulting
from full participation in the federal highway program would constitute a benefit to the community as a whole.

§17-22-6. Purchase or condemnation; powers of Commissioner of Highways; payment to claimants.

The Commissioner of Highways is hereby authorized and empowered to make acquisition of all of the property rights and interest specified in section five of this article by purchase at private sale or, in the event he is unable to do so, by proceeding in eminent domain. Upon any such taking or acquisition pursuant to the provisions of this article, just and full compensation for the sign and leasehold interest shall be paid directly to the owner thereof, and just and full compensation for the loss of the right to erect and maintain signs shall be paid directly to the owner of the affected real property. In any condemnation proceeding involving such taking or acquisition by the state, the commissioners or jury shall ascertain the compensation to which the owner of the sign and leasehold interest is entitled, separate and apart from the compensation to which the owner of the real property is entitled, as provided and authorized in section eighteen, article two, chapter fifty-four of this code.

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

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

§17-22-8. Exempted areas; agreements between Commissioner of Highways and United States Secretary of Transportation.

In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this article, signs, displays and devices, whose size, lighting and spacing shall be determined by agreement between the Commissioner of Highways of West Virginia and the Secretary of Transportation of the United States, may be erected and maintained within six hundred sixty feet of the nearest edge of the right-of-way of federal-aid interstate or primary roads, within areas zoned industrial or commercial, or in unzoned commercial or industrial areas, as may be determined by agreement between the Commissioner of Highways of West Virginia and the Secretary of Transportation of the United States: Provided, That any such agreement shall contain a definition of unzoned commercial or industrial areas which reflects existing conditions in this state, such as, without limiting the foregoing, existing land use, availability of land for urban development, topography and accepted zoning practices now prevailing in this state. Any agreement between the Commissioner of Highways and the Secretary of Transportation relating to size, lighting and spacing shall reflect customary usage in this state. Any agreement between the Commissioner of Highways and the Secretary of
Transportation defining unzoned commercial or industrial areas, or relating to size, lighting and spacing, shall be no more restrictive than necessary to secure to this state any federal aid contingent upon compliance with federal laws, or federal rules and regulations relating to outdoor advertising, and shall be subject to amendment or rejection by the Legislature of West Virginia: Provided, however, That the terms of any such agreement shall be no more restrictive than those included in any other similar agreement made by the Secretary of Transportation and other states: Provided further, That such agreement shall provide for its modification and amendment in the event and to the extent that the Secretary of Transportation and any other state shall thereafter agree to any provisions which shall be less restrictive. The provisions of this section shall not apply to signs, displays and devices referred to in clauses (b) and (c), section seven of this article.

§17-22-9. Signs, displays and devices providing information for the traveling public; location.

Signs, displays and devices giving specific information in the interest of the traveling public may be erected and maintained, pursuant to agreement between the Commissioner of Highways and the Secretary of Transportation, within the rights-of-way of highways within the federal-aid interstate system, at appropriate distances from interchanges on such interstate system.

§17-22-10. Special fund.

There is hereby created a special fund, to the credit of which shall be paid such funds as, from time to time, may be appropriated by the Legislature and all federal funds allocated and distributed to the State of West Virginia in implementation of the provisions of Title 23, United States Code, relating to outdoor advertising, to be administered by

It shall be the function and duty of the Commissioner of Highways to administer and enforce the provisions of this article, and in the performance of his or her duties hereunder, he or she may assign to division engineers, and other employees in his or her department, such duties as he or she may deem proper. The commissioner is hereby authorized and empowered to promulgate rules and regulations implementing the provisions of this article, including rules and regulations permitting the state of West Virginia to comply with the provisions of Title 23, United States Code, relating to the payment of bonuses for the regulation of outdoor advertising adjacent to the interstate system and the terms and provisions of any agreement heretofore entered into pursuant to law by and between the Commissioner of Highways of West Virginia and the Secretary of Commerce of the United States relating to the payment of such bonuses, any provisions of this article to the contrary notwithstanding.

§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

No person shall engage or continue in the business of outdoor advertising in this state without first obtaining a license for outdoor advertising from the commissioner; and no person shall construct, erect, operate, use, maintain, lease or sell any outdoor advertising sign, display or device in this state without first obtaining a license from the commissioner. The commissioner shall charge an annual license fee in the amount of $125, payable in advance, for licensees obtaining up to twenty permits. Licensees, including subsidiaries and affiliates, obtaining twenty-one or more permits shall pay an
annual fee of $1,000, payable in advance. Applications for
licenses, or renewal of licenses, shall be made on forms
furnished by the commissioner and shall contain any
pertinent information required by the commissioner and shall
be accompanied by the annual fee. Licenses granted under
this section expire on June 30 of each year and shall not be
prorated. Applications for the renewal of licenses shall be
made not less than thirty days prior to the date of expiration.
Nothing in this section shall be construed to require any
person to obtain a license who constructs, erects, operates,
uses or maintains an on-premise sign, display or device
solely on his or her own property at the location of the
advertised business and within limitations established in rules
authorized by section eleven of this article and promulgated
in accordance with state law. The Commissioner of
Highways, in his or her discretion, may propose for
promulgation an emergency rule as provided in article three,
chapter twenty-nine-a of this code that clarifies, explains or
implements limitations or restrictions on the construction,
errection, operation, use and maintenance of outdoor
advertising signs, displays and devices. With the prior
written approval of the Commissioner of Highways, a county
commission may enact and enforce outdoor advertising
ordinances which place limitations or restrictions on outdoor
advertising signs, displays or devices which are in addition
to or more restrictive than the limitations or restrictions
provided by the Commissioner of Highways in the
emergency rule on this subject.

The commissioner may, after thirty days' notice in
writing to the licensee, make and enter an order revoking any
license granted by him or her upon repayment of a
proportionate part of the license fee, in any case where he or
she finds that any material information required to be given
in the application for the license is knowingly false or
misleading or that the licensee has violated any of the
provisions of this article, unless the licensee, before the
expiration of said thirty days, corrects the false or misleading
information and complies with the provisions of this article.
The order shall be accompanied by findings of fact and
conclusions of law upon which the order was made and
entered. Any person adversely affected by an order made
and entered by the commissioner is entitled to judicial review
of the order. The judicial review shall be in the circuit court
for the county in which the owner of the sign has his or her
principal place of business in this state, or in the circuit court
of Kanawha County if all parties agree. The judgment of the
circuit court is final unless reversed, vacated or modified on
appeal to the Supreme Court of Appeals of West Virginia.
Legal counsel and services for the commissioner in appeal
proceedings in any circuit court and the Supreme Court of
Appeals shall be provided by the Attorney General or his or
her assistants, and in appeal proceedings in any circuit court
by the prosecuting attorney of the county as well, all without
additional compensation. The commissioner may employ
special counsel to represent the commissioner in a particular
proceeding.

CHAPTER 3

(Com. Sub. for H.B. 2690 - By Delegates Talbott, Argento,
Pethel, Swartzmiller, Tabb, Beach, Williams,
Anderson, Evans, Schoen and C. Miller)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §19-9-28, §19-9-29, §19-9-30,
and §19-9-36 of the Code of West Virginia, 1931, as amended,
all relating to updating language pertaining to the death of
diseased or infected animals; indemnity for the death of
diseased or infected animals; deleting outdated amounts paid to
appraisers and arbitrators for services rendered; and disposing
of dead domesticated animals.

Be it enacted by the Legislature of West Virginia:

of West Virginia, 1931, as amended, be amended and reenacted, all
to read as follows:

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS
AND EUTHANASIA OF DISEASED
ANIMALS.

§19-9-28. Indemnity for euthanizing infected or exposed
animals; agreement.
§19-9-29. When right of indemnity does not exist.
§19-9-30. Appraisal of infected or exposed animals; amount; arbitration; fees of arbitrators.
§19-9-32. Euthanasia of diseased animals; supervision; certificate of euthanasia.
§19-9-33. Payment of indemnity.
§19-9-34. Disposal of carcass of diseased animal.
§19-9-34a. Authority of commissioner to promulgate rules regulating disposal of dead
animals.
§19-9-35. Tests for bovine tuberculosis; disposition of infected bovine animals.

§19-9-28. Indemnity for euthanizing infected or exposed
animals; agreement.

1 Whenever, to prevent the spread of any communicable
disease which cannot be cured or controlled by isolation and
adequate or proper veterinary treatment, the commissioner or
any of the commissioner's agents find it necessary to
euthanize any animal infected with or directly exposed to any
infectious, contagious or communicable disease, which
cannot be cured or controlled by isolation and adequate or
proper veterinary treatment, and if the owner of the animal
9 elects to receive indemnity for it, the commissioner shall
10 require the owner, before the appraisal and death of the
11 animal, to execute an agreement that the owner will
12 thoroughly clean and disinfect all premises that may have
13 been infected by the animal in the manner the commissioner
14 prescribes. If the animal has tuberculosis, the agreement will
15 require the owner to have the entire herd of bovine animals
16 tested with tuberculin by the commissioner or the
17 commissioner’s agent, at times the commissioner designates,
18 and the agreement will require that the owner not admit to the
19 herd any bovine animal that has not had a negative reaction
20 to the test. The agreement shall be in duplicate, one copy to
21 be retained by the signer, on a form prescribed by the
22 commissioner, and shall be signed by the owner or the
23 owner’s agent. The agreement shall be effective for a period
24 of two years from the date it is executed. All animals for
25 which the owner claims indemnity shall be appraised before
26 being euthanized, and the owner shall be indemnified as
27 hereinafter provided: Provided, That any animal infected
28 with rabies may be euthanized by the owner or any person
29 authorized to do so without an agreement or appraisal, and if
30 the disease is caused by a dog bite, the animal shall be
31 appraised and the owner shall be compensated as provided in
32 article twenty of this chapter.

§19-9-29. When right of indemnity does not exist.

1 The right of indemnity shall not exist nor shall payment
2 be made in any of the following cases:

3 (a) For animals owned by the United States, this state, or
4 any county, city, town or village in this state;

5 (b) For animals brought into this state contrary to the
6 provisions of this article, or where the owner of the animals
7 or person claiming compensation has failed to comply with
8 the provisions of this article;
(c) When the owner or claimant at the time of coming into possession of the animal knew or had reason to believe it to be afflicted with a communicable disease;

(d) When the owner has been guilty of negligence or carelessly exposed such animals to a communicable disease;

and

(e) When the owner has refused or neglected to comply with the sanitary requirements of the Commissioner of Agriculture or the commissioner's agents.

§19-9-30. Appraisal of infected or exposed animals; amount; arbitration; fees of arbitrators.

The commissioner or the commissioner's agent shall act as appraiser and shall appraise each infected or directly exposed animal within five days before euthanizing the animal, basing the amount upon the class and market value of the animal at the time of the appraisal, whether for breeding purposes or for milk or meat production. Animals reacting to any approved test, but not exhibiting any physical evidence of disease, shall be appraised without considering the presence of a diseased condition, but animals exhibiting any physical evidence of disease shall be appraised as infected animals: Provided, That where indemnities are claimed for directly exposed animals euthanized on account of rabies infection, appraisal shall be based on the value of the animal before it became infected. If the amount of appraisal of any animal, as determined by the appraiser, is not satisfactory to the owner of the animal, the owner shall immediately notify the appraiser of this fact, setting forth the reason for complaint. The amount of the appraisal shall then be determined by arbitrators, one to be appointed by the appraiser and one by the owner of the animal. If these arbitrators are not able to agree on the amount of appraisal, a third arbitrator shall be appointed by them, whose decision
shall be final. Compensation for the arbitrators appointed by
the owner and the appraiser shall be paid by the party
appointing the arbitrator, and in case a third arbitrator is
chosen, the third arbitrator shall be paid by the party against
whom the decision is made.


When the animal is to be euthanized, the commissioner
or the commissioner's agent shall deliver to the owner a
certificate of appraisal which may cover any number of
animals belonging to the same owner, showing the age and
description of each animal found to be infected or directly
exposed; the name and place of test, if any; the mark or brand
signifying an animal with tuberculosis; any other mark or
brand which the animal may bear; the date when and the
place where the animal is to be euthanized by the
veterinarian; the designation of the officer who is to
supervise the euthanasia; the appraised value of each animal;
the name and address of the owner of the animal; and the fact
that the owner has executed the agreement as provided in
section twenty-eight of this article.

§19-9-32. Euthanasia of diseased animals; supervision;
certificate of euthanasia.

After the agreement described in section twenty-eight of
this article has been executed, the appraisal has been made
and the certificate of appraisal issued, the commissioner or
the commissioner's agent shall have the animal euthanized
and the carcass disposed of in accordance with the meat
inspection regulations of the United States Department of
Agriculture, or in such manner as the commissioner
prescribes. The officer supervising the euthanasia shall
immediately include in the certificate of appraisal provided
for in section thirty-one of this article a certificate of
euthanasia stating that the officer has witnessed the
euthanasia of each of the animals; identifying the place and
date of the euthanasia; certifying that the number, age,
description and brand or mark correspond to those in the
certificate of appraisal; stating the result of the post-mortem
examination; the disposition made of the carcass; and the
amount paid to the veterinarian, which amount shall be paid
to the owner and credited on the amount of appraisal:
Provided, That in case animals are euthanized as having
tuberculosis, the appraisal certificate shall be credited in the
manner provided in section thirty-six of this article.

The euthanasia may be supervised and certified by the
commissioner; any of the commissioner’s agents; or any person
with the authority of an agent or officer of the United States
Department of Agriculture. The commissioner may prescribe
other requirements for the certificates or the affidavits required
by this article, and may make and enforce rules governing the
handling, shipping and euthanasia of such animals.

§19-9-33. Payment of indemnity.

All claims for indemnity for animals euthanized as
having tuberculosis shall be paid in the manner prescribed in
section thirty-seven of this article. In all other cases when
animals are euthanized as provided in this article the
veterinarian shall forthwith forward to the commissioner the
certificates of appraisal and euthanasia, together with the
owner’s claim for indemnity, and the owner’s affidavit that
the owner has in all respects complied with the agreement
provided for in section twenty-eight of this article, and with
any other requirements prescribed by the commissioner. If
the certificates, claim and affidavit are correct and the claim
is not barred by section twenty-nine of this article, the
commissioner shall approve and file them. The commissioner
shall, at the end of each fiscal year, issue a requisition to the
State Auditor for two thirds of the value of the approved
certificates: Provided, That in case of an outbreak of foot-and-mouth disease, or any other dangerously contagious or infectious disease among bovine animals, ovine animals, or swine, on account of which such animals are being euthanized by cooperative order of federal and state authority, and for which euthanized animals the federal government pays one half of the indemnity, this state shall pay one half, and only one half, of such indemnity. The State Auditor shall issue a warrant on the State Treasurer, in favor of the claimant, for the amount ordered by the commissioner, which shall be paid out of the current appropriation for administering this article: Provided, however, That in case the amount of the certificates of appraisal, and of those described in section thirty-seven of this article, in any one year, exceeds the current appropriation therefor, the certificates shall be paid pro rata at the end of each fiscal year.

§19-9-34. Disposal of carcass of diseased animal.

Whenever it is necessary to destroy or dispose of the carcass of any animal to prevent the spread of disease, the destruction or disposal shall be made by one of the following methods designed to be protective of human health and the environment: (a) Complete cremation of the entire carcass with all its parts and products; (b) boiling the carcass and all its parts and products in water or heating the same with steam at the temperature of boiling water, continuously during at least two hours; (c) disposing of the carcass and all its parts and products in a solid waste landfill permitted and approved by the Department of Environmental Protection; (d) burial of the carcass and all its parts and products in a place that will not be subjected to overflow from ponds or streams, and which is not less than one hundred feet from any watercourse, well, spring, public highway, house or stable. If buried, the carcass shall be covered with quicklime to a depth of not less than three inches, and the top of such
carcass shall not be within two feet of the surface of the
ground when the grave is filled and smoothed to the level of
the surrounding surface; (e) rendering by a licensed facility;
(f) composting; and (g) such other method as the
commissioner may prescribe. When an animal infected with
a communicable disease dies or is euthanized, the owner of
the animal shall destroy or dispose of the carcass in the
manner provided in this section. It shall be unlawful to sell
any such carcass, any part of it, or any hide or offal from it.
If the owner of such animal does not dispose of the carcass
within twenty-four hours as provided by law, the
commissioner or the commissioner's agent shall destroy or
dispose of the carcass according to law, at the cost of the
owner. The expense of destruction or disposal may be
collected from the owner as debts of like amount are by law
collectible.

§19-9-34a. Authority of commissioner to promulgate rules
regulating disposal of dead animals.

Notwithstanding any other provision of law to the
contrary, the Commissioner of Agriculture is authorized to
promulgate rules to regulate the disposal of dead animals.

§19-9-35. Tests for bovine tuberculosis; disposition of infected
bovine animals.

The commissioner or the commissioner's agent is
authorized to test with tuberculin any bovine animal kept
within the state, subject to rules prescribed by the
commissioner. The tuberculin test shall be applied to bovine
animals at times designated by the commissioner for the
control and eradication of bovine tuberculosis, and all cows
whose milk is sold for human consumption or manufacture,
and all uncastrated beef animals, shall be tested with
tuberculin to the greatest extent possible.
When a bovine animal has a clearly defined reaction to such test, as prescribed by the commissioner's rules, the animal shall be considered infected with bovine tuberculosis and shall be marked or branded upon the left jaw with a capital "T" not less than two inches high, one and one-half inches wide, with a mark one fourth of an inch wide. Such branding shall not constitute cruelty to animals within the meaning of the penal laws of the state.

All bovine animals within the state which are deemed to have tuberculosis, either as a result of a physical examination or the tuberculin test, shall be euthanized, and if the owner of any such animal demands indemnity, the owner shall execute the agreement provided for in section twenty-eight of this article; such animal shall be appraised as provided in section thirty of this article; an appraisal certificate shall be issued as provided in section thirty-one of this article; and the euthanasia shall be supervised and the certificate shall be issued as provided in section thirty-two of this article.


The owners of animals euthanized as having tuberculosis shall be indemnified in an amount determined by the results of post-mortem inspection by the officer supervising the euthanasia, and the certificate of appraisal shall be credited according to the following rules: (a) If an animal is found upon post-mortem inspection not to show lesions of tuberculosis, the carcass and other edible portions shall be passed as food, and the veterinarian shall sell them, including all accompanying parts, for the best price obtainable, which shall be paid to the owner and deducted from the amount of appraisal, and any remaining balance shall be paid to the owner; (b) if an animal is found upon post-mortem inspection to be infected with tuberculosis, and the lesions are such that the carcass and parts of the carcass are passed for food, the veterinarian shall sell them, including all accompanying
16 parts, for the best price obtainable, which shall be paid to the
17 owner and deducted from eighty percent of the amount of the
18 appraisal, and any remaining balance shall be paid the owner;
19 (c) if an animal upon post-mortem inspection is condemned
20 for offal, the veterinarian shall sell the hide and offal for the
21 best price obtainable, which price shall be paid to the owner
22 and deducted from forty percent of the appraisal, and any
23 remaining balance shall be paid to the owner.

CHAPTER 4

(H.B. 2541 - By Delegates Hamilton, Argento, Ireland,
Evans, Eldridge, Guthrie, Webster and Schadler)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §19-18-1 of the Code of West
Virginia, 1931, as amended, relating to including poultry
among those domesticated farm animals or stock for which the
owner shall be liable for damages caused by those animals
when they enter on the property of another.

Be it enacted by the Legislature of West Virginia:

That §19-18-1 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 18. GENERAL STOCK LAW.
§19-18-1. Stock trespassing on grounds of another; damages.

If any horse, mule, ass, jennet, cattle, sheep, swine, poultry as defined in section two, article two-b of this chapter or goat shall enter into any grounds, the owner or manager of any such stock shall be liable to the owner or tenant of such grounds for any damage he or she may sustain thereby, and the party so injured may, if he or she find such stock on his or her premises, impound them, or a sufficient number thereof, subject to the provisions of sections eight, nine and ten of this article, until such damages and costs of keeping have been paid.

CHAPTER 5

(S.B. 445 - By Senators Kessler and Williams)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §19-21A-6 of the Code of West Virginia, 1931, as amended, relating to removing the certification requirements for election of conservation supervisors.

Be it enacted by the Legislature of West Virginia:

That §19-21A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.
§19-21A-6. Election of supervisors for each district; filling vacancies.

(a) Each county in a district shall elect two nonpartisan supervisors: Provided, That any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.

(b) A candidate for supervisor must be a landowner and an active farmer with a minimum of five years' experience or a retired farmer who has had a minimum of five years' experience and must have the education, training and experience necessary to carry out the duties required by this article. The State Conservation Committee shall propose for promulgation in accordance with the requirements of article three-a, chapter twenty-nine of this code legislative rules to establish criteria for the necessary education, training and experience.

(c) All registered voters in the district are eligible to vote in the election for candidates from the county within the boundaries of the district in which the voter resides. The candidates in each county who receive the largest number of votes cast in the election shall be elected supervisors for that county.

(d) Supervisors shall be elected in the general election to be conducted in the year 2008 as nonpartisan candidates. After that, supervisors shall be elected in the primary election. The term of office for the candidate for supervisor receiving the highest number of votes in the general election of 2008 is four years; the candidate for supervisor receiving the second highest number of votes in the general election of 2008 is two years. In counties where more than two supervisors are elected in the general election of 2008, the
two supervisors receiving the highest number of votes serve for four years and the remaining supervisor or supervisors serve for two years. Terms of office for supervisors elected after that are four years. The provisions of chapter three of this code apply to election of supervisors.

(e) Persons holding the position of supervisor, regardless of the expiration of the designated term of office, continue to serve until the election and qualification of his or her successor.

(f) Any vacancy occurring in the office of supervisor shall be filled by the committee by appointment of a person from the county in which the vacancy occurs. Within fifteen days after the vacancy occurs, the district shall submit a list of names of persons qualified to be a supervisor. If the unexpired term is for less than two years and two months, the appointed person holds office until the expiration of the term. If the unexpired term is for more than two years and two months, the appointed person holds the office until a successor is elected in the next primary or general election and qualified.

CHAPTER 6

(H.B. 2474 - By Delegates Argento, Talbott, Martin, Staggers, Evans, Williams, Tabb, C. Miller and Beach)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-29-6; and to amend and reenact §22-15-22 of said code, all relating to the regulation of land-based aquaculture facilities; exempting
aquaculture facilities from certain sludge management requirements; and providing the Commissioner of Agriculture rule-making authority to promulgate rules after consultation with the Department of Environmental Protection, concerning the disposal or application of waste produced from an aquaculture facility.

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 §19-29-6; and that §22-15-22 of said code be amended and reenacted, all to read as follows:

Chapter
19. Agriculture.
22. Environmental Resources.

CHAPTER 19. AGRICULTURE.

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.

§19-29-6. Waste disposal from an aquaculture facility.

1 After consultation with the Department of Environmental Protection, the commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to include the disposal or application of waste produced from an aquaculture facility.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


1 (a) Any sludge or other material determined by the secretary to have beneficial properties similar to sewage
sludge may be beneficially used in accordance with the applicable requirements governing sewage sludge, and any other requirements determined to be necessary by the secretary to protect human health and the environment. Persons seeking to beneficially use sludge must meet the requirements of this article and the rules promulgated under this article.

(b) In order to enhance the resource recovery and recycling goals of this act and to encourage the beneficial use of sludge or other materials, the secretary shall propose for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, emergency and legislative rules to effectuate the purposes of this section. The secretary shall at a minimum include the following in the proposed rules:

(1) A mechanism to determine beneficial use characteristics;

(2) A method to determine pollutant content of the material proposed for beneficial use;

(3) A method to determine that the beneficial properties of the material are derived from the raw material rather than additives;

(4) Buffer zones or other criteria necessary to adequately protect ground and surface water;

(5) Necessary restrictions of pollutant levels in the material;

(6) Analytical methods, loading rates and storage requirements for the material;

(7) Permit requirements; and
32 (8) Appropriate fees.

33 (c) These rules do not apply to land-based aquaculture facilities.

CHAPTER 7

(Com. Sub. for H.B. 2771 - By Delegates D. Poling, Hamilton, Ellem, Shook, Klempa, Hatfield and Miley)

[Amended and again passed May 27, 2009, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §21-1D-2 and §21-1D-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §21-1D-5a and §21-1D-7b, all relating to West Virginia Alcohol and Drug-Free Workplace Act; applying the provisions of the Act only to contracts valued in excess of $100,000; clarifying the definitions of the phrases “drug test”, “drug of abuse” and “reasonable cause”; including a new definition for the phrase “preemployment drug test”; requiring drug and alcohol testing for employees of contractors who perform work for counties, municipalities and political subdivisions; providing an exemption for workers covered by United States Department of Transportation drug testing guidelines; requiring contractors to provide an annual certified drug-free workplace report to public authorities; and limiting the application of the offense for a third or subsequent violation of the Act to violations occurring within the previous five years.
Be it enacted by the Legislature of West Virginia:

That §21-1D-2 and §21-1D-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 §21-1D-5a and §21-1D-7b, all to read as follows:

ARTICLE 1D. WEST VIRGINIA ALCOHOL AND DRUG-FREE WORKPLACE ACT.

§21-1D-2. Definitions.

(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 value of which contract is over $100,000. 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 at least 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 and any other substance the employer chooses to test for.

(f) The term "employee" means a laborer, mechanic or other worker. For the purposes of this article, employee does not include those 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 those 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 "preemployment drug test" means a drug test taken within the preceding twelve months from employment or seven days after hire.
(j) The term “public authority”, as used in this article, means any officer, board or commission or other agency of the State of West Virginia, its counties or municipalities or any political subdivision thereof, 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 public funds of the State of West Virginia and this article applies to expenditures of these institutions made, in whole or in part, from public funds.

(k) The term “public improvement”, as used in this article, includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia, its counties or municipalities or any political subdivision thereof.

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

(m) The term “reasonable cause” means a belief based on facts and inferences based primarily upon, but not limited to: (1) Observable phenomena, such as direct observation of use, possession or distribution of alcohol or a drug of abuse, or of the physical symptoms of being under the influence of alcohol or a drug of abuse, such as, but not limited to, slurred speech, dilated pupils, odor of an alcoholic beverage or a drug of abuse, changes in affect or dynamic mood swings; (2) a pattern of abnormal conduct, erratic or aberrant behavior or deteriorating work performance such as frequent absenteeism, excessive tardiness or recurrent accidents, that appears to be related to the use of alcohol or a drug of abuse and does not appear to be attributable to other factors; (3) the identification of an employee as the focus of a criminal
§21-1D-5a. Drug-free workplace policy not applicable to workers required to follow federal Department of Transportation drug testing guidelines.

In instances where a worker is required by law to follow United States Department of Transportation drug testing guidelines, no additional drug tests are required under this article.

§21-1D-7b. Contractor to provide certified drug-free workplace report.

No less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. The report shall include:
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5 (1) Information to show that the education and training service to the requirements of section five of this article was provided;

8 (2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests pursuant to this article;

11 (3) The average number of employees in connection with the construction on the public improvement;

13 (4) Drug test results for the following categories including the number of positive tests and the number of negative tests:

16 (A) Preemployment and new hires;

17 (B) Reasonable suspicion;

18 (C) Post-accident;

19 (D) Random.

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

1 (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 $1,000; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000; for the third or any subsequent offense within the preceding five years, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000 and the contractor shall be excluded from bidding any additional new public improvement projects for a period of one year.
12 (b) Any person who directly or indirectly aids, requests
13 or authorizes any other person to violate any of the
14 provisions of this article is guilty of a misdemeanor and,
15 upon conviction thereof, shall be fined not less than $50 nor
16 more than $250.

CHAPTER 8

(Com. Sub. for H.B. 3240 - By Delegates White and Kominar)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §17F-1-2 of the Code of West
Virginia, 1931, as amended, relating to all-terrain vehicle rider
safety awareness courses; authorizing the Commissioner of
Motor Vehicles to authorize state institutions of higher
education to issue certificates of completion; and limiting the
liability of the state institutions of higher education which
operate, own, train or promote all-terrain vehicle rider safety
awareness courses approved by the commissioner.

Be it enacted by the Legislature of West Virginia:

That §17F-1-2 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

§17F-1-2. Safety awareness courses.

1 (a) The Commissioner of Motor Vehicles shall offer a
2 free all-terrain vehicle rider safety awareness course, and
3 may approve other all-terrain vehicle rider safety awareness
(b) The commissioner shall issue certificates of completion to persons who satisfactorily complete the requirements of an approved course. The commissioner may authorize a dealer of all-terrain vehicles and other approved providers to issue the certificates of completion. The commissioner may authorize a state institution of higher education, which is the operator, owner, trainer or promoter of an all-terrain vehicle rider safety awareness course approved by the commissioner, pursuant to subsection (a) of this section, to issue the certificates of completion on behalf of the commissioner.

(c) No person under the age of eighteen may operate an all-terrain vehicle without a certificate of completion of a vehicle rider safety awareness course as offered or approved by the commissioner.

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

(e) No state institution of higher education, which operates, owns, trains or promotes an all-terrain vehicle rider safety awareness course approved by the commissioner, pursuant to this section, is liable for personal injuries to, or for the death of, a rider that may occur during an approved all-terrain vehicle rider safety awareness course, unless an employee or agent of the state institution of higher education's acts or omissions are with malicious purpose, in bad faith, or undertaken in a wanton or reckless manner.
CHAPTER 9

(Com. Sub. for S.B. 501 - By Senators Kessler and Prezioso)

[Amended and again passed May 29, 2009 as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §7-10-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-20-8 of said code; and to amend and reenact §30-10A-4, §30-10A-6 and §30-10A-8 of said code, all relating to euthanizing animals; prohibiting the euthanizing of animals by use of a gas chamber and providing an exception thereto; requiring all persons or entities performing animal euthanasia to register with the Board of Veterinary Medicine; allowing animal euthanasia technicians to administer sedatives and tranquilizers; and directing the Board of Veterinary Medicine to promulgate emergency rules.

Be it enacted by the Legislature of West Virginia:

That §7-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §19-20-8 of said code be amended and reenacted; and that §30-10A-4, §30-10A-6 and §30-10A-8 of said code be amended and reenacted, all to read as follows:

Chapter
  7.  County Commissions and Officers.
  19.  Agriculture.
  30.  Professions and Occupations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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 the action.

(f) (1) The term “humanely destroyed” as used in this
section means:

(A) 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

(B) Any other humane euthanasia procedure approved by
the American Veterinary Medical Association, the Humane
Society of the United States or the American Humane
Association.

(2) The term “humanely destroyed” does not include
euthanizing an animal by means of a gas chamber: Provided,
That any county which has a gas chamber in operation as of the effective date of this section may continue to operate the gas chamber subject to the following: (1) The gas chamber shall be operated by an animal euthanasia technician certified pursuant to article ten-a, chapter thirty of this code; and (2) the gas chamber shall have been manufactured and installed by a person who regularly manufactures and installs gas chambers. The Board of Veterinary Medicine shall promulgate emergency rules regarding the inspection of gas chambers, pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

(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.

(i) All persons or entities in the state performing euthanasia under this article shall register with the Board of Veterinary Medicine by December 31, 2009, in a manner to be prescribed
by the board. The Board of Veterinary Medicine shall promulgate emergency rules relating to the registration of those performing animal euthanasia, pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-8. Impounding and disposition of dogs; costs and fees.

(a) All dogs seized and impounded as provided in this article, except dogs taken into custody under section two of this article, shall be kept housed and fed in the county or municipal shelter for five days after notice of seizure and impounding has been given or posted as required by this article, at the expiration of which time all dogs which have not previously been redeemed by their owners as provided in this article, shall be sold or humanely destroyed. No dog sold as provided in this section may be discharged from the county or municipal shelter until the dog has been registered and provided with a valid registration tag.

(b) (1) The term "humanely destroyed" as used in this section means:

(A) 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

(B) Any other humane euthanasia procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association.

(2) The term “humanely destroyed” does not include euthanizing a dog or cat by means of a gas chamber:
Provided, That any county which has a gas chamber in operation as of the effective date of this section may continue to operate the gas chamber subject to the following: (1) The gas chamber shall be operated by an animal euthanasia technician certified pursuant to article ten-a, chapter thirty of this code; and (2) the gas chamber shall have been manufactured and installed by a person who regularly manufactures and installs gas chambers. The Board of Veterinary Medicine shall promulgate emergency rules regarding the inspection of gas chambers, pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

(c) In an emergency or in a situation in which a dog cannot be humanely destroyed in an expeditious manner, a dog 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 dog’s suffering and to protect other persons and animals.

d) The owner, keeper or harborer of any dog seized and impounded under the provisions of this article may, at any time prior to the expiration of five days from the time that notice of the seizure and impounding of the dog has been given or posted as required by this article, redeem the dog by paying to the dog warden or his or her authorized agent or deputy all of the costs assessed against the dog and by providing a valid certificate of registration and registration tag for the dog.

e) Reasonable costs and fees, in an amount to be determined, from time to time, by the county commission, shall be assessed against every dog seized and impounded under the provisions of this article, except dogs taken into
custody under section two of this article. The cost shall be a
valid claim in favor of the county against the owner, keeper
or harborer of any dog seized and impounded under the
provisions of this article and not redeemed or sold as
provided in this section and the costs shall be recovered by
the sheriff in a civil action against the owner, keeper or
harborer.

(f) A record of all dogs impounded, the disposition of the
dogs and a statement of costs assessed against each dog shall
be kept by the dog warden and a transcript thereof shall be
furnished to the sheriff quarterly.

(g) All persons or entities in the state performing
euthanasia under this article shall register with the Board of
Veterinary Medicine by December 31, 2009, in a manner to
be prescribed by the board. The Board of Veterinary
Medicine shall promulgate emergency rules relating to the
registration of those performing animal euthanasia, pursuant
to section fifteen, article three, chapter twenty-nine-a of this
code.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 10A. ANIMAL EUTHANASIA TECHNICIANS.

§30-10A-4. Scope of practice.
§30-10A-6. Recordkeeping.

§30-10A-4. Scope of practice.

(a) A certified animal euthanasia technician may sedate,
tranquilize and euthanize animals assigned to the care of a
legally operated humane society, animal shelter or animal
control facility within this state. A certified animal
euthanasia technician shall practice sedation, tranquilization
and euthanasia under the authority of a licensed veterinarian
as defined in article ten of this chapter or a county humane
officer as defined in article ten, chapter seven of this code
within the limitations imposed by this article and rules promulged by the board under this article.

(b) For the purposes of this article, controlled substance permits issued by the state Board of Pharmacy and the federal Drug Enforcement Administration shall be issued to a municipal or county run animal control facility, or a humane society or animal shelter incorporated and organized under the laws of the state, with one or more duly appointed agents. The humane society or animal shelter shall possess a tax-exempt charitable or tax-exempt governmental determination under the Internal Revenue Code of 1986, as amended.

(c) A certified animal euthanasia technician may not practice or offer to practice his or her profession outside the direct authority of the humane society, animal shelter or animal control facility which employs him or her or otherwise contracts for his or her services. A certified animal euthanasia technician is not qualified and may not indicate that he or she is qualified to act in any capacity relative to animals beyond his or her specified and regulated authority to sedate, tranquilize and euthanize animals at the instruction of the humane society, animal shelter or animal control facility by which he or she is employed and under the supervision of a humane officer or licensed veterinarian.

§30-10A-6. Recordkeeping.

A humane society, animal shelter or animal control facility which was issued a controlled substances permit by the Board of Pharmacy and an identification number by the federal Drug Enforcement Administration is responsible for ensuring that certified animal euthanasia technicians in its employ maintain proper records regarding the inventory, storage and administration of controlled substances and any other drugs which he or she is authorized to administer. The proper completion and retention of these records is the joint
responsibility of the humane society, animal shelter or animal control facility and the certified animal euthanasia technician. The humane society, animal shelter or animal control facility and the certified animal euthanasia technicians are subject to inspection and audit by the board, the West Virginia Board of Pharmacy and any other appropriate state or federal agency with authority regarding the recordkeeping, inventory, storage and administration of controlled substances and other drugs authorized for use by animal euthanasia technicians under authority of this article.


(a) In the event that sodium pentobarbital is no longer approved as the euthanasia “drug of choice” for animals by either state or federal mandate, the board shall determine the replacement “drug of choice” for sodium pentobarbital for use by certified animal euthanasia technicians by legislative rule. The replacement “drug of choice” shall be administered, controlled, stored and secured by a humane society, animal shelter or animal control facility which meets the qualifications in section one of this article in accordance with legislative rules promulgated by the board.

(b) The board may replace sodium pentobarbital as the “drug of choice” at any time by legislative rule promulgated pursuant to article three, chapter twenty-nine-a of this code. The determined “drug of choice” for animal euthanasia as specified by the board shall be used by animal euthanasia technicians certified under the provisions of this article.

(c) The board shall promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code to allow the use of sedatives and tranquilizers by euthanasia technicians, as defined in section one of this article.
CHAPTER 10

(Com. Sub. for H.B. 2010 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed May 31, 2009; in effect from passage.]
[Approved by the Governor on June 5, 2009.]

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 Appropriations.
II. Appropriations.
III. Administration.

TITLE I — GENERAL PROVISIONS.

TITLE I - GENERAL PROVISIONS.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.

1 Section 1. General policy. — The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year two thousand ten.
Sec. 2. Definitions. — For the purpose of this bill:

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

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

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

The "fiscal year two thousand ten" shall mean the period from July 1, 2009, through June 30, 2010.

"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.

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.

"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.

"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 may be transferred to a "personal services" line unless the source funds are also wholly from a "personal services" line, or unless the source funds are from another activity that has exclusively funded employment expenses (any of object codes 001 through 016, 160 and 163) for at least twelve consecutive months prior to the time of transfer and the
position(s) supported by the transferred funds are also
permanently transferred to the receiving agency or board
within the department: Provided further, That the secretary
of each department and the director, commissioner,
executive secretary, superintendent, chairman or any other
agency head not governed by a departmental secretary as
established by chapter five-f of the code shall have the
authority to transfer funds appropriated to "personal services"
and "employee benefits" to other lines within the same
account and no funds from other lines shall be transferred to
the "personal services" line: And provided further, That the
secretary of each department and the director, commissioner,
executive secretary, superintendent, chairman or any other
agency head not governed by a departmental secretary as
established by chapter five-f of the code shall have the
authority to transfer general revenue funds appropriated to
"annual increment" to other general revenue accounts within
the same department, bureau or commission for the purpose
of providing an annual increment in accordance with article
five, chapter five of the code: And provided further, That no
authority exists hereunder to transfer funds into line-items to
which no funds are legislatively appropriated: And provided
further, That if the Legislature by subsequent enactment
consolidates agencies, boards or functions, the secretary or
other appropriate agency head may transfer the funds
formerly appropriated to such agency, board or function in
order to implement such consolidation. No funds may be
transferred from a Special Revenue Account, dedicated
account, capital expenditure account or any other account or
fund specifically exempted by the Legislature from transfer,
except that the use of the appropriations from the State Road
Fund for the office of the Secretary of the Department of
Transportation is not a use other than the purpose for which
such funds were dedicated and is permitted.

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

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

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

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<tr>
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<td>139</td>
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<td>Auditor's Office--Technology Support and Acquisition Fund No. 1233</td>
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§10. State improvement fund appropriations.
§11. Specific funds and collection accounts.
§12. Appropriations for refunding erroneous payment.
§15. Total appropriations.
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 ten.

**LEGISLATIVE**

1—Senate

Fund 0165 FY 2010 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R)</td>
<td>003 $1,010,000</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers</td>
<td>005 3,003,210</td>
</tr>
<tr>
<td>and Employees (R)</td>
<td>010 597,712</td>
</tr>
<tr>
<td>Employee Benefits (R)</td>
<td>021 561,392</td>
</tr>
<tr>
<td>Current Expenses and</td>
<td>064 450,000</td>
</tr>
<tr>
<td>Contingent Fund (R)</td>
<td>101 40,000</td>
</tr>
<tr>
<td>Repairs and Alterations (R)</td>
<td>102 250,000</td>
</tr>
<tr>
<td>Computer Supplies (R)</td>
<td>103 150,000</td>
</tr>
<tr>
<td>Computer Systems (R)</td>
<td>399 700,000</td>
</tr>
<tr>
<td>Printing Blue Book (R)</td>
<td>913 29,482</td>
</tr>
<tr>
<td>Expenses of Members (R)</td>
<td>103 150,000</td>
</tr>
<tr>
<td>BRIM Premium (R)</td>
<td>399 700,000</td>
</tr>
<tr>
<td>Total</td>
<td>$6,791,796</td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 2009 are to remain in full force and effect and are hereby reappropriated to June 30, 2010. Any balances so reappropriated may be transferred and credited to the fiscal year 2010 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 2010</th>
<th>Org 2200</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>9</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the
fiscal year 2009 are to remain in full force and effect and are
hereby reappropriated to June 30, 2010. Any balances so
reappropriated may be transferred and credited to the fiscal
year 2010 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)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
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<th>Appropriations for Joint Expenses for the fiscal year 2009</th>
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<td>0175</td>
<td>2010</td>
<td>2300</td>
<td>$7,113,700</td>
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<td></td>
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<td>1 Joint Committee on</td>
</tr>
<tr>
<td>104</td>
<td></td>
<td></td>
<td>Government and Finance (R)</td>
</tr>
<tr>
<td>105</td>
<td></td>
<td></td>
<td>Legislative Printing (R)</td>
</tr>
<tr>
<td>106</td>
<td></td>
<td></td>
<td>Review Committee (R)</td>
</tr>
<tr>
<td>107</td>
<td></td>
<td></td>
<td>Legislative Rule-Making</td>
</tr>
<tr>
<td>108</td>
<td></td>
<td></td>
<td>Joint Standing Committee on Education (R)</td>
</tr>
<tr>
<td>109</td>
<td></td>
<td></td>
<td>Tax Reduction and Federal Funding</td>
</tr>
<tr>
<td>642</td>
<td></td>
<td></td>
<td>Increased Compliance (TRAFFIC)(R)</td>
</tr>
<tr>
<td>113</td>
<td></td>
<td></td>
<td>BRIM Premium (R)</td>
</tr>
<tr>
<td>913</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>$9,128,700</td>
</tr>
</tbody>
</table>

The appropriations for the joint expenses for the fiscal year 2009 are to remain in full force and effect and are hereby reappropriated to June 30, 2010. Any balances so reappropriated may be transferred and credited to the fiscal year 2010 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 2010 Org 2400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services (R)</td>
<td>001</td>
<td>$66,799,069</td>
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<tr>
<td>2 Annual Increment (R)</td>
<td>004</td>
<td>870,250</td>
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<td>3 Employee Benefits (R)</td>
<td>010</td>
<td>20,963,317</td>
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<tr>
<td>4 Childrens' Protection Act (R)</td>
<td>090</td>
<td>2,583,038</td>
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<tr>
<td>5 Unclassified (R)</td>
<td>099</td>
<td>22,419,979</td>
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<tr>
<td>6 Judges' Retirement System (R)</td>
<td>110</td>
<td>2,879,000</td>
</tr>
<tr>
<td>7 Retirement Systems -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Unfunded Liability (R)</td>
<td>775</td>
<td>1,075,000</td>
</tr>
<tr>
<td>9 BRIM Premium (R)</td>
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<td>374,015</td>
</tr>
<tr>
<td>10 Total</td>
<td></td>
<td>$117,963,668</td>
</tr>
</tbody>
</table>

The appropriations to the supreme court of appeals for the fiscal years 2008 and 2009 are to remain in full force and effect and are hereby reappropriated to June 30, 2010. Any balances so reappropriated may be transferred and credited to the fiscal year 2010 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.
### 5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2010 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund</th>
<th>Activity</th>
<th>FY 2010</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>0101</td>
<td>0100</td>
<td>001</td>
<td>$2,406,443</td>
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<td>2</td>
<td>Salary of Governor</td>
<td>0101</td>
<td>0100</td>
<td>002</td>
<td>150,000</td>
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<tr>
<td>3</td>
<td>Annual Increment</td>
<td>0101</td>
<td>0100</td>
<td>004</td>
<td>27,870</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>0101</td>
<td>0100</td>
<td>010</td>
<td>694,004</td>
</tr>
<tr>
<td>5</td>
<td>Office of Economic Opportunity</td>
<td>0101</td>
<td>0100</td>
<td>034</td>
<td>131,057</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified (R)</td>
<td>0101</td>
<td>0100</td>
<td>099</td>
<td>1,267,777</td>
</tr>
<tr>
<td>7</td>
<td>GO HELP</td>
<td>0101</td>
<td>0100</td>
<td>116</td>
<td>523,424</td>
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<td>8</td>
<td>National Governors' Association</td>
<td>0101</td>
<td>0100</td>
<td>123</td>
<td>60,700</td>
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<tr>
<td>9</td>
<td>Southern States Energy Board</td>
<td>0101</td>
<td>0100</td>
<td>124</td>
<td>28,732</td>
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<tr>
<td>10</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>0101</td>
<td>0100</td>
<td>289</td>
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<tr>
<td>11</td>
<td>Southern Governors' Association</td>
<td>0101</td>
<td>0100</td>
<td>314</td>
<td>25,000</td>
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<tr>
<td>12</td>
<td>Pharmaceutical Advocate</td>
<td>0101</td>
<td>0100</td>
<td>753</td>
<td>0</td>
</tr>
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<td>13</td>
<td>BRIM Premium</td>
<td>0101</td>
<td>0100</td>
<td>913</td>
<td>156,851</td>
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<tr>
<td>14</td>
<td>P20 Jobs Cabinet</td>
<td>0101</td>
<td>0100</td>
<td>954</td>
<td>40,000</td>
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<td>0100</td>
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<td>$5,511,858</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, activity 099), JOBS Fund (fund 0101, activity 665), and Pharmaceutical Cost Management Council (fund 0101, activity 796) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

### 6—Governor's Office — Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2010 Org 0100
Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0102, activity 096) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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

7—Governor's Office —
Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2010 Org 0100

Any unexpended balances remaining in the appropriation for 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 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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 2010 Org 1200

1 Personal Services ..................... 001 $2,264,450
2 Salary of Auditor ..................... 002 95,000
3 Annual Increment ..................... 004 47,686
4 Employee Benefits ................... 010 826,778
5 Unclassified (R) ..................... 099 545,454
6 Other Post Employee Benefits - Transfer 289 0
7 BRIM Premium ...................... 913 15,428
8 Total ..................................  $3,794,796

Any unexpended balance remaining in the appropriation for Unclassified (fund 0116, activity 099) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

9—Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2010 Org 1300

1 Personal Services ..................... 001 $1,984,224
2 Salary of Treasurer ................... 002 95,000
3 Annual Increment ..................... 004 31,060
4 Employee Benefits ................... 010 639,741
<table>
<thead>
<tr>
<th>Appropriations</th>
<th>[Ch. 10]</th>
</tr>
</thead>
<tbody>
<tr>
<td>5  Unclassified (R)</td>
<td>099</td>
</tr>
<tr>
<td>6  Abandoned Property Program</td>
<td>118</td>
</tr>
<tr>
<td>7  Other Post Employee Benefits - Transfer</td>
<td>289</td>
</tr>
<tr>
<td>8  Personal Finance Education Program</td>
<td>313</td>
</tr>
<tr>
<td>9  for 21st Century Skills</td>
<td>692</td>
</tr>
<tr>
<td>10 Tuition Trust Fund (R)</td>
<td>913</td>
</tr>
<tr>
<td>11 BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>12 Total</td>
<td>$4,014,440</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099) and Tuition Trust Fund (fund 0126, activity 692) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

10—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2010 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Org 1400</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001 $4,073,184</td>
</tr>
<tr>
<td>2 Salary of Commissioner</td>
<td>002 95,000</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>004 101,842</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>010 1,645,539</td>
</tr>
<tr>
<td>5 Animal Identification Program</td>
<td>039 204,353</td>
</tr>
<tr>
<td>6 State Farm Museum</td>
<td>055 110,000</td>
</tr>
<tr>
<td>7 Unclassified (R)</td>
<td>099 1,308,754</td>
</tr>
<tr>
<td>8 Gypsy Moth Program (R)</td>
<td>119 1,531,105</td>
</tr>
<tr>
<td>9 Huntington Farmers Market</td>
<td>128 50,000</td>
</tr>
<tr>
<td>10 Black Fly Control (R)</td>
<td>137 756,343</td>
</tr>
<tr>
<td>11 Other Post Employee Benefits - Transfer</td>
<td>289 0</td>
</tr>
<tr>
<td>12 Donated Foods Program</td>
<td>363 50,000</td>
</tr>
<tr>
<td>13 Predator Control (R)</td>
<td>470 260,000</td>
</tr>
<tr>
<td>14 Logan Farmers Market</td>
<td>501 43,689</td>
</tr>
<tr>
<td>15 Bee Research</td>
<td>691 76,429</td>
</tr>
<tr>
<td>16 Microbiology Program (R)</td>
<td>785 163,000</td>
</tr>
</tbody>
</table>
Ch. 10] APPROPRIATIONS 75

17 Moorefield Agriculture Center (R) 786 1,172,462
18 BRIM Premium ................. 913 130,202
19 Threat Preparedness ............. 942 77,881
20 WV Food Banks .................. 969 100,000
21 Senior’s Farmers’ Market Nutrition
22 Coupon Program .................. 970 65,035
23 Total .......................... $12,014,818

24 Any unexpended balances remaining in the
25 appropriations for Unclassified (fund 0131, activity 099),
26 Gypsy Moth Program (fund 0131, activity 119), Black Fly
27 Control (fund 0131, activity 137), Predator Control (fund
28 0131, activity 470), Microbiology Program (fund 0131,
29 activity 785), and Moorefield Agriculture Center (fund
30 0131, activity 786) at the close of the fiscal year 2009 are
31 hereby reappropriated for expenditure during the fiscal year
32 2010.

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

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

11—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2010 Org 1400

1 Personal Services ................. 001 $ 502,380
2 Annual Increment .................. 004 10,726
3 Employee Benefits ............... 010 210,554
4 Unclassified (R) .................. 099 442,292
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soil Conservation Projects (R)</td>
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<td>10,662,863</td>
</tr>
<tr>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>Marlinton Flood Wall (R)</td>
<td>757</td>
<td>1,500,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>12,969</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$13,341,784</strong></td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), and Marlinton Flood Wall (fund 0132, activity 757) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

### Department of Agriculture — Meat Inspection

(WV Code Chapter 19)

**Fund 0135 FY 2010 Org 1400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$ 691,433</td>
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<tr>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$ 691,433</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.

### Department of Agriculture — Agricultural Awards

(WV Code Chapter 19)

**Fund 0136 FY 2010 Org 1400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Programs &amp; Awards for 4-H</td>
<td>577</td>
<td>$15,000</td>
</tr>
<tr>
<td>Clubs and FFA/FHA</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3 Commissioner's Awards and
4 Programs ....................... 737 43,650
5 Total ........................ $ 58,650

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

(WV Code Chapter 8A)

Fund 0607 FY 2010 Org 1400

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total ............... 096 $ 108,150</td>
<td></td>
</tr>
</tbody>
</table>
| 2 | Any unexpended balance remaining in the appropriation for West Virginia Agricultural Land Protection Authority (fund 0607, activity 096) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

15—Attorney General

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

Fund 0150 FY 2010 Org 1500

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services (R) ............ 001 $ 2,458,451</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Salary of Attorney General ...... 002 95,000</td>
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</tr>
<tr>
<td>3</td>
<td>Annual Increment .................. 004 58,175</td>
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<td>4</td>
<td>Employee Benefits (R) .......... 010 931,612</td>
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<td>5</td>
<td>Unclassified (R) .................. 099 674,309</td>
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<tr>
<td>6</td>
<td>Other Post Employee Benefits - Transfer 289 0</td>
<td></td>
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<tr>
<td>7</td>
<td>Better Government Bureau ......... 740 314,309</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium ...................... 913 118,590</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Total .......................... $ 4,650,446</td>
<td></td>
</tr>
</tbody>
</table>

10 Any unexpended balances remaining in the above appropriations for Personal Services (fund 0150, activity 001), Employee Benefits (fund 0150, activity 010),
Unclassified (fund 0150, activity 099), and Agency Client Revolving Liquidity Pool (fund 0150, activity 362) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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 2010 Org 1600

<table>
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<th>Item</th>
<th>Description</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$684,299</td>
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<tr>
<td>2</td>
<td>Salary of Secretary of State</td>
<td>002</td>
<td>95,000</td>
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<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>14,890</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>268,484</td>
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<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>246,127</td>
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<tr>
<td>6</td>
<td>Other Post Employee Benefits - Transfer</td>
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<td>0</td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>15,393</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$1,324,193</td>
</tr>
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</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0155, activity 099) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.
17—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2010 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 2010 Org 0201

1 Personal Services .................... 001 $ 484,703
2 Annual Increment .................... 004 3,026
3 Employee Benefits ................... 010 121,826
4 Unclassified ........................... 099 116,553
5 Other Post Employee Benefits - Transfer 289 0
6 Financial Advisor (R) ............... 304 200,886
7 Lease Rental Payments ............... 516 16,000,000
8 Design-Build Board ................... 540 19,068
9 BRIM Premium ........................... 913 3,990
10 Total .............................. $ 16,950,052

Any unexpended balances remaining in the
appropriations for Financial Advisor (fund 0186, activity
304) and Debt Reduction (fund 0186, activity 635) at the
close of the fiscal year 2009 are hereby reappropriated for
expenditure during the fiscal year 2010.

The appropriation for Lease Rental Payments shall be
disbursed as provided by chapter thirty-one, article fifteen,
section six-b of the code.
Any unexpended balance remaining in the appropriation for Pension Merger Administrative Costs (fund 0195, activity 429) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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.

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of
the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

21—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2010 Org 0211

1 Personal Services ....................... 001 $1,475,957
2 Annual Increment ....................... 004 27,742
3 Employee Benefits ..................... 010 618,448
4 Unclassified ........................... 099 735,223
5 Fire Service Fee ....................... 126 14,000
6 Other Post Employee Benefits - Transfer 289 0
7 Preservation and Maintenance of Statues
   and Monuments on Capitol Grounds 371 68,000
8 BRIM Premium .......................... 913 $112,481
9 Total .................................... $3,051,851

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (activity 371), the Division shall consult the 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 2010 Org 0213

1 Personal Services ....................... 001 $ 710,848
2 Annual Increment ....................... 004 12,095
3 Employee Benefits ..................... 010 258,005
4 Unclassified ........................... 099 203,957
5 Other Post Employee Benefits - Transfer 289 0
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 2010 Org 0217

1 Unclassified - Total .............. 096 $ 49,000

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 2010 Org 0219

1 Personal Services ................. 001 $ 650,070
2 Annual Increment .................. 004 9,997
3 Employee Benefits ................. 010 180,098
4 Unclassified ....................... 099 135,443
5 Other Post Employee Benefits - Transfer 289 0
6 BRIM Premium 913 3,885
7 Total .............................. $ 978,593

Any unexpended balance remaining in the appropriation 
for Unclassified - Surplus (fund 0220, activity 097) at the 
close of the fiscal year 2009 is hereby reappropriated for 
expenditure during the fiscal year 2010.
25-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2010 Org 0220

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$691,098</td>
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<td>Other Post Employee Benefits - Transfer</td>
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<td>BRIM Premium</td>
<td>913</td>
<td>$2,788</td>
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<tr>
<td>Total</td>
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<td>$693,886</td>
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</table>

26-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2010 Org 0221

<table>
<thead>
<tr>
<th>Item Description</th>
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<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>11,100</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>227,896</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>435,622</td>
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<tr>
<td>Appointed Counsel Fees and Public Defender Corporations (R)</td>
<td>127</td>
<td>30,479,274</td>
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<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
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<tr>
<td>BRIM Premium</td>
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<td>$4,216</td>
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<td>Total</td>
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<td>$31,813,108</td>
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Any unexpended balance remaining in the above appropriation for Appointed Counsel Fees and Public Defender Corporations (fund 0226, activity 127) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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

(WV Code Chapter 5A)

Fund 0233 FY 2010 Org 0224
### 28-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Activity</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>0557</td>
<td>2010</td>
<td>0228</td>
<td>289</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>$0</td>
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<td>0557</td>
<td>2010</td>
<td>0228</td>
<td>683</td>
<td>Forensic Medical Examinations (R)</td>
<td>$144,808</td>
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<tr>
<td>0557</td>
<td>2010</td>
<td>0228</td>
<td>749</td>
<td>Federal Funds/Grant Match (R)</td>
<td>$101,556</td>
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<tr>
<td>0557</td>
<td>2010</td>
<td>0228</td>
<td></td>
<td>Total</td>
<td>$246,364</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, activity 683) and Federal Funds/Grant Match (fund 0557, activity 749) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

### 29-Children’s Health Insurance Agency

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Activity</th>
<th>Description</th>
<th>Amount</th>
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<td>0588</td>
<td>2010</td>
<td>0230</td>
<td>289</td>
<td>Other Post Employee Benefits - Transfer</td>
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<tr>
<td>0588</td>
<td>2010</td>
<td>0230</td>
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<td>$10,972,709</td>
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</table>

### 30-Real Estate Division

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Activity</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>0610</td>
<td>2010</td>
<td>0233</td>
<td>099</td>
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<td>$639,607</td>
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</table>
DEPARTMENT OF COMMERCE

31-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2010 Org 0304

1 Any unexpended balance remaining in the appropriation for Tourism - Special Projects (fund 0246, activity 859) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

32-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2010 Org 0305

1 Personal Services ..................... 001 $2,550,907
2 Annual Increment ..................... 004 68,934
3 Employee Benefits ................... 010 1,107,622
4 Unclassified .......................... 099 639,230
5 Other Post Employee Benefits - Transfer 289 0
6 BRIM Premium ......................... 913 141,742
7 Total .................................. $4,508,435

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

(WV Code Chapter 29)

### Fund 0253 FY 2010 Org 0306

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<thead>
<tr>
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<td>Mineral Mapping System (R)</td>
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<td>Other Post Employee Benefits - Transfer</td>
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<td>Geoscience Education Program</td>
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</table>

10. Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, activity 207) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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

## 34-West Virginia Development Office

(WV Code Chapter 5B)

### Fund 0256 FY 2010 Org 0307

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<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>ARC-WV Home of Your Own Alliance</td>
<td>048</td>
<td>38,400</td>
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<td>Southern WV Career Center</td>
<td>071</td>
<td>472,080</td>
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<td>Unclassified</td>
<td>099</td>
<td>1,757,758</td>
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<td>Item</td>
<td>Appropriations</td>
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<td>---------------------------------------------------------------------</td>
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</tr>
<tr>
<td>7 Partnership Grants (R)</td>
<td>131, 637,000</td>
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<tr>
<td>8 National Youth Science Camp</td>
<td>132, 200,000</td>
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<tr>
<td>9 Local Economic Development</td>
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<tr>
<td>10 Partnerships (R)</td>
<td>133, 1,795,200</td>
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<td>11 ARC Assessment</td>
<td>136, 160,616</td>
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<tr>
<td>12 Mid-Atlantic Aerospace Complex (R)</td>
<td>231, 169,712</td>
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<tr>
<td>13 Guaranteed Work Force Grant (R)</td>
<td>242, 2,157,120</td>
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<tr>
<td>14 Other Post Employee Benefits - Transfer</td>
<td>289, 0</td>
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<tr>
<td>15 Mingo County Surface Mine Project</td>
<td>296, 120,000</td>
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<tr>
<td>16 Robert C. Byrd Institute for Advanced/</td>
<td></td>
<td></td>
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<tr>
<td>17 Flexible Manufacturing - Technology</td>
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<td></td>
</tr>
<tr>
<td>18 Outreach and Programs for Environmental</td>
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<tr>
<td>and Advanced Technologies</td>
<td>367, 499,008</td>
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<td>19 Advantage Valley</td>
<td>389, 71,328</td>
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<tr>
<td>20 Chemical Alliance Zone</td>
<td>390, 36,768</td>
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<tr>
<td>21 WV High Tech Consortium</td>
<td>391, 226,352</td>
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<td>22 Regional Contracting Assistance</td>
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<td>23 Center</td>
<td>418, 144,000</td>
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<tr>
<td>24 Highway Authorities</td>
<td>431, 833,090</td>
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<td>25 Charleston Farmers Market</td>
<td>476, 96,000</td>
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<tr>
<td>26 International Offices (R)</td>
<td>593, 663,018</td>
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<tr>
<td>27 Small Business Development (R)</td>
<td>703, 262,260</td>
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<td>28 WV Manufacturing Extension</td>
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<td>29 Partnership</td>
<td>731, 138,240</td>
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<td>30 Polymer Alliance</td>
<td>754, 110,400</td>
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<td>31 Regional Councils</td>
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<td>32 Mainstreet Program</td>
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<tr>
<td>33 National Institute of Chemical Studies</td>
<td>805, 67,680</td>
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<td>34 Local Economic Development</td>
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<tr>
<td>35 Assistance (R)</td>
<td>819, 8,327,000</td>
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<tr>
<td>36 I-79 Development Council</td>
<td>824, 25,000</td>
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<tr>
<td>37 BRIM Premium</td>
<td>913, 26,096</td>
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<tr>
<td>38 4-H Camp Improvements</td>
<td>941, 0</td>
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<tr>
<td>39 Hatfield McCoy Recreational Trail</td>
<td>960, 240,000</td>
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<tr>
<td>40 Hardwood Alliance Zone</td>
<td>992, 40,896</td>
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<td></td>
<td>$24,629,275</td>
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</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), 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), Local Economic Development Assistance (fund 0256, activity 819), Economic Development Assistance (fund 0256, activity 900), 4-H Camp Improvements (activity 941), and Mining Safety Technology (fund 0256, activity 945) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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 $34,000 per county served by an economic development corporation or authority.

From the above appropriation for Highway Authorities (fund 0256, activity 431), $121,250 is for King Coal Highway Authority; $121,250 is for Coal Field Expressway Authority; $97,000 is for Coal Heritage Highway Authority;
$97,000 is for Coal Heritage Area Authority; $48,500 is for Little Kanawha River Parkway; $87,300 is for Midland Trail Scenic Highway Association; $55,290 is for Shawnee Parkway Authority; $97,000 is for Corridor G Regional Development Authority; $60,000 is for Corridor H Authority; and $48,500 is for Route 2 I68 Highway Authority.

35-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2010 Org 0308

1 Personal Services .................. 001 $1,849,948
2 Annual Increment .................. 004 34,586
3 Employee Benefits .................. 010 741,610
4 Unclassified .................. 099 800,128
5 Other Post Employee Benefits - Transfer 289 0
6 BRIM Premium .................. 913 47,521
7 Total .................. $3,473,793

36-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2010 Org 0310

1 Personal Services .................. 001 $9,510,723
2 Annual Increment .................. 004 327,177
3 Employee Benefits .................. 010 4,136,440
4 Gypsy Moth Suppression Program – Wildlife Management Areas .... 014 0
5 Unclassified .................. 099 12,255
7 Other Post Employee Benefits - Transfer 289 0
8 Litter Control Conservation Officers 564 162,756
9 Upper Mud River Flood Control .... 654 185,285
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<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
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<tr>
<td></td>
<td>Law Enforcement</td>
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<td>$2,962,106</td>
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<td>BRIM Premium</td>
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<td>$308,815</td>
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<tr>
<td>12</td>
<td>Total</td>
<td></td>
<td>$17,605,557</td>
</tr>
</tbody>
</table>

13 Any unexpended balances remaining in the appropriations for Land Purchase (fund 0265, activity 761) and Fish Hatchery Improvements (fund 0265, activity 825) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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

**37-Division of Miners' Health, Safety and Training**

(WV Code Chapter 22)

**Fund 0277 FY 2010 Org 0314**

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
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<td>004</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified</td>
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<td>2,247,736</td>
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<td>5</td>
<td>Other Post Employee Benefits - Transfer</td>
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<td>6</td>
<td>WV Diesel Equipment Commission</td>
<td>712</td>
<td>38,132</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
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<td>68,134</td>
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<td>8</td>
<td>Total</td>
<td></td>
<td>$10,885,644</td>
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</tbody>
</table>

9 Included in the above appropriation for Unclassified (fund 0277, activity 099) is $500,000 for the third year of Southern West Virginia Community and Technical College Mine Rescue and Rapid Response Team.
38-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2010 Org 0319

<table>
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<tr>
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<tr>
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<td>Unclassified</td>
<td>099</td>
<td>$14,064</td>
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<td>Other Post Employee Benefits - Transfer</td>
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<tr>
<td>Total</td>
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<td>$166,912</td>
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</table>

39-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2010 Org 0320

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<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$33,515</td>
</tr>
<tr>
<td>Coal Forum</td>
<td>664</td>
<td>$15,000</td>
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<tr>
<td>Mine Safety Technology Task Force</td>
<td>061</td>
<td>$30,000</td>
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<td>$78,515</td>
</tr>
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</table>

It is the intent of the Legislature that the Coal Forum (activity 664) is to expend funds from its appropriation on technical, environmental and coal education programs.

40-WORKFORCE WV

(WV Code Chapter 23)

Fund 0572 FY 2010 Org 0323

<table>
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<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
<td>$100,000</td>
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</table>

41-Department of Commerce - Office of the Secretary
**DEPARTMENT OF EDUCATION**

*43-State Department of Education - School Lunch Program*

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund 0303 FY 2010 Org 0402</th>
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<tbody>
<tr>
<td>1 Personal Services .......... 001  $ 247,203</td>
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<tr>
<td>2 Annual Increment .......... 004  5,073</td>
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<tr>
<td>3 Employee Benefits .......... 010  90,174</td>
</tr>
<tr>
<td>4 Unclassified .............. 099  2,187,765</td>
</tr>
<tr>
<td>5 Total ....................          $2,530,215</td>
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</table>
### 44-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

**Fund 0306 FY 2010 Org 0402**

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<td>Employee Benefits</td>
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<td>129,288</td>
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<tr>
<td>Other Post Employee Benefits - Transfer</td>
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<td><strong>Total</strong></td>
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### 45-State Department of Education

(WV Code Chapters 18 and 18A)

**Fund 0313 FY 2010 Org 0402**

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<td>34/1000 Waiver</td>
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<tr>
<td>Increased Enrollment</td>
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<td>Safe Schools</td>
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<td>2,482,124</td>
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<tr>
<td>Teacher Mentor (R)</td>
<td>158</td>
<td>842,034</td>
</tr>
<tr>
<td>National Teacher Certification (R)</td>
<td>161</td>
<td>400,000</td>
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<tr>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>Technology Repair and Modernization</td>
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<td>990,628</td>
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<tr>
<td>Tax Assessment Errors</td>
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<tr>
<td>HVAC Technicians</td>
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<tr>
<td>READS</td>
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<td>0</td>
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<tr>
<td>Early Retirement Notification</td>
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<td>Incentive</td>
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<td>297,188</td>
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<tr>
<td>MATH Program</td>
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<td>396,251</td>
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</table>
18 21st Century Fellows ................................ 507  297,188
19 Teacher Reimbursement .......................... 573  297,188
20 Hospitality Training .............................. 600  337,099
21 Low Student Enrollment Allowance .......... 615  600,000
22 Hi-Y Youth in Government ...................... 616  98,000
23 High Acuity Special Needs ..................... 634  250,000
24 Foreign Student Education ...................... 636  95,122
25 State Teacher of the Year ...................... 640  43,828
26 Principals Mentorship .......................... 649  79,250
27 Allowance for Work Based Learning ........... 744  0
28 Pilot Program of Structured In-School Alternatives .................. 826  100,000
30 21st Century Innovation Zones ................. 876  500,000
31 Student Enrichment Program .................. 879  0
32 21st Century Learners (R) ...................... 886  2,723,350
33 BRIM Premium .................................. 913  267,786
34 High Acuity Health Care Needs Program ........ 920  990,628
36 School Nurse Funding ........................... 921  1,016,521
37 21st Century Assessment and Professional Development .......................... 931  4,457,825
39 Allowance for Extraordinary Sustained Growth ................. 943  298,752
41 WV Commission on Holocaust Education ........ 935  15,000
42 Education ..................................... 972  4,200,000
44 Sparse Population Allocation .................. 973  312,048
45 Educational Program Allowance ............... 996  247,657
46 Total .......................................... $37,204,092

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

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, activity 099), Teacher Mentor (fund 0313, activity 158), National Teacher Certification (fund 0313, activity 161), High Acuity Special
53 Needs (fund 0313, activity 634), 21st Century Learners (fund 0313, activity 886), and Educational Enhancements - Surplus (fund 0313, activity 927) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

58 From the above appropriation for Sparse Population Allocation (activity 973), funding shall be provided in the same manner as in Fiscal Year 2009. 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.

64 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.

69 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.

73 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.

46-State Department of Education - Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2010 Org 0402


<table>
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<tbody>
<tr>
<td>1</td>
<td>Special Education - Counties</td>
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<td>2</td>
<td>Special Education - Institutions</td>
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<td>3</td>
<td>Education of Juveniles Held in</td>
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<tr>
<td>4</td>
<td>Predispositional Juvenile</td>
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<td>5</td>
<td>Detention Centers</td>
<td>302</td>
<td>591,216</td>
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<td>6</td>
<td>Education of Institutionalized</td>
<td></td>
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<tr>
<td>7</td>
<td>Juveniles and Adults (R)</td>
<td>472</td>
<td>16,539,199</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$28,096,254</td>
</tr>
</tbody>
</table>

9 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 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

10 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 2010 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
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<tbody>
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<td>1</td>
<td>Other Current Expenses</td>
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<td>$148,912,188</td>
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<td>2</td>
<td>Advanced Placement</td>
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<td>Professional Educators</td>
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<td>Service Personnel</td>
<td>152</td>
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<td>102,684,546</td>
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<td>71,357,448</td>
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<td>7</td>
<td>Administration</td>
<td>155</td>
<td>15,842,837</td>
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<td>Improved Instructional Programs</td>
<td>156</td>
<td>37,185,054</td>
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<td>9</td>
<td>21st Century Strategic Technology</td>
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<td>10</td>
<td>Learning Growth</td>
<td>936</td>
<td>4,184,906</td>
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<td>11</td>
<td>Basic Foundation Allowances</td>
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<td>1,500,447,387</td>
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<td>12</td>
<td>Less Local Share</td>
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<td>(373,447,774)</td>
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<td>Description</td>
<td>FY 2010 Org 0402</td>
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<tr>
<td>---</td>
<td>-------------------------------------------------</td>
<td>------------------</td>
<td></td>
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<tr>
<td>13</td>
<td>Total Basic State Aid</td>
<td>1,126,999,613</td>
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<td>14</td>
<td>Public Employees’ Insurance</td>
<td></td>
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<td>15</td>
<td>Matching</td>
<td>012 213,776,225</td>
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<td>16</td>
<td>Teachers’ Retirement System</td>
<td>019 52,149,000</td>
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<td>17</td>
<td>School Building Authority</td>
<td>453 23,308,825</td>
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<td>18</td>
<td>Retirement Systems -</td>
<td></td>
<td></td>
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<td>19</td>
<td>Unfunded Liability</td>
<td>775 300,850,000</td>
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<td>20</td>
<td>Total</td>
<td>$1,717,083,663</td>
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</table>

21 The above appropriation for the State Aid to Schools shall be supplemented with additional funding provided under the American Recovery and Reinvestment Act of 2009 to maintain the public education state aid to schools funding formula for fiscal year 2010.

48-State Board of Education - Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2010 Org 0402

<table>
<thead>
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<th></th>
<th>Description</th>
<th>FY 2010 Org 0402</th>
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<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004 22,869</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010 376,024</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099 1,198,660</td>
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<td>5</td>
<td>Wood Products - Forestry Vocational Program</td>
<td>146 58,289</td>
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<td>6</td>
<td>Albert Yanni Vocational Program</td>
<td>147 148,594</td>
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<td>7</td>
<td>Vocational Aid</td>
<td>148 17,377,688</td>
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<td>8</td>
<td>Adult Basic Education</td>
<td>149 3,906,702</td>
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<td>9</td>
<td>Program Modernization</td>
<td>305 990,628</td>
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<td>10</td>
<td>Technical &amp; Secondary Program</td>
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<td>11</td>
<td>Improvement Staff</td>
<td>330 300,076</td>
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<td>12</td>
<td>GED Testing (R)</td>
<td>339 580,857</td>
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<tr>
<td>13</td>
<td>Aquaculture Support</td>
<td>769 0</td>
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<tr>
<td>14</td>
<td>FFA Grant Awards</td>
<td>839 12,878</td>
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</table>
16 Pre-Engineering Academy Program 840 297,188
17 Total .......................... $ 26,313,199

Any unexpended balance remaining in the appropriation
for GED Testing (fund 0390, activity 339) at the close of the
fiscal year 2009 is hereby reappropriated for expenditure
during the fiscal year 2010.

49-State Board of Education -
Division of Educational Performance Audits

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2010 Org 0402

1 Personal Services ................. 001 $ 432,124
2 Annual Increment .................. 004 5,196
3 Employee Benefits ................. 010 115,979
4 Unclassified ....................... 099 179,782
5 Total ........................... $ 733,081

50-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2010 Org 0403

1 Personal Services ................. 001 $8,057,712
2 Annual Increment .................. 004 8,366
3 Employee Benefits ................ 010 3,266,213
4 Unclassified ....................... 099 1,607,491
5 Other Post Employee Benefits - Transfer 289 0
6 Capital Outlay and Maintenance (R) 755 62,500
7 BRIM Premium ..................... 913 59,087
8 Total ........................... $13,061,369
Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0320, activity 755) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 5F)

Fund 0294 FY 2010 Org 0431

<table>
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<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
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<td>$897,933</td>
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<td>2</td>
<td>Center for Professional</td>
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<td>3</td>
<td>Development (R)</td>
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<td>4</td>
<td>National Youth Science Camp</td>
<td>132</td>
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<td>WV Humanities Council</td>
<td>168</td>
<td>450,000</td>
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<td>6</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>7</td>
<td>Benedum Professional Development</td>
<td></td>
<td></td>
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<td>8</td>
<td>Collaborative (R)</td>
<td>427</td>
<td>1,100,000</td>
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<td>9</td>
<td>Governor’s Honor Academy (R)</td>
<td>478</td>
<td>500,780</td>
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<td>10</td>
<td>Energy Express</td>
<td>861</td>
<td>470,000</td>
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<td>11</td>
<td>BRIM Premium</td>
<td>913</td>
<td>4,509</td>
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<td>12</td>
<td>Special Olympic Games</td>
<td>966</td>
<td>25,000</td>
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<tr>
<td>13</td>
<td>Total</td>
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<td>$6,385,489</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294 activity 115), Benedum Professional Development Collaborative (fund 0294, activity 427), and Governor’s Honor Academy (fund 0294, activity 478) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.
## 52-Division of Culture and History

(WV Code Chapter 29)

**Fund 0293 FY 2010 Org 0432**

<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>$2,626,190</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>59,087</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,106,721</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>976,929</td>
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<td>5</td>
<td>Other Post Employee Benefits - Transfer</td>
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<td>6</td>
<td>Culture and History Programming</td>
<td>732</td>
<td>292,945</td>
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<td>7</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>100,000</td>
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<td>8</td>
<td>Historical Highway Marker</td>
<td>844</td>
<td>75,035</td>
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<tr>
<td>9</td>
<td>Program (R)</td>
<td>913</td>
<td>33,677</td>
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<tr>
<td>10</td>
<td>BRIM Premium</td>
<td>913</td>
<td>33,677</td>
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<tr>
<td>11</td>
<td>Total</td>
<td></td>
<td>$5,270,584</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0293, activity 097), 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 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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.

From the above appropriation for Unclassified (activity 099), 15,000 shall be expended for the South Eastern Museums Conference and $100,000 shall be used for the Sesquicentennial Celebration.

53-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2010 Org 0433

<table>
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<tr>
<th>Code</th>
<th>Description</th>
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<tbody>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
<td>238,479</td>
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<tr>
<td>181</td>
<td>Services to Blind &amp; Handicapped</td>
<td>184,140</td>
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<td>Other Post Employee Benefits - Transfer</td>
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<td>913</td>
<td>BRIM Premium</td>
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<tr>
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<td>Total</td>
<td>$1,857,698</td>
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</table>

54-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2010 Org 0439

<table>
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<th>Code</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>010</td>
<td>Employee Benefits</td>
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<td>099</td>
<td>Unclassified (R)</td>
<td>910,942</td>
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<tr>
<td>249</td>
<td>Mountain Stage</td>
<td>300,000</td>
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<td>Item</td>
<td>Appropriations</td>
<td>[Ch. 10]</td>
</tr>
<tr>
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<tr>
<td>6</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
</tr>
<tr>
<td>7</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium</td>
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</tr>
<tr>
<td>9</td>
<td>Total</td>
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Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0300, activity 097), Unclassified (fund 0300, activity 099) and Capital Outlay and Maintenance (fund 0300, activity 755) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

55-State Board of Rehabilitation - Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2010 Org 0932

<table>
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<th>Item</th>
<th>Appropriations</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$7,414,605</td>
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<td>Annual Increment</td>
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<td>166,317</td>
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<td>3</td>
<td>Independent Living Services (R)</td>
<td>009</td>
<td>500,000</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,516,516</td>
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<td>5</td>
<td>Unclassified</td>
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<td>502,066</td>
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<td>6</td>
<td>Workshop Development</td>
<td>163</td>
<td>1,816,149</td>
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<tr>
<td>7</td>
<td>Supported Employment Extended</td>
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<td>8</td>
<td>Services</td>
<td>206</td>
<td>119,032</td>
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<td>9</td>
<td>Other Post Employee Benefits - Transfer</td>
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<td>0</td>
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<td>10</td>
<td>Ron Yost Personal Assistance Fund (R)</td>
<td>407</td>
<td>400,000</td>
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<td>11</td>
<td>Employment Attendant Care Program</td>
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<td>229,000</td>
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<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>100,000</td>
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<td>BRIM Premium</td>
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Any unexpended balances remaining in the appropriations for Independent Living Services (fund 0310, activity 009), Unclassified - Surplus (fund 0310, activity 099) and Capital Outlay and Maintenance (fund 0310, activity 755) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.
18 Ron Yost Personal Assistance Fund (fund 0310, activity 407), and Capital Outlay and Maintenance (fund 0310, activity 755) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*56-Environmental Quality Board*

(WV Code Chapter 20)

<table>
<thead>
<tr>
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<th>FY 2010</th>
<th>Org 0311</th>
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<td>390</td>
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<td>3 Employee Benefits</td>
<td>010</td>
<td>18,068</td>
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<td>4 Unclassified</td>
<td>099</td>
<td>49,235</td>
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<td>5 Other Post Employee Benefits - Transfer</td>
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<td>0</td>
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<tr>
<td>6 BRIM Premium</td>
<td>913</td>
<td>684</td>
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*57-Division of Environmental Protection*

(WV Code Chapter 22)

<table>
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<th>FY 2010</th>
<th>Org 0313</th>
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<td>2 Annual Increment</td>
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<td>70,049</td>
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### Appropriations

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<th>Activities</th>
<th>Budget</th>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
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<td>068</td>
<td>Water Resources Protection and Management</td>
<td>$570,254</td>
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<tr>
<td>099</td>
<td>Unclassified</td>
<td>$1,024,751</td>
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<td>289</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>$0</td>
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<tr>
<td>607</td>
<td>Dam Safety</td>
<td>$208,470</td>
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<tr>
<td>637</td>
<td>West Virginia Stream Partners Program</td>
<td>$77,396</td>
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<tr>
<td>776</td>
<td>WV Contribution to River Commissions</td>
<td>$148,485</td>
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<td>Office of Water Resources</td>
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<td>855</td>
<td>Non-Enforcement Activity</td>
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<td>913</td>
<td>BRIM Premium</td>
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<td>993</td>
<td>Welch DEP Office Continuing Operation</td>
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</tbody>
</table>

A portion of the appropriation for Unclassified (fund 0273, activity 099) and Dam Safety (fund 0273, activity 607) may be transferred to the special revenue fund Dam Safety Rehabilitation Revolving Fund (fund 3025) for the state deficient dams rehabilitation assistance program.

### 58-Air Quality Board

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2010</th>
<th>Org 0325</th>
</tr>
</thead>
<tbody>
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</table>

<table>
<thead>
<tr>
<th>Code</th>
<th>Activities</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>$97,393</td>
</tr>
<tr>
<td>289</td>
<td>Other Post Employee Benefits - Transfer</td>
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<td>913</td>
<td>BRIM Premium</td>
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<td>Total</td>
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</table>

### Department of Health and Human Resources

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

(WV Code Chapter 5F)
Fund 0400 FY 2010 Org 0501

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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Any unexpended balance remaining in the appropriation for the Women’s Commission (fund 0400, activity 191) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

60-Division of Health - Central Office

(WV Code Chapter 16)

Fund 0407 FY 2010 Org 0506

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Any unexpended balances remaining in the appropriations for Statewide EMS Program Support (fund

*CLERK'S NOTE: The Governor reduced the amount on line 35 from $4,249,336 to $3,749,336.*
APPROPRIATIONS

Ch. 10] 107

52 0407, activity 383), Maternal and Child Health Clinics,
53 Clinicians and Medical Contracts and Fees (fund 0407,
54 activity 575), Capital Outlay and Maintenance (fund 0407,
55 activity 755), Healthy Lifestyles (fund 0407, activity 778),
56 Emergency Response Entities - Special Projects (fund 0407,
57 activity 822), Assistance to Primary Health Care Centers
58 Community Health Foundation (fund 0407, activity 845)
59 and Tobacco Education Program (fund 0407, activity 906)
60 at the close of the fiscal year 2009 are hereby reappropriated
61 for expenditure during the fiscal year 2010.

62 From the above appropriation for Unclassified (activity
63 099), an amount not less than $100,000 is for the West
64 Virginia Cancer Coalition; $50,000 shall be expended for
65 the West Virginia Aids Coalition; $100,000 is for
66 Adolescent Immunization Education; and $50,000 is for
67 Hospital Hospitality House of Huntington.

68 From the above appropriation for Maternal and Child
69 Health Clinics, Clinicians and Medical Contracts and Fees
70 (fund 0407, activity 575) $250,000 is for the West Virginia
71 University Center for Excellence in Women’s Health; and
72 $400,000 shall be transferred to the Breast and Cervical
73 Cancer Diagnostic Treatment Fund.

74 From the above appropriation for ABCA Tobacco
75 Retailer Education Program - Transfer (activity 239),
76 $200,000 shall be transferred to the Alcohol Beverage
77 Control Administration (fund 7352, org 0708) for
78 expenditure.

79 Included in the above appropriation for Primary Care
80 Centers - Mortgage Finance is $50,000 for the mortgage
81 payment for the Lincoln Primary Care Center, Inc.; $53,140
82 for the mortgage payment for the Monroe Health Center;
83 $42,564 for the mortgage payment for Roane County Family
84 Health Care, Inc.; $30,000 for the mortgage payment for the
85 Tug River Health Association, Inc.; $48,000 for the
86 mortgage payment for the Primary Care Systems (Clay);
APPROPRIATIONS

$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 the 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.

61-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2010 Org 0506

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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), Capital Outlay (fund 0525, activity 511), Capital Outlay and Maintenance (fund 0525, activity 755), and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

The secretary shall, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of revenue an itemized report of expenditures made during the preceding six-month period.

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

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health - hospital services revenue account (fund 5156, activity 335), on July 1, 2009, the sum of $160,000 shall be transferred to the department of agriculture - land division as advance payment for the purchase of food products;
actual payments for such purchases shall not be required until such credits have been completely expended.

Additional funds have been appropriated in fund 5156, fiscal year 2010, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

62-Division of Health - West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2010 Org 0506

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

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

63-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2010 Org 0510

1 Personal Services . . . . . . . . . . . . 001 $735,925
2 Annual Increment . . . . . . . . . . . . 004 19,912
3 Employee Benefits . . . . . . . . . . . . 010 249,257
4 Unclassified . . . . . . . . . . . . . . 099 261,293
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<td>913 BRIM Premium</td>
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### 64-Division of Human Services

(WV Code Chapters 9, 48 and 49)

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<td>183 Medical Services Contracts and Office of Managed Care</td>
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<td>189 Medical Services (R)</td>
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<td>195 Social Services</td>
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<td>196 Family Preservation Program</td>
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<td>384 Domestic Violence Legal Services Fund</td>
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<td>455 James “Tiger” Morton Catastrophic Fund</td>
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<td>698 WV Works Separate State Program</td>
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<td>705 Child Support Enforcement</td>
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*CLERK'S NOTE: The Governor reduced the amount on line 23 from $1,250,000 to $750,000.*
| 26 | Medicaid Auditing .................. | 706 | 604,108 |
| 27 | Temporary Assistance for Needy Families/Maintenance of Effort .. | 707 | 22,969,096 |
| 28 | Child Care Maintenance of Effort | 708 | 5,693,743 |
| 29 | Child and Family Services .......... | 736 | 2,850,000 |
| 30 | Grants for Licensed Domestic Violence Programs and Statewide Prevention | 750 | *2,500,000 |
| 31 | Capital Outlay and Maintenance (R) | 755 | 12,500 |
| 32 | Medical Services Administrative Costs | 789 | 16,675,238 |
| 33 | Indigent Burials (R) ............... | 851 | 1,700,000 |
| 34 | BRIM Premium ....................... | 913 | 834,187 |
| 35 | Rural Hospitals Under 150 Beds .. | 940 | 2,596,000 |
| 36 | Children’s Trust Fund - Transfer .. | 951 | 300,000 |
| 37 | Total ................................ |  | $587,476,242 |

Any unexpended balances remaining in the appropriations for Medical Services (fund 0403, activity 189), Family Resource Networks (fund 0403, activity 274), Capital Outlay and Maintenance (fund 0403, activity 755), and Indigent Burials (fund 0403, activity 851) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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

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

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the department of health and human

*Clerk's Note: The Governor reduced the amount on line 33 from $2,500,000 to $1,500,000.
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
(WVCDV).

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.
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

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

(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2010</th>
<th>Org</th>
<th>Appropriations</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0430</td>
<td>FY 2010</td>
<td>0601</td>
<td>Unclassified (R)</td>
<td>099 $728,246</td>
</tr>
<tr>
<td>0430</td>
<td>FY 2010</td>
<td>0601</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>289 0</td>
</tr>
<tr>
<td>0430</td>
<td>FY 2010</td>
<td>0601</td>
<td>Fusion Center</td>
<td>469 488,759</td>
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<tr>
<td>0430</td>
<td>FY 2010</td>
<td>0601</td>
<td>BRIM Premium</td>
<td>913 9,404</td>
</tr>
<tr>
<td>0430</td>
<td>FY 2010</td>
<td>0601</td>
<td>WV Fire and EMS Survivor Benefit</td>
<td>939 200,000</td>
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<tr>
<td>0430</td>
<td>FY 2010</td>
<td>0601</td>
<td>Homeland State Security Administrative Agency (R)</td>
<td>953 583,059</td>
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<tr>
<td>0430</td>
<td>FY 2010</td>
<td>0601</td>
<td>Total</td>
<td>$2,009,468</td>
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</tbody>
</table>

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 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

66-Adjutant General - State Militia

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2010</th>
<th>Org</th>
<th>Appropriations</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0433</td>
<td>FY 2010</td>
<td>0603</td>
<td>Personal Services</td>
<td>001 $0</td>
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<tr>
<td>0433</td>
<td>FY 2010</td>
<td>0603</td>
<td>Annual Increment</td>
<td>004 0</td>
</tr>
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</table>
Any unexpended balance remaining in the appropriation for Unclassified (fund 0433, activity 099) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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.

### 67-Adjutant General - Military Fund

(WV Code Chapter 15)

**Fund 0605 FY 2010 Org 0603**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified — Total</td>
<td>096</td>
<td>$200,000</td>
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</table>

### 68-West Virginia Parole Board

(WV Code Chapter 62)

**Fund 0440 FY 2010 Org 0605**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$191,650</td>
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<td>Annual Increment</td>
<td>004</td>
<td>2,307</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>232,693</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>209,172</td>
</tr>
<tr>
<td>Salaries of Members of West Virginia Parole Board</td>
<td>227</td>
<td>455,000</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>7</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$1,095,534</td>
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</table>

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

(WV Code Chapter 15)

Fund **0443** FY **2010** Org **0606**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001 $409,963</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004 8,060</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010 169,311</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099 336,750</td>
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<tr>
<td>5</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>289 0</td>
</tr>
<tr>
<td>6</td>
<td>Radiological Emergency Preparedness</td>
<td>554 30,000</td>
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<tr>
<td>7</td>
<td>Federal Funds/Grant Match (R)</td>
<td>749 679,089</td>
</tr>
<tr>
<td>8</td>
<td>Mine and Industrial Accident Rapid Call Center</td>
<td>781 564,360</td>
</tr>
<tr>
<td>9</td>
<td>Early Warning Flood System (R)</td>
<td>877 525,897</td>
</tr>
<tr>
<td>10</td>
<td>BRIM Premium</td>
<td>913 20,336</td>
</tr>
<tr>
<td>11</td>
<td>WVU Charleston Poison Control Hotline</td>
<td>944 596,100</td>
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<tr>
<td>12</td>
<td>Disaster Mitigation</td>
<td>952 50,000</td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td>$3,389,866</td>
</tr>
</tbody>
</table>

15 Any unexpended balances remaining in the appropriations for Unclassified (fund 0443, activity 099), Federal Funds/Grant Match (fund 0443, activity 749), and Early Warning Flood System (fund 0443, activity 877) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

**70-Division of Corrections - Central Office**

(WV Code Chapters 25, 28, 49 and 62)
### Fund 0446 FY 2010 Org 0608

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$423,953</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$7,235</td>
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<tr>
<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>$103,470</td>
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<td><strong>Total</strong></td>
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<td><strong>$670,647</strong></td>
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</table>

Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

### 71-Division of Corrections - Correctional Units

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

### Fund 0450 FY 2010 Org 0608

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$363,744</td>
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<tr>
<td>Childrens Protection Act (R)</td>
<td>090</td>
<td>$929,068</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,120,067</td>
</tr>
<tr>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>$0</td>
</tr>
<tr>
<td>Charleston Work Release</td>
<td>456</td>
<td>$1,360,388</td>
</tr>
<tr>
<td>Beckley Correctional Center</td>
<td>490</td>
<td>$1,043,117</td>
</tr>
<tr>
<td>Huntington Work Release</td>
<td>495</td>
<td>$938,740</td>
</tr>
<tr>
<td>Anthony Center</td>
<td>504</td>
<td>$4,822,085</td>
</tr>
<tr>
<td>Huttonsville Correctional Center</td>
<td>514</td>
<td>$20,722,846</td>
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<tr>
<td>Northern Correctional Facility</td>
<td>534</td>
<td>$7,102,936</td>
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<tr>
<td>Inmate Medical Expenses (R)</td>
<td>535</td>
<td>$24,226,064</td>
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<tr>
<td>Pruntytown Correctional Center</td>
<td>543</td>
<td>$7,265,811</td>
</tr>
<tr>
<td>Payments to Federal, County and/or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Jails (R)</td>
<td>555</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>Corrections Academy</td>
<td>569</td>
<td>$1,326,521</td>
</tr>
<tr>
<td>Martinsburg Correctional Center</td>
<td>663</td>
<td>$3,480,257</td>
</tr>
<tr>
<td>Parole Services</td>
<td>686</td>
<td>$2,553,391</td>
</tr>
<tr>
<td>Special Services</td>
<td>687</td>
<td>$3,271,051</td>
</tr>
</tbody>
</table>
19 Capital Outlay and Maintenance (R) 755 1,000,000
20 McDowell County Correctional Center 790 1,949,983
21 Stephens Correctional Facility 791 6,474,500
22 St. Mary’s Correctional Facility 881 13,022,560
23 Denmar Correctional Facility 882 4,455,189
24 Ohio County Correctional Facility 883 1,670,038
25 Mt. Olive Correctional Facility 888 20,289,903
26 Lakin Correctional Facility 896 8,536,736
27 BRIM Premium 913 829,190
28 Total $158,754,185

29 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), Payments to Federal, County and/or Regional Jails (fund 0450, activity 555), and Capital Outlay and Maintenance (fund 0450, activity 755) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

38 The commissioner of corrections shall 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).

44 From the above appropriation to Unclassified, on July 1, 2009, the sum of $300,000 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)
### Appropriations

**Fund 0453 FY 2010 Org 0612**

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>249,120</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>8,553,337</td>
</tr>
<tr>
<td>Childrens Protection Act</td>
<td>090</td>
<td>827,312</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>8,801,916</td>
</tr>
<tr>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
<td>600,000</td>
</tr>
<tr>
<td>Barracks Lease Payments</td>
<td>556</td>
<td>246,478</td>
</tr>
<tr>
<td>Communications and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Equipment (R)</td>
<td>558</td>
<td>1,013,285</td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>605</td>
<td>4,764,396</td>
</tr>
<tr>
<td>Handgun Administration Expense</td>
<td>747</td>
<td>79,698</td>
</tr>
<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>250,000</td>
</tr>
<tr>
<td>Retirement Systems - Unfunded</td>
<td>775</td>
<td>9,876,000</td>
</tr>
<tr>
<td>Automated Fingerprint</td>
<td>898</td>
<td>647,084</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>5,418,504</td>
</tr>
<tr>
<td>Total</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, activity 558), and Capital Outlay and Maintenance (fund 0453, activity 755) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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)
120  

APPROPRIATIONS  

[Ch. 10]  

Fund 0456 FY 2010 Org 0613  

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>43,710</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>524,725</td>
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<tr>
<td>Unclassified</td>
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<td>268,823</td>
</tr>
<tr>
<td>Veterans’ Field Offices</td>
<td>228</td>
<td>177,140</td>
</tr>
<tr>
<td>Veterans’ Nursing Home</td>
<td>286</td>
<td>6,583,435</td>
</tr>
<tr>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>Veterans’ Toll Free Assistance Line</td>
<td>328</td>
<td>5,105</td>
</tr>
<tr>
<td>Veterans’ Reeducation Assistance (R)</td>
<td>329</td>
<td>211,604</td>
</tr>
<tr>
<td>Veterans’ Grant Program (R)</td>
<td>342</td>
<td>150,000</td>
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<tr>
<td>Veterans’ Grave Markers</td>
<td>473</td>
<td>15,750</td>
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<tr>
<td>Veterans’ Transportation</td>
<td>485</td>
<td>625,000</td>
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<tr>
<td>Memorial Day Patriotic Exercise</td>
<td>697</td>
<td>20,000</td>
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<tr>
<td>Educational Opportunities for</td>
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<td></td>
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<tr>
<td>Children of Deceased Veterans(R)</td>
<td>854</td>
<td>50,000</td>
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<td>BRIM Premium</td>
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<td>23,860</td>
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<tr>
<td>Total</td>
<td></td>
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</tr>
</tbody>
</table>

18 Any unexpended balances remaining in the appropriations for Veterans’ Reeducation Assistance (fund 0456, activity 329), Veterans’ Grant Program (fund 0456, activity 342), Women’s Veterans’ Monument (fund 0456, activity 385), 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 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

27 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 2010 Org 0618

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tr>
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<td>3 Employee Benefits</td>
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<td>354,353</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>29,859</td>
</tr>
<tr>
<td>5 Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>6 Total</td>
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<td>$1,157,847</td>
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</tbody>
</table>

### 75-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2010 Org 0619

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>099</td>
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<td>2 Other Post Employee Benefits - Transfer</td>
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<tr>
<td>3 Total</td>
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</table>

### 76-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2010 Org 0620

<table>
<thead>
<tr>
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<th>Code</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$309,419</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>4,525</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>109,047</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>103,565</td>
</tr>
<tr>
<td>5 Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>6 Child Advocacy Centers (R)</td>
<td>458</td>
<td>1,000,606</td>
</tr>
<tr>
<td>7 Community Corrections (R)</td>
<td>561</td>
<td>3,500,000</td>
</tr>
</tbody>
</table>
8 Statistical Analysis Program .... 597 51,823  
9 Grants Program .................. 694 250,000  
10 BRIM Premium ................... 913 1,660  
11 Total .......................... $5,330,645  

Any unexpended balances remaining in the  
appropriations for Community Corrections (fund 0546,  
activity 561), and Child Advocacy Centers (fund 0546,  
activity 458) at the close of the fiscal year 2009 are hereby  
reappropriated for expenditure during the fiscal year 2010.

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

77-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2010 Org 0621

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Jones Building Treatment Center (R)</td>
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<td>$0</td>
</tr>
<tr>
<td>2 Statewide Reporting Centers (R)</td>
<td>262</td>
<td>3,028,129</td>
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<tr>
<td>3 Robert L. Shell Juvenile Center</td>
<td>267</td>
<td>2,080,735</td>
</tr>
<tr>
<td>4 Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>5 Central Office</td>
<td>701</td>
<td>2,373,936</td>
</tr>
<tr>
<td>6 Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>250,000</td>
</tr>
<tr>
<td>7 Gene Spadaro Juvenile Center</td>
<td>793</td>
<td>2,184,382</td>
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<tr>
<td>8 BRIM Premium</td>
<td>913</td>
<td>96,187</td>
</tr>
<tr>
<td>9 WV Industrial Home for Youth (R)</td>
<td>979</td>
<td>11,314,554</td>
</tr>
<tr>
<td>10 Davis Center (R)</td>
<td>980</td>
<td>5,583,323</td>
</tr>
<tr>
<td>11 Eastern Regional Juvenile Center</td>
<td>981</td>
<td>1,829,430</td>
</tr>
<tr>
<td>12 Northern Regional Juvenile Center</td>
<td>982</td>
<td>1,415,513</td>
</tr>
<tr>
<td>13 North Central Regional</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14 Juvenile Center</td>
<td>983</td>
<td>1,950,250</td>
</tr>
<tr>
<td>15 Southern Regional Juvenile Center</td>
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<td>2,004,841</td>
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</table>
Any unexpended balances remaining in the appropriations for Jones Building Treatment Center (fund 0570, activity 261), Statewide Reporting Centers (fund 0570, activity 262), Capital Outlay and Maintenance (fund 0570, activity 755), WV Industrial Home for Youth (fund 0570, activity 979), and Davis Center (fund 0570, activity 980) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

From the above appropriations, on July 1, 2009, the sum of $50,000 shall be transferred to the department of agriculture - land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

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

78-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2010 Org 0622

1 Personal Services .................. 001 $ 1,348,894
2 Annual Increment ................... 004 38,090
3 Employee Benefits ................. 010 599,124
4 Unclassified (R) .................... 099 341,232
5 Other Post Employee Benefits - Transfer 289 0
6 BRIM Premium ..................... 913 9,969
7 Total ............................. $2,337,309
Any unexpended balances remaining in the appropriations for Equipment (fund 0585, activity 070) and Unclassified (fund 0585, activity 099) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

DEPARTMENT OF REVENUE

79-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2010 Org 0701

1 Unclassified (R) .................. 099  $ 860,220
2 Other Post Employee Benefits - Transfer  289  0
3 Total ............................  $ 860,220

Any unexpended balances remaining in the appropriations for Unclassified - Total (fund 0465, activity 096) and Unclassified (fund 0465, activity 099) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

80-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2010 Org 0702

1 Personal Services (R) .............. 001  $13,270,094
2 Annual Increment .................. 004  322,206
3 Employee Benefits (R) ............ 010  4,968,482
4 Unclassified (R) ................... 099  10,214,281
5 Other Post Employee Benefits - Transfer  289  0
6 GIS Development Project (R) ....... 562  150,000
7 Multi State Tax Commission ......... 653  77,958
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 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

81-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2010 Org 0703

1 Unclassified (R) ....................... 099 $ 890,921
2 Other Post Employee Benefits - Transfer 289 0
3 Pay Equity Reserve ..................... 364 250,000
4 BRIM Premium .......................... 913 3,628
5 Total ................ .................. $ 1,144,549

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, activity 099) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

82-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2010 Org 0709
126 APPROPRIATIONS [Ch. 10

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
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<td>099</td>
<td>$677,300</td>
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<td>2</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$677,300</td>
</tr>
</tbody>
</table>

4 Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0593, activity 096) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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

(WV Code Chapter 29)

Fund 0523 FY 2010 Org 0933

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<tr>
<td>1</td>
<td>Unclassified - Total</td>
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</table>

DEPARTMENT OF TRANSPORTATION

84-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2010 Org 0804

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<tr>
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<td>3</td>
<td>BRIM Premium</td>
<td>913</td>
<td>186,413</td>
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<td>$2,701,315</td>
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</tbody>
</table>

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

(WV Code Chapter 17)

Fund 0510 FY 2010 Org 0805

1 Unclassified (R) 099 $1,757,022
2 Federal Funds/Grant Match (R) 749 1,175,620
3 Total ........................ $2,932,642

4 Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

86-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2010 Org 0806

1 Unclassified (R) 099 $415,277
2 Other Post Employee Benefits - Transfer 289 0
3 BRIM Premium 913 2,764
4 Total ........................ $418,041

5 Any unexpended balance remaining in the appropriation for Unclassified (fund 0581, activity 099) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

87-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2010 Org 0807
Any unexpended balance remaining in the appropriation for Unclassified (fund 0582, activity 099) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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 2010 Org 0508

Any unexpended balance remaining in the appropriation for Unclassified - Total - Surplus (fund 0420, activity 284) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

**HIGHER EDUCATION**

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

(WV Code Chapter 18B)

Fund 0596 FY 2010 Org 0420

Other Post Employee Benefits - Transfer 289 $ 0
<table>
<thead>
<tr>
<th>Institution Description</th>
<th>Appropriations</th>
<th>2022 Appropriation</th>
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<tr>
<td>New River Community and Technical College</td>
<td>358</td>
<td>$5,509,896</td>
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<tr>
<td>West Virginia Council for Community and Technical Education (R)</td>
<td>392</td>
<td>$874,357</td>
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<td>Eastern West Virginia Community and Technical College</td>
<td>412</td>
<td>$2,002,722</td>
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<td>West Virginia State Community and Technical College</td>
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<td>Kanawha Valley Community and Technical College</td>
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<td>Southern West Virginia Community and Technical College</td>
<td>446</td>
<td>$8,387,167</td>
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<td>West Virginia Northern Community and Technical College</td>
<td>447</td>
<td>$7,472,803</td>
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<tr>
<td>West Virginia University - Parkersburg</td>
<td>471</td>
<td>$9,422,264</td>
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<td>West Virginia University Institute for Technology Community and Technical College</td>
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<td></td>
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<tr>
<td>Bridgemont Community and Technical College</td>
<td>486</td>
<td>0</td>
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<td>Marshall Community and Technical College</td>
<td>487</td>
<td>$3,790,870</td>
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<td>Community College</td>
<td>878</td>
<td>$967,707</td>
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<td>Workforce Development (R)</td>
<td>885</td>
<td>$2,871,671</td>
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<td>Blue Ridge Community and Technical College</td>
<td>887</td>
<td>$333,500</td>
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<td>College Transition Program (R)</td>
<td>893</td>
<td>$3,850,000</td>
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<tr>
<td>West Virginia Advance Workforce Development (R)</td>
<td>894</td>
<td>$2,402,500</td>
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<td>Technical Program Development (R)</td>
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<td></td>
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<tr>
<td>Pierpont Community and Technical College</td>
<td>930</td>
<td>$8,080,538</td>
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<td>Total</td>
<td></td>
<td>$65,629,367</td>
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Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0596, activity 097), 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 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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 2010 Org 0441

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
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<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$2,181,965</td>
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<td>2</td>
<td>Higher Education Grant Program</td>
<td>164</td>
<td>31,092,532</td>
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<td>3</td>
<td>WVNET</td>
<td>169</td>
<td>2,011,602</td>
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<td>4</td>
<td>Other Post Employee Benefits - Transfer</td>
<td>289</td>
<td>0</td>
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<td>5</td>
<td>PROMISE Scholarship — Transfer</td>
<td>800</td>
<td>16,000,000</td>
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<td>6</td>
<td>HEAPS Grant Program (R)</td>
<td>867</td>
<td>5,004,027</td>
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<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>19,953</td>
</tr>
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<td>8</td>
<td>Total</td>
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<td>$56,310,079</td>
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</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0589, activity 099), VISTA E-Learning (fund 0589, activity 519), Vice Chancellor for Health Sciences - Rural Health Initiative Program and Site Support (fund 0589, activity 595), Capital Outlay and Maintenance (fund 0589, activity 755), and HEAPS Grant Program (fund 0589, activity 867) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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.

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91-Higher Education Policy Commission -
System -
Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2010 Org 0442

1 WVU School of Health Science -
2 Eastern Division ................. 056  $ 2,535,527
3 School of Osteopathic Medicine ... 172  7,244,063
4 Marshall Medical School ........... 173  11,967,464
5 WVU—School of Health Sciences . 174  16,620,863
6 WVU School of Health Sciences -
7 Charleston Division ............... 175  2,543,185
8 Rural Health Outreach Programs ... 377  600,000
9 Other Post Employee Benefits - Transfer 289  0
10 School of Osteopathic Medicine
11 BRIM Subsidy .................. 403  168,841
12 Bluefield State College ........ 408  6,174,504
13 Concord University ............. 410  9,634,825
14 Fairmont State University ..... 414  13,769,754
15 Glenville State College ........ 428  6,268,810
16 Shepherd University ............ 432 10,665,423
17 West Liberty University ....... 439  8,854,062
18 West Virginia State University .. 441 10,391,801
19 Marshall University ............ 448  49,406,129
20 Marshall University Medical School
21 BRIM Subsidy .................. 449  982,670
22 West Virginia University ...... 459 110,312,115
23 West Virginia University School of
24 Medicine BRIM Subsidy ........ 460 1,354,826
25 Jackson’s Mill ................. 461  0
26 West Virginia University Institute
27 for Technology .................. 479  8,247,189
28 Vista-E Learning ................ 519  289,265
29 State Priorities - Brownfield
30 Professional Development (R) .. 531  777,092
31 Rural Health Initiative - Medical
32 Schools Support ............... 581  461,156
33 Area Health Education Centers ... 743  0
34 West Virginia State University Land
35 Grant Match .................... 956  1,846,384
36 West Virginia University —
37 Potomac State .................. 994  4,437,890
38 Total ..........................  $ 285,553,838

39 Any unexpended balances remaining in the
40 appropriations for Rural Health Outreach Programs (fund
41 0586, activity 377), Marshall School of Medicine - Surplus
42 (fund 0586, activity 452), WVUIT-ABET Accreditation
43 (fund 0586, activity 454), Jackson’s Mill (fund 0586,
44 activity 461), State Priorities-Brownfield Professional
45 Development (fund 0586, activity 531), Jackson’s Mill -
Surplus (fund 0586, activity 842), and Blanchette Rockefeller Neurological Institute - Surplus (fund 0586, activity 947) at the close of fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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.

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 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, $100,000 for the WV Alzheimers Disease Register and $100,000 for the rifle team.

Included in the above appropriation for Marshall Medical School is $417,351 for the Marshall University Forensic Lab and $175,061 for the Marshall University Center for Rural Health.

Included in the above appropriation for Marshall University is $181,280 for the Marshall University — Southern WV CTC 2+2 Program and $100,000 for the Luke Lee Listening Language & Learning Lab.

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 Rural Outreach Programs (activity 377) includes rural health 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

(Including claims against the state) $3,787,976,953

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 ten.

DEPARTMENT OF TRANSPORTATION

92-Division of Motor Vehicles

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

Fund 9007 FY 2010 Org 0802

<table>
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<th>Activity</th>
<th>Fund</th>
<th>State Road Fund</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>297,660</td>
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</table>
136 APPROPRIATIONS [Ch. 10

3 Employee Benefits ............. . 010 6,626,528
4 Unclassified .................. . 099 15,404,133
5 Total .............................. $37,481,469

93-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2010 Org 0803

1 Debt Service .................. . 040 $50,000,000
2 Maintenance .................. . 237 309,184,000
3 Maintenance, Contract Paving and
4 Secondary Road Maintenance . 272 40,000,000
5 Bridge Repair and Replacement . 273 33,500,000
6 Inventory Revolving ............ . 275 4,000,000
7 Equipment Revolving ............ . 276 20,000,000
8 General Operations ............. . 277 56,500,000
9 Interstate Construction ........ . 278 115,000,000
10 Other Federal Aid Programs ... . 279 350,700,000
11 Appalachian Programs ........ . 280 112,000,000
12 Nofederal Aid Construction ... . 281 32,000,000
13 Highway Litter Control ........ . 282 1,691,000
14 Federal Economic Stimulus ..... . 891 204,572,000
15 Total ......................... $ 1,329,147,000

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

19 The commissioner of highways shall have the authority
20 to operate revolving funds within the state road fund for the
21 operation and purchase of various types of equipment used
22 directly and indirectly in the construction and maintenance
23 of roads and for the purchase of inventories and materials
24 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

( Including claims against the state)  $1,367,137,215

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 ten.

LEGISLATIVE

94-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731  FY 2010  Org 2300
<table>
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<td>2: Annual Increment</td>
<td>004</td>
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<tr>
<td>3: Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4: Unclassified</td>
<td>099</td>
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<tr>
<td>5: Economic Loss Claim Payment Fund (R)</td>
<td>334</td>
</tr>
<tr>
<td>6: Total</td>
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</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

**JUDICIAL**

*95-Supreme Court - Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2010 Org 2400

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

**EXECUTIVE**

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

(WV Code Chapters 11A, 12 and 36)
There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to pay the direct expenses relating to land sales as provided in chapter eleven-a of the West Virginia Code.

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

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

(WV Code Chapter 6)

98-Auditor's Office -
Securities Regulation Fund

(WV Code Chapter 32)
### 99-Auditor’s Office - Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2010 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
<td>$400,000</td>
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</table>

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

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

(WV Code Chapter 12)

Fund 1234 FY 2010 Org 1200

<table>
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<th>Item</th>
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<tr>
<td>Unclassified - Total</td>
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<td>$3,254,610</td>
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### 101-Auditor’s Office - Office of the Chief Inspector

(WV Code Chapter 6)

Fund 1235 FY 2010 Org 1200

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<th>Item</th>
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<td>Annual Increment</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
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<tr>
<td>4</td>
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<td>099</td>
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</tbody>
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102-Treasure's Office -
College Prepaid Tuition and Savings Program
Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2010 Org 1300

|   | Unclassified - Total               | 096 | $1,402,462 |

103-Treasure's Office -
Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1329 FY 2010 Org 1300

|   | Unclassified - Total               | 096 | $475,000 |

104-Department of Agriculture -
Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2010 Org 1400

|   | Unclassified - Total               | 096 | $2,683,867 |

105-Department of Agriculture -
West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2010 Org 1400
142 APPROPRIATIONS [Ch. 10

1  Personal Services .............. 001  $  53,384
2  Annual Increment .............. 004  998
3  Employee Benefits ............. 010  15,673
4  Unclassified .................. 099  975,996
5  Total .....................  $1,046,051

106-Department of Agriculture -
     General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2010 Org 1400

1  Unclassified - Total ............ 096  $  210,000

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

107-Department of Agriculture -
     Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2010 Org 1400

1  Unclassified - Total ............ 096  $1,507,094

108-Department of Agriculture -
     Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2010 Org 1400

1  Unclassified - Total ............ 096  $ 4,539,525

109-Department of Agriculture -
     Integrated Predation Management Fund
(WV Code Chapter 7)

Fund 1465 FY 2010 Org 1400

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

110-Attorney General -
Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2010 Org 1500

1 Personal Services ................. 001 $ 262,577
2 Annual Increment .................. 004 2,437
3 Employee Benefits ................. 010 81,703
4 Unclassified ........................ 099 156,266
5 Total .............................. $ 502,983

111-Attorney General -
Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2010 Org 1500

1 Unclassified - Total ............... 096 $ 262,818

112-Attorney General -
Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2010 Org 1500

1 Unclassified - Total ............... 096 $ 901,135
### APPROPRIATIONS

**113—Secretary of State - Service Fees and Collection Account**

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2010 Org 1600

| 1 | Personal Services .................. | 001 | $ 300,000 |
| 2 | Employee Benefits .................. | 010 | 68,300 |
| 3 | Unclassified ........................ | 099 | 881,700 |
| 4 | Total ................................ |     | $1,250,000 |

**114—Secretary of State - General Administrative Fees Account**

(WV Code Chapters 3, 5 and 59)

Fund 1617 FY 2010 Org 1600

| 1 | Personal Services .................. | 001 | $1,200,000 |
| 2 | Annual Increment .................. | 004 | 15,000 |
| 3 | Employee Benefits .................. | 010 | 467,673 |
| 4 | Unclassified ........................ | 099 | 834,678 |
| 5 | Technology Improvements .............. | 599 | 0 |
| 6 | Total ................................ |     | $2,517,351 |

### DEPARTMENT OF ADMINISTRATION

**115—Department of Administration - Office of the Secretary Employee Pension and Health Care Benefit Fund**

(WV Code Chapter 18)

Fund 2044 FY 2010 Org 0201

| 1 | Unclassified - Total ............... | 096 | $6,688,000 |
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).

116-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220  FY 2010  Org 0210

1 Personal Services .................. 001  $16,326,413
2 Annual Increment .................. 004   342,459
3 Employee Benefits ................. 010   5,659,244
4 Unclassified ........................ 099  15,551,701
5 Total ............................. $37,879,817

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

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

117-Division of Personnel

(WV Code Chapter 29)

Fund 2440  FY 2010  Org 0222
146  APPROPRIATIONS  [Ch. 10

1  Personal Services  001  $2,763,429
2  Annual Increment  004  72,348
3  Employee Benefits  010  991,588
4  Unclassified  099  1,207,158
5  Total  $5,034,523

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

118-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521  FY 2010  Org 0228

1  Unclassified - Total (R)  096  $550,092

2  Any unexpended balance remaining in the appropriation
3  for Unclassified - Total (fund 2521, activity 096, fiscal year
4  2009) at the close of the fiscal year 2009 is hereby
5  reappropriated for expenditure during the fiscal year 2010.

119-Office of Technology -
    Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531  FY 2010  Org 0231

1  Unclassified - Total  096  $1,881,795

2  From the above fund, the provisions of West Virginia
3  Code §11B-2-18 shall not operate to permit expenditures in
4  excess of the funds authorized for expenditure herein.
## DEPARTMENT OF COMMERCE

### 120-Division of Forestry

(WV Code Chapter 19)

**Fund 3081 FY 2010 Org 0305**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<td>1</td>
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### 121-Division of Forestry - Timbering Operations Enforcement Fund

(WV Code Chapter 19)

**Fund 3082 FY 2010 Org 0305**

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

(WV Code Chapter 11)

**Fund 3084 FY 2010 Org 0305**

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### 123-Geological and Economic Survey

(WV Code Chapter 29)

**Fund 3100 FY 2010 Org 0306**

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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</table>
148 APPOPRIATIONS

[Ch. 10

1  Personal Services ............... 001  $ 25,821
2  Employee Benefits .............. 010  2,351
3  Unclassified ................... 099  190,107
4  Total ........................... $ 218,279

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

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

(WV Code Chapter 5B)

Fund 3002 FY 2010 Org 0307

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

125-Division of Labor -
  Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2010 Org 0308

1  Personal Services ............... 001  $1,095,009
2  Annual Increment ............... 004  12,643
3  Employee Benefits .............. 010  469,000
4  Unclassified ................... 099  563,475
5  Total ........................... $2,140,127

126-Division of Labor -
  Elevator Safety Act

(WV Code Chapter 21)
127-Division of Labor -
Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3188 FY 2010 Org 0308

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<th>Item</th>
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<td>004</td>
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<td>$65,087</td>
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128-Division of Labor -
Amusement Rides and Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3191 FY 2010 Org 0308

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<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Unclassified - Total</td>
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129-Division of Labor -
State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Fund 3192 FY 2010 Org 0308

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<th>Item</th>
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<tbody>
<tr>
<td>Unclassified - Total</td>
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<td>$107,066</td>
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</tbody>
</table>

1 Personal Services ....... 001 $102,203
2 Annual Increment .......... 004 2,262
3 Employee Benefits .......... 010 46,861
4 Unclassified ............... 099 28,724
| APPROPRIATIONS |  
|----------------|------|
| 5 BRIM Premium  | 913  |
| 6 Total         | $183,454 |

130-Division of Labor - Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2010 Org 0308

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

131-Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2010 Org 0310

| 1 Wildlife Resources | 023  | $5,493,200 |
| 2 Administration     | 155  | 1,303,878  |
| 3 Capital Improvements and Land Purchase (R) | 248  | 1,373,300  |
| 5 Law Enforcement     | 806  | 5,493,200   |
| 6 Total               |      | $13,663,578 |

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

8 Any unexpended balances remaining in the appropriations for Capital Improvements and Land Purchase (fund 3200, activity 248, fiscal year 2008 and fiscal year 2009) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

132-Division of Natural Resources - Game, Fish and Aquatic Life Fund
<table>
<thead>
<tr>
<th>Fund 3202 FY 2010 Org 0310</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified - Total .......... 096 $ 75,000</td>
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133-Division of Natural Resources - Nongame Fund

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<td>1 Personal Services .......... 001 $ 704,058</td>
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<td>2 Annual Increment .......... 004 8,850</td>
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<td>3 Employee Benefits .......... 010 274,984</td>
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<td>4 Unclassified ................. 099 323,849</td>
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<td>5 Total ........................ $1,311,741</td>
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134-Division of Natural Resources - Planning and Development Division

<table>
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<th>Fund 3205 FY 2010 Org 0310</th>
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<td>2 Annual Increment .......... 004 2,220</td>
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<td>3 Employee Benefits .......... 010 51,341</td>
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<td>4 Unclassified ................. 099 217,075</td>
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<td>5 Total ........................ $ 400,936</td>
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135-Division of Natural Resources - Whitewater Study and Improvement Fund

<table>
<thead>
<tr>
<th>Fund 3253 FY 2010 Org 0310</th>
</tr>
</thead>
</table>
152

### Appropriations [Ch. 10]

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>$135,000</td>
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#### 136-Division of Natural Resources - Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2010 Org 0310

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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total</td>
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#### 137-Miners' Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2010 Org 0314

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<tr>
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<td>Annual Increment</td>
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<td>900</td>
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<td>4</td>
<td>WV Mining Extension Service</td>
<td>026</td>
<td>150,000</td>
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<td>5</td>
<td>Unclassified</td>
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<td>1,046,900</td>
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<tr>
<td>6</td>
<td>Mine Safety Technology Task Force</td>
<td>061</td>
<td>115,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$1,778,600</td>
</tr>
</tbody>
</table>

8 Any unexpended balance remaining in the appropriation for Disaster Mitigation (fund 3355, activity 952) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

#### 138-Division of Energy - Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2010 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 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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

(WV Code Chapter 5B)

Fund 3011 FY 2010 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 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

DEPARTMENT OF EDUCATION

140-State Board of Education -
Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2010 Org 0402

1 Unclassified - Total ............... 096  $ 800,000

141-State Department of Education -
School Building Authority

(WV Code Chapter 18)
1 Personal Services .................. 001 $ 794,734
2 Annual Increment .................. 004 8,460
3 Employee Benefits ................. 010 276,409
4 Unclassified ...................... 099 271,715
5 Total ............................. $1,351,318

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.

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

(WV Code Chapter 18)

1 Personal Services .................. 001 $ 825,000
2 Annual Increment .................. 004 13,000
3 Employee Benefits ................. 010 293,550
4 Unclassified ...................... 099 778,450
5 Total ............................. $1,910,000

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 29)

1 Governor’s Honor Academy ....... 478 $ 100,000
2 EPSCoR (R) .................. . 571 359,368
3 Literacy Project (R) ............ . 899 350,000
4 Total ........................ $ 809,368

5 Any unexpended balance remaining in the appropriation
6 for Unclassified - Total (fund 3508, activity 096), EPSCoR
7 (fund 3508, activity 571), Educational Enhancements (fund
8 3508, activity 695), and Literacy Project (fund 3508, activity
9 899) at the close of the fiscal year 2009 are hereby
10 reappropriated for expenditure during the fiscal year 2010.

144-Division of Culture and History –
Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2010 Org 0432

1 Unclassified – Total .............. . 096 $ 800,000

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

(WV Code Chapter 18)

Fund 8664 FY 2010 Org 0932

1 Unclassified - Total .............. . 096 $ 905,360

DEPARTMENT OF ENVIRONMENTAL PROTECTION

146-Solid Waste Management Board

(WV Code Chapter 22C)
<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$577,984</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>6,720</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>183,319</td>
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<td>4</td>
<td>Unclassified</td>
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<td>5</td>
<td>Total</td>
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147-Division of Environmental Protection - Hazardous Waste Management Fund

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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148-Division of Environmental Protection - Air Pollution Education and Environment Fund

(WV Code Chapter 22)

<table>
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<th>Description</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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149-Division of Environmental Protection - Special Reclamation Fund
### Fund 3321 FY 2010 Org 0313

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**150-Division of Environmental Protection - Oil and Gas Reclamation Fund**

### Fund 3322 FY 2010 Org 0313

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<th>Item Description</th>
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<td>Unclassified - Total</td>
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**151-Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund**

### Fund 3323 FY 2010 Org 0313

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**152-Division of Environmental Protection - Mining and Reclamation Operations Fund**

### Fund 3324 FY 2010 Org 0313
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<th>Annual Increment</th>
<th>Employee Benefits</th>
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<td>60,642</td>
<td>3,262,525</td>
<td>1,785,550</td>
<td>8,998,675</td>
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**153-Division of Environmental Protection - Underground Storage Tank Administrative Fund**

(WV Code Chapter 22)

Fund 3325 FY 2010 Org 0313

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<th></th>
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<th>Annual Increment</th>
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<td>196,796</td>
<td>559,272</td>
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**154-Division of Environmental Protection - Hazardous Waste Emergency Response Fund**

(WV Code Chapter 22)

Fund 3331 FY 2010 Org 0313

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<td>004</td>
<td>010</td>
<td>099</td>
</tr>
<tr>
<td>2</td>
<td>10,834</td>
<td>191,983</td>
<td>834,243</td>
<td>1,536,873</td>
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</tr>
</tbody>
</table>

**155-Division of Environmental Protection - Solid Waste Reclamation and Environmental Response Fund**
### APPROPRIATIONS

(WV Code Chapter 22)

**Fund 3332 FY 2010 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$555,417</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>6,156</td>
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<td>3 Employee Benefits</td>
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<td>183,266</td>
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<td>4,026,024</td>
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<td><strong>Total</strong></td>
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<td><strong>$4,770,863</strong></td>
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</table>

*156-Division of Environmental Protection - Solid Waste Enforcement Fund*

(WV Code Chapter 22)

**Fund 3333 FY 2010 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1 Personal Services</td>
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<td>004</td>
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<td>741,892</td>
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<td><strong>Total</strong></td>
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*157-Division of Environmental Protection - Air Pollution Control Fund*

(WV Code Chapter 22)

**Fund 3336 FY 2010 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<td>004</td>
<td>55,389</td>
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<td>1,294,579</td>
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<td>2,308,152</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$7,582,970</strong></td>
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### 158-Division of Environmental Protection - Environmental Laboratory Certification Fund

(WV Code Chapter 22)

**Fund 3340 FY 2010 Org 0313**

<table>
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<th>Code</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$158,556</td>
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<td>$364,450</td>
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### 159-Division of Environmental Protection - Stream Restoration Fund

(WV Code Chapter 22)

**Fund 3349 FY 2010 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
<td>$2,533,626</td>
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</table>

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

(WV Code Chapter 22)

**Fund 3486 FY 2010 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
<td>$60,000</td>
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</table>

### 161-Division of Environmental Protection - Recycling Assistance Fund

(WV Code Chapter 22)
### Fund 3487 FY 2010 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$377,086</td>
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<td>Annual Increment</td>
<td>004</td>
<td>6,788</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>2,256,743</td>
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</table>

**162-Division of Environmental Protection - Mountaintop Removal Fund**

(WV Code Chapter 22)

### Fund 3490 FY 2010 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$768,384</td>
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<td>Annual Increment</td>
<td>004</td>
<td>11,723</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>281,953</td>
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<td>099</td>
<td>492,090</td>
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<td>Total</td>
<td></td>
<td>$1,554,150</td>
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</table>

**163-Oil and Gas Conservation Commission — Special Oil and Gas Conservation Fund**

(WV Code Chapter 22C)

### Fund 3371 FY 2010 Org 0315

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$115,814</td>
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<td>Annual Increment</td>
<td>004</td>
<td>2,976</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>37,262</td>
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<td>099</td>
<td>73,206</td>
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<td>Total</td>
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<td>$229,258</td>
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</table>

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**164-Board of Barbers and Cosmetologists**
Fund 5425 FY 2010 Org 0505

1 Personal Services ................. 001 $ 0
2 Annual Increment ................. 004 0
3 Employee Benefits ............... 010 0
4 Unclassified ..................... 099 0
5 Total .......................... $ 0

165-WV Board of Medicine

Fund 5106 FY 2010 Org 0506

1 Unclassified - Total ............. 096 $ 0

166-Division of Health - Tobacco Settlement Expenditure Fund

Fund 5124 FY 2010 Org 0506

1 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 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

167-Division of Health - Vital Statistics

Fund 5124 FY 2010 Org 0506

1 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 2009 are hereby re appropriated for expenditure during the fiscal year 2010.

167-Division of Health - Vital Statistics

Fund 5124 FY 2010 Org 0506

1 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 2009 are hereby reappropriated for expenditure during the fiscal year 2010.
### Fund 5144 FY 2010 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$342,687</td>
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<td>$11,190</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>$1,146,534</td>
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</table>

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

(WV Code Chapter 16)

### Fund 5156 FY 2010 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
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<tr>
<td>2</td>
<td>Institutional Facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Operations (R)</td>
<td>335</td>
<td>$38,674,129</td>
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<td>4</td>
<td>Medical Services Trust Fund -</td>
<td></td>
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<tr>
<td>5</td>
<td>Transfer (R)</td>
<td>512</td>
<td>$25,300,000</td>
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<td>6</td>
<td>Total</td>
<td></td>
<td>$64,174,567</td>
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</table>

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010, except for fund 5156, activity 040 (fiscal year 2008); $414,508.51 for fund 5156, activity 335 (fiscal year 2004); $514,104.86 for fund 5156, activity 335 (fiscal year 2005); $1,784,716.00 for fund 5156, activity 335 (fiscal year 2006); and $3,403,952.63 for fund 5156, activity 335 (fiscal year 2008) which shall expire on June 30, 2009.

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

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

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 2010, 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, 2009, the sum of $160,000 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.

169-Division of Health - Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2010 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<tr>
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<td>$2,195,266</td>
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</table>
### 170-Division of Health - Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2010 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
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<td>$7,936</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$160,258</td>
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### 171-Division of Health - Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2010 Org 0506

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$61,049</td>
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<td>Annual Increment</td>
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<td>$2,047</td>
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<td>Employee Benefits</td>
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### 172-Division of Health - Lead Abatement Fund

(WV Code Chapter 16)

Fund 5204 FY 2010 Org 0506

<table>
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<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>$40,000</td>
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### 173-Division of Health - West Virginia Birth to Three Fund
### Fund 5214 FY 2010 Org 0506

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
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<td>24,195,585</td>
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#### 174-Division of Health - Tobacco Control Special Fund

### Fund 5218 FY 2010 Org 0506

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<th>Description</th>
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#### 175-West Virginia Health Care Authority — Health Care Cost Review Fund

### Fund 5375 FY 2010 Org 0507

<table>
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<th>Amount</th>
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<tr>
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<td>31,072</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>690,728</td>
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<tr>
<td>Hospital Assistance</td>
<td>025</td>
<td>600,000</td>
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<td>$6,663,040</td>
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</table>

The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code and from the special revolving fund designated health care cost review fund.
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 WV Code 16-29G-4.

176-West Virginia Health Care Authority - West Virginia Health Information Network Account

(WV Code Chapter 16)

Fund 5380 FY 2010 Org 0507

1 Unclassified .................. 099 $ 1,500,000
2 Technology Infrastructure Network . 351 3,500,000
3 Total ..................... $ 5,000,000

177-West Virginia Health Care Authority - Revolving Loan Fund

(WV Code Chapter 16)

Fund 5382 FY 2010 Org 0507

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

178-Division of Human Services - Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2010 Org 0511

1 Medical Services ................. 189 $ 165,595,278
2 Medical Services Administrative Costs . 789 412,022
3 Total ......................... $ 166,007,300

4 From the above appropriation for Medical Services Administrative Costs (fund 5090, activity 789), $200,000
shall be transferred to the tax division per WV Code §11-27-32 and the remainder 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).

179-Division of Human Services - Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2010 Org 0511

1 Unclassified - Total (R) ............. 096 $44,287,194

2 Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 5094, activity 096) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010, except for fund 5094, activity 096, fiscal year 2006 which shall expire on June 30, 2009.

180-Division of Human Services - Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2010 Org 0511

1 Medical Services ..................... 189 $30,556,594
2 Medical Services Administrative Costs 789 536,433
3 Total ................................. $31,093,027

4 The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as
6 defined and authorized in subsection (c) of WV Code 9-4A-7 2a. Expenditures from the fund are limited to the following:
8 payment of backlogged billings, funding for services to
9 future federally mandated population groups and payment
10 of the required state match for medicaid disproportionate
11 share payments. The remainder of all moneys deposited in
12 the fund shall be transferred to the division of human
13 services accounts.

181-Division of Human Services -
James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2010 Org 0511

<table>
<thead>
<tr>
<th></th>
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<th>$1,609,076</th>
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182-Family Protection Services Board -
Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2010 Org 0511

<table>
<thead>
<tr>
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<th>Unclassified - Total ......... 096</th>
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</thead>
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183-Division of Human Services -
West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2010 Org 0511

<table>
<thead>
<tr>
<th></th>
<th>Unclassified - Total ......... 096</th>
<th>$1,700,000</th>
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</table>
184–Division of Human Services -  
*West Virginia Works Separate State Two-Parent Program Fund*  

(WV Code Chapter 9)  

Fund 5468 FY 2010 Org 0511  

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

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

185-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 2010 Org 0601  

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

186-State Armory Board -  
General Armory Fund  

(WV Code Chapter 15)  

Fund 6057 FY 2010 Org 0603  

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

187-Division of Homeland Security and Emergency Management -  
*West Virginia Interoperable Radio Project*
188-West Virginia Division of Corrections -
Parolee Supervision Fees

(WV Code Chapter 62)

<table>
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<th>Fund 6362 FY 2010 Org 0608</th>
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<td>1 Personal Services ........... 001 $ 275,000</td>
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<td>2 Annual Increment ............. 004 $ 2,070</td>
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<tr>
<td>3 Employee Benefits .......... 010 $ 88,812</td>
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<td>4 Unclassified ............... 099 $ 376,923</td>
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<td>5 Total ...................... $ 742,805</td>
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</table>

189-West Virginia State Police -
Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

<table>
<thead>
<tr>
<th>Fund 6501 FY 2010 Org 0612</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $ 765,276</td>
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<tr>
<td>2 Annual Increment ........... 004 $ 29,580</td>
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<td>3 Employee Benefits .......... 010 $ 294,849</td>
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<td>4 Unclassified ............... 099 $ 375,127</td>
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<tr>
<td>5 BRIM Premium ............... 913 $ 302,432</td>
</tr>
<tr>
<td>6 Total ...................... $1,767,264</td>
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</table>
The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

190-West Virginia State Police -
Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2010 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.

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

(WV Code Chapter 15)

Fund 6516 FY 2010 Org 0612

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

192-West Virginia State Police -
Surplus Transfer Account
Ch. 10] APPROPRIATIONS 173

(WV Code Chapter 15)

Fund 6519 FY 2010 Org 0612

1 Unclassified (R) ..................... 099 $ 312,002
2 BRIM Premium ..................... 913 54,063
3 Total ..................... $ 366,065

4 Any unexpended balance remaining in the appropriation for Unclassified (fund 6519, fiscal year 2008, activity 099) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

193-West Virginia State Police - Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2010 Org 0612

1 Unclassified ..................... 099 $ 246,879
2 BRIM Premium ..................... 913 18,524
3 Total ........................ $ 265,403

194-West Virginia State Police - Bail Bond Enforcer Fund

(WV Code Chapter 15)

Fund 6532 FY 2010 Org 0612

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

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

(WV Code Chapter 9A)
174 APPROPRIATIONS

Fund 6703 FY 2010 Org 0613

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

196-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2010 Org 0615

1 Personal Services ................... 001 $1,374,952
2 Annual Increment .................... 004 21,860
3 Employee Benefits .................. 010 438,339
4 Debt Service ........................ 040 9,000,000
5 Unclassified ....................... 099 545,235
6 Total ............................. $11,380,386

197-Division of Veterans' Affairs -
WV Veterans' Home -
Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2010 Org 0618

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

198-Fire Commission -
Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2010 Org 0619

1 Personal Services ................... 001 $1,815,193
2 Annual Increment .................... 004 31,024
3 Employee Benefits .................. 010 647,548
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<tr>
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<th>Description</th>
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<tr>
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<td>6</td>
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</table>

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2009 is hereby available for expenditure as part of the fiscal year 2010 appropriation.

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

(WV Code Chapter 62)

Fund 6386 FY 2010 Org 0620

<table>
<thead>
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200-Criminal Justice Services - Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2010 Org 0620

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<tr>
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DEPARTMENT OF REVENUE

201-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2010 Org 0303

<table>
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<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,705,543</td>
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<td>2</td>
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176

APPROPRIATIONS

202–Office of the Secretary -
State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2010 Org 0701

1 Unclassified - Total - Transfer . . . . . 402 $ 23,701,000

2 The above appropriation for Unclassified - Total -
3 Transfer shall be transferred to the Consolidated Public
4 Retirement Board - West Virginia Teachers’ Retirement
5 System Employers Accumulation Fund (fund 2601).

203-Tax Division -
Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2010 Org 0702

1 Personal Services . . . . . . . . . . . . . . . 001 $ 17,274
2 Annual Increment . . . . . . . . . . . . . . . 004 340
3 Employee Benefits . . . . . . . . . . . . . . . 010 5,845
4 Unclassified . . . . . . . . . . . . . . . . . . . 099 7,717
5 Total . . . . . . . . . . . . . . . . . . . . . . $ 31,176

204-Tax Division -
Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2010 Org 0702

1 Personal Services . . . . . . . . . . . . . . . 001 $ 895,551
2 Annual Increment . . . . . . . . . . . . . . . 004 $ 23,100
3 Employee Benefits . . . . . . . . . . . . . . . 010 331,342
<table>
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<tr>
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<th>Code</th>
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205-Tax Division - Special District Excise Tax Administration Fund

(WV Code Chapter 11)

Fund 7086 FY 2010 Org 0702

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206-Tax Division - Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2010 Org 0702

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<tr>
<th></th>
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207-State Budget Office - Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2010 Org 0703

<table>
<thead>
<tr>
<th></th>
<th>Public Employees Insurance Reserve Fund — Transfer</th>
<th></th>
<th>903</th>
<th>6,800,000</th>
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</thead>
</table>

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

208-Insurance Commissioner - Examination Revolving Fund
## 209-Insurance Commissioner - Consumer Advocate

(WV Code Chapter 33)

<table>
<thead>
<tr>
<th>Fund 7151 FY 2010 Org 0704</th>
</tr>
</thead>
</table>

1. Personal Services .......... 001 $375,601
2. Annual Increment ........... 004 5,640
3. Employee Benefits .......... 010 129,597
4. Unclassified ................ 099 281,626
5. Total ...................... $792,464

## 210-Insurance Commissioner

(WV Code Chapter 33)

<table>
<thead>
<tr>
<th>Fund 7152 FY 2010 Org 0704</th>
</tr>
</thead>
</table>

1. Personal Services .......... 001 $16,045,026
2. Annual Increment ........... 004 353,336
3. Employee Benefits .......... 010 6,848,269
4. Unclassified ................ 099 14,286,885
5. Total ...................... $37,533,516

6. The total amount of this appropriation shall be paid from
7. a special revenue fund out of collections of fees and charges
8. as provided by law.
## APPROPRIATIONS

### 211-Insurance Commissioner – Workers’ Compensation Old Fund

(WV Code Chapter 23)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
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</thead>
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<tr>
<td>7162</td>
<td>2010</td>
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<tbody>
<tr>
<td>Unclassified</td>
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### 212-Insurance Commissioner – Workers’ Compensation Uninsured Employers’ Fund

(WV Code Chapter 23)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
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<td>2010</td>
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</tr>
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<table>
<thead>
<tr>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
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<td>$27,000,000</td>
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</table>

### 213-Insurance Commissioner – Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>7164</td>
<td>2010</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
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<td>$5,000,000</td>
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### 214-Insurance Commissioner – Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
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</thead>
<tbody>
<tr>
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<table>
<thead>
<tr>
<th>Description</th>
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<th>Amount</th>
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<tr>
<td>Unclassified</td>
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</tbody>
</table>

### 215-Lottery Commission - Revenue Center Construction Fund

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>
### Fund 7209 FY 2010 Org 0705

1. Unclassified - Total .......... 096 $73,000,000

**216-Municipal Bond Commission**

### Fund 7253 FY 2010 Org 0706

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<th>Item</th>
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<tr>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>$324,012</td>
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</table>

**217-Racing Commission - Relief Fund**

### Fund 7300 FY 2010 Org 0707

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

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

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

**218-Racing Commission - Administration and Promotion**
(WV Code Chapter 19)

Fund 7304 FY 2010 Org 0707

1 Personal Services .................... 001 $123,351
2 Annual Increment .................... 004 2,170
3 Employee Benefits .................. 010 32,456
4 Unclassified ........................ 099 82,161
5 Total .................................. $240,138

219-Racing Commission -
General Administration

(WV Code Chapter 19)

Fund 7305 FY 2010 Org 0707

1 Personal Services .................... 001 $1,796,977
2 Annual Increment .................... 004 25,206
3 Employee Benefits .................. 010 462,987
4 Unclassified ........................ 099 755,728
5 Total .................................. $3,040,898

220-Racing Commission -
Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2010 Org 0707

1 Unclassified - Total ............... 096 $2,770,956

221-Alcohol Beverage Control Administration -
Wine License Special Fund

(WV Code Chapter 60)
182 APPROPRIATIONS [Ch. 10

Fund 7351 FY 2010 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 2010 Org 0708

1 Personal Services .................... 001 $3,683,360
2 Annual Increment .................... 004 98,092
3 Employee Benefits ................... 010 1,629,154
4 Unclassified ......................... 099 3,030,048
5 Total ............................. $8,440,654

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

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

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

13 There is hereby appropriated from liquor revenues, in
14 addition to the above appropriation, the necessary amount
15 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 2010 Org 0802

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

224-Division of Motor Vehicles - Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2010 Org 0802

1 Unclassified - Total ................. 096 $4,597,699

225-Division of Highways - A. James Manchin Fund

(WV Code Chapter 17)

Fund 8319 FY 2010 Org 0803

1 Unclassified - Total ................. 096 $2,719,000

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

(WV Code Chapter 17)

Fund 8254 FY 2010 Org 0806

1 Unclassified - Total ................. 096 $2,500,000
BUREAU OF SENIOR SERVICES

227-Bureau of Senior Services - Community Based Service Fund

(WV Code Chapter 22)

Fund 5409 FY 2010 Org 0508

1 Unclassified - Total .................. 096 $7,250,000

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 2010 Org 0442

1 Debt Service ......................... 040 $4,822,241
2 General Capital Expenditures (R) . 306 500,000
3 Total ............................. 036 $5,322,241

4 Any unexpended balance remaining in the appropriation for General Capital Expenditures (fund 4902, activity 306, fiscal year 2009) at the close of fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

8 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.
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 2010 Org 0442

1 Debt Service ......................... 040 $ 23,429,974
2 General Capital Expenditures ...... 306 3,000,000
3 Facilities Planning
4 and Administration (R) ........ 386 414,056
5 Total ............................... $ 26,844,030

Any unexpended balance remaining in the appropriation for Facilities Planning and Administration (fund 4903, activity 386) at the close of fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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
Any unexpended balance remaining in the appropriation at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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-Higher Education Policy Commission -
West Virginia University -
West Virginia University Health Sciences Center

Any unexpended balance remaining in the appropriation at the close of fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

232-Higher Education Policy Commission -
Marshall University -
Marshall University Land Sale Account
Fund 4270 FY 2010 Org 0471
1 Unclassified - Total ............ 096 $2,292,914

2 The total amount of this appropriation shall be used for
3 the purchase of additional real property or technology, or for
4 capital improvements at the institution.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

233-Board of Barbers and Cosmetologists

(WV Code Chapter 16 and 30)

Fund 5425 FY 2010 Org 0505

1 Personal Services ................. 001 $257,886
2 Annual Increment ................. 004 7,750
3 Employee Benefits ............... 010 115,033
4 Unclassified ....................... 099 119,366
5 Total ................................ $500,035

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.

234-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2010 Org 0509

1 Personal Services ................. 001 $48,520
2 Annual Increment ................. 004 1,180
3 Employee Benefits ............... 010 18,568
### 235-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

**Fund 8517 FY 2010 Org 0906**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Code</th>
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<tbody>
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### 236-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

**Fund 8520 FY 2010 Org 0907**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Code</th>
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### 237-Public Service Commission

(WV Code Chapter 24)

**Fund 8623 FY 2010 Org 0926**

<table>
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<td>114,609</td>
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<tr>
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<td>$18,945,422</td>
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</tbody>
</table>
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.

238-Public Service Commission -
Gas Pipeline Division —
Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2010 Org 0926

<table>
<thead>
<tr>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
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</table>

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

239-Public Service Commission -
Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2010 Org 0926
<table>
<thead>
<tr>
<th></th>
<th>Code</th>
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<tbody>
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<td>$2,813,900</td>
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The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

240-Public Service Commission - Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2010 Org 0926

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

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

241-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2010 Org 0927

<table>
<thead>
<tr>
<th></th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 368,686</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>8,828</td>
</tr>
</tbody>
</table>
Ch. 10] APPROPRIATIONS 191

3 Employee Benefits ................. 010 125,754
4 Unclassified ....................... 099 300,622
5 Total .................................. $ 803,890

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

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

(WV Code Chapter 30)

Fund 8646 FY 2010 Org 0930

1 Unclassified - Total ............... 096 $ 114,000

243-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2010 Org 0935

1 Unclassified - Total ............... 096 $ 112,120

244-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2010 Org 0936

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

245-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2010 Org 0938

1 Unclassified - Total ............... 096 $ 125,578
246-Board of Medicine

(WV Code Chapter 30)

Fund 9070 FY 2010 Org 0945

1 Unclassified - Total ............. 096 $1,231,332

247-Economic Development Project Bridge Loan Fund

(WV Code Chapter 29)

Fund 9066 FY 2010 Org 0944

1 Unclassified - Total ............. 096 $2,400,000

2 The above appropriation for Unclassified-Total (activity 096) shall be transferred to the Housing Development Fund.

248-Board of Treasury Investments

(WV Code Chapter 12)

Fund 9152 FY 2010 Org 0950

1 Unclassified - Total ............. 096 $1,266,707

2 There is hereby appropriated from this fund, in addition to the above appropriation, the amount of funds necessary for the Board of Treasury Investments to pay the fees and expenses of custodians, fund advisors and fund managers for the Consolidated fund of the State as provided in Chapter 12, Article 6C of the West Virginia Code.

3 The total amount of the appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.
Sec. 4. Appropriations from lottery net profits. - Net profits of the lottery are to be deposited by the director of the lottery to the following accounts in the amounts indicated. The director of the lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, 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.

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

(WV Code Chapter 5)

Fund 2252 FY 2010 Org 0211

<table>
<thead>
<tr>
<th>Lottery Activity Funds</th>
</tr>
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<tbody>
<tr>
<td>Debt Service - Total</td>
</tr>
<tr>
<td>$8,240,000</td>
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</tbody>
</table>

250-West Virginia Development Office - Division of Tourism
APPROPRIATIONS

(WV Code Chapter 5B)

Fund 3067 FY 2010 Org 0304

1 Other Post Employee Benefits - Transfer 289 $ 0
2 Tourism - Telemarketing Center ... 463 86,400
3 WV Film Office .................. 498 348,159
4 Tourism - Unclassified (R) ........ 618 3,092,931
5 Tourism - Special Projects (fund 3067, activity 859) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.
6 Total .......................... $ 7,606,448

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), and Tourism - Special Projects (fund 3067, activity 859) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

251-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2010 Org 0310

1 Gypsy Moth Suppression
2 Program for State Parks (R) .... 017 $ 42,997
3 Unclassified (R) ................. 099 2,279,975
4 Other Post Employee Benefits - Transfer 289 0
5 Pricketts Fort State Park ....... 324 120,000
6 Non-Game Wildlife (R) ......... 527 429,357
7 State Parks and
8 Recreation Advertising (R) ..... 619 577,614
9 Total .......................... $ 3,449,943

Any unexpended balances remaining in the appropriations for Gypsy Moth Suppression Program for State Parks (fund 3267, activity 017), Unclassified (fund
3267, activity 099), Capital Outlay - Parks (fund 3267, activity 288), Non-Game Wildlife (fund 3267, activity 527), and State Parks and Recreation Advertising (fund 3267, activity 619) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

252-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2010 Org 0402

1 Unclassified (R) ....................... 099 $ 4,116,000
2 Other Post Employee Benefits - Transfer 289 0
3 FBI Checks .......................... 372 114,831
4 Vocational Education
5 Equipment Replacement ........... 393 812,067
6 Assessment Program (R) .......... 396 6,444,969
7 SAS in Schools ...................... 613 0
8 21st Century Technology Infrastructure
9 Network Tools and Support (R) . 933 22,854,919
10 Total ................................. $ 34,342,786

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, activity 099), Technology Infrastructure Network (fund 3951, activity 351), Assessment Program (fund 38951, activity 396), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, activity 933) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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

(WV Code Chapter 18)
Fund 3963 FY 2010 Org 0402

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

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

(WV Code Chapter 5F)

Fund 3508 FY 2010 Org 0431

1 Unclassified (R) ............... 099 $ 220,000
2 Commission for National and
3 Community Service .......... 193 435,050
4 Other Post Employee Benefits - Transfer 289 0
5 Arts Programs (R) .............. 500 80,000
6 College Readiness (R) ........... 579 181,577
7 Challenger Learning Center ...... 862 125,000
8 Statewide STEM 21st Century
9 Academy ....................... 897 150,000
10 Total ......................... $ 1,191,627

11 Any unexpended balances remaining in the
12 appropriations for Unclassified (fund 3508, activity 099),
13 Arts Programs (fund 3508, activity 500), and College
14 Readiness (fund 3508, activity 579) at the close of fiscal
15 year 2009 are hereby reappropriated for expenditure during
16 the fiscal year 2010.

255-Division of Culture and History -
Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2010 Org 0432
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1 Huntington Symphony ....... 027  $ 95,000
2 Martin Luther King, Jr.
3 Holiday Celebration ....... 031  10,800
4 Fairs and Festivals .......... 122  2,776,340
5 Archeological Curation/Capital
6 Improvements (R) ......... 246  53,005
7 Other Post Employee Benefits - Transfer 289  0
8 Historic Preservation Grants (R) ... 311  556,499
9 West Virginia Public Theater ... 312  190,000
10 Tri-County Fair Association ...... 343  23,750
11 George Tyler Moore Center for the Study of the Civil War ......... 397  57,000
12 Greenbrier Valley Theater .... 423  142,500
13 Theater Arts of West Virginia ..... 464  300,000
15 Marshall Artists Series .......... 518  57,000
16 Grants for Competitive Arts
17 Program (R) ............... 624  1,075,000
18 West Virginia State Fair ...... 657  50,000
19 Contemporary American Theater
20 Festival ..................... 811  95,000
21 Independence Hall .......... 812  47,500
22 Mountain State Forest Festival .... 864  66,500
23 WV Symphony ............... 907  95,000
24 Wheeling Symphony .......... 908  95,000
25 Appalachian Children’s Chorus ... 916  95,000
26 Total .......................... $5,880,894

27 Any unexpended balances remaining in the appropriations for Archeological Curation/Capital Improvements (fund 3534, activity 246), Historic Preservation Grants (fund 3534, activity 311), Grants for Competitive Arts Program (fund 3534, activity 624), and Project ACCESS (fund 3534, activity 865) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.
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 (Fayette) $4,500, African-American Jubilee (Ohio) $5,500, Alderson 4th of July Celebration (Greenbrier) $5,000, 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, Antique Market Fair (Lewis) $2,000, Apollo Theater-Summer Program (Berkeley) $2,000, Appalachian Autumn Festival (Braxton) $3,500, Appalachian Mountain Bike Race (Calhoun) $1,500, Apple Butter Festival (Morgan) $6,000, Aracoma Story (Logan) $50,000, Arkansaw Homemaker's Heritage Weekend (Hardy) $3,500, Armed Forces Day-South Charleston (Kanawha) $3,000, Arthurdale Heritage New Deal Festival (Preston) $5,000, Arts Monongahela (Monongalia) $20,000, Athens Town Fair (Mercer) $2,000, Augusta Fair (Randolph) $5,000, Barbour County Arts & Humanities Council $1,500, Barbour County Fair $25,000, Barboursville Octoberfest (Cabell) $5,000, Bass Festival (Pleasants) $1,850, Battelle District Fair (Monongalia) $5,000, Battle of Dry Creek (Greenbrier) $1,500, Battle of Lewisburg Civil War Days (Greenbrier) $3,000, Battle of Point Pleasant Memorial Committee (Mason) $5,000, Beckley Main Street (Raleigh) $5,000, Belle Boyd House (Berkeley) $2,000, Belle Town Fair (Kanawha) $4,500, Bergoo Down Home Days (Webster) $2,500, Berkeley County Youth Fair $18,500, Black Bear 4K Mountain Bike Race $1,000, Black Heritage Festival (Harrison) $6,000, Black Walnut Festival (Roane) $10,000, Blue-Gray Reunion (Barbour) $3,500, Boone County Fair $10,000, Boone County Labor Day Celebration $4,000, Bradshaw Fall Festival (McDowell) $2,000, Bramwell Street Fair (Mercer) $3,500, Braxton County Fairs and Festivals Association $11,500, Braxton County Monster Fest/WV Autumn
Ch. 10] APPROPRIATIONS 199

72 Festival $2,500, Bridgeport Bennedum Festival (Harrison)
73 $1,500, Brooke County Fair $3,500, Bruceton Mills Good
74 Neighbor Days (Preston) $2,000, Buckwheat Festival
75 (Preston) $8,500, Buffalo 4th of July Celebration (Putnam)
76 $500, Buffalo Creek Memorial (Logan) $5,000, Burlington
77 Apple Harvest Festival (Mineral) $30,000, Burlington
78 Pumpkin Harvest Festival (Raleigh) $5,000, Cabell County
79 Fair $10,000, Calhoun County Wood Festival $2,000,
80 Campbell's Creek Community Fair (Kanawha) $2,500, Cape
81 Coalwood Festival Association (McDowell) $2,500, Capon
82 Bridge Annual VFD Celebration (Hampshire) $1,000,
83 Capon Bridge Founders Day Festival (Hampshire) $2,000,
84 Capon Springs Ruritan 4th of July (Hampshire) $1,000,
85 Carnegie Hall, Inc. (Greenbrier) $70,000, Cass
86 Homecoming (Pocahontas) $2,000, Cedarville Town
87 Festival (Gilmer) $1,000, Celebration in the Park (Wood)
88 $4,000, Celebration of America (Monongalia) $6,000,
89 Ceredo Historical Society (Wayne) $2,000, Ceredo-Kenova
90 Railroad Museum (Wayne) $2,000, Chapmanville Apple
91 Butter Festival (Logan) $1,000, Chapmanville Fire
92 Department 4th of July $3,000, Charles Town Christmas
93 Festival (Jefferson) $5,000, Charles Town Heritage Festival
94 (Jefferson) $5,000, Cherry River Festival (Nicholas) $6,500,
95 Chester Fireworks (Hancock) $1,500, Chester Fourth of July
96 Festivities (Hancock) $5,000, Chief Logan State Park-Civil
97 War Celebration (Logan) $8,000, Christmas in
98 Shepherdstown (Jefferson) $4,000, Christmas in the Park
99 (Brooke) $5,000, Christmas in the Park (Logan) $25,000,
100 City of Dunbar Critter Dinner (Kanawha) $10,000, City of
101 New Martinsville Festival of Memories (Wetzel) $11,000,
102 City of Pleasant Valley Celebration (Marion) $2,500, Civil
103 War Horse Cavalry Race (Barbour) $1,000, Clay County
104 Golden Delicious Apple Festival $7,000, Coal Field
105 Jamboree (Logan) $35,000, Coalton Days Fair (Randolph)
106 $7,000, Collis P. Huntington Railroad Historical Society
107 $10,000, Country Roads Festival (Fayette) $2,000, Cowen
108 Railroad Festival (Webster) $3,500, Craigsville Fall Festival
109 (Nicholas) $3,500, Delbarton Homecoming (Mingo) $3,500,
110 Dodridge County Fair $7,000, Durbin Days (Pocahontas)
111 $5,000, Elbert/Filbert Reunion Festival (McDowell) $1,500,
112 Elizabethtown Festival (Marshall) $5,000, Elkins Randolph
113 County 4th of July Car Show $2,000, Fairview 4th of July
114 Celebration (Marion) $1,000, Farm Safety Day (Preston)
115 $2,000, Fayette American Legion 4th of July $1,000,
116 FestivALL Charleston (Kanawha) $20,000, First Stage
117 Children's Theater Company (Cabell) $2,000, Flanagan
118 Murrell House (Summers) $10,000, Flemington Day Fair
119 and Festival (Taylor) $3,500, Follansbee Community Days
120 (Brooke) $8,250, Fort Ashby Fort (Mineral) $1,500, Fort
121 Gay Mountain Heritage Days (Wayne) $5,000, Fort New
122 Salem (Harrison) $3,700, Fort Randolph (Mason) $5,000,
123 Frankford Autumnfest (Greenbrier) $5,000, Franklin Fishing
124 Derby (Pendleton) $7,500, Franklins Fireman Carnival
125 (Pendleton) $5,000, Freshwater Folk Festival (Greenbrier)
126 $5,000, Frieda J. Riley Award (Harrison) $3,000, Friends
127 Auxiliary of W.R. Sharpe Hospital $5,000, Frontier Days
128 (Harrison) $3,000, Frontier Fest/Canaan Valley (Taylor
129 County) $5,000, Fund for the Arts-Wine & All that Jazz
130 Festival $2,500, Gassaway Days Celebration (Braxton)
131 $5,000, General Adam Stephen Memorial Foundation
132 $18,525, Gilbert Kiwanis Harvest Festival (Mingo) $4,000,
133 Gilbert Spring Fling (Mingo) $5,000, Gilmer County Farm
134 Show $4,000, Grafton Mother's Day Shrine Committee
135 (Taylor) $8,500, Grant County Arts Council $2,000, Grape
136 Stomping Wine Festival (Nicholas) $2,000, Great
137 Greenbrier River Race (Pocahontas) $10,000, Greater
138 Quinwood Days (Greenbrier) $2,000, Green Spring Days
139 (Hampshire) $1,000, Guyandotte Civil War Days (Cabell)
140 $10,000, Hamlin 4th of July Celebration (Lincoln) $5,000,
141 Hampshire Civil War Celebration Days $1,000, Hampshire
142 County 4th of July Celebration $20,000, Hampshire County
143 Fair $6,000, Hampshire County French & Indian War
144 Celebration $1,000, Hampshire Heritage Days $4,000,
145 Hancock County Oldtime Fair $5,000, Hardy County
Commission - 4th of July $10,000, Hardy County Tour and Crafts Association $20,000, Hatfield McCoy Mteawan
Reunion Festival (Mingo) $5,000, Hatfield McCoy Trail
National ATV and Dirt Bike Weekend $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) $5,000, Iaeger Lions Club Annual Golf Show (McDowell) $1,500, Iaeger Town Fair (McDowell) $1,500,
Indian Mound Cemetery (Hampshire) $2,000, Irish Heritage Festival of WV (Raleigh) $5,000, Irish Spring Festival (Lewis) $1,000, Italian Heritage Festival-Clarksburg (Harrison) $30,000, Jackson County Fair $5,000, Jacksonburg Homecoming (Wetzel) $1,000, Jane Lew Arts and Crafts Fair (Lewis) $1,000, Jefferson County African American Heritage Festival $5,000, Jefferson County Black History Preservation Society $5,000, Jefferson County Fair Association $25,000, Jefferson County Historical Landmark Commission $8,000, Jersey Mountain Ruritan Pioneer Days (Hampshire) $1,000, John Henry Days Festival (Monroe)
$5,000, Johnnie Johnson Blues and Jazz Festival (Marion)
$5,000, Johnstown Community Fair (Harrison) $2,500, Junior Heifer Preview Show (Lewis) $2,000, Kanawha Coal Riverfest-St. Albans $5,000, Kanawha County Fair (Kanawha) $5,000, Kay Ford Reunion (Kanawha) $2,500, Kenova Fall Festival (Wayne) $5,000, Kermit Fall Festival (Mingo) $3,000, Keyser Old Fashioned 4th of July Celebration (Mineral) $1,000, King Coal Festival (Mingo) $5,000, Kingwood Downtown Street Fair and...
Heritage Days (Preston) $2,000, L.Z. Rainelle WV
Veterans Reunion (Greenbrier) $5,000, Lady of
Agriculture (Preston) $1,000, Lamb and Steer Show
$9,000, Larry Joe Harless Center Octoberfest Hatfield
McCoy Trail (Mingo) $10,000, Last Blast of Summer
(McDowell) $5,000, Laurel Mt. Re-enactment Committee
(Barbour) $3,250, Levels VFD Lawn Association
(Hampshire) $1,000, Lewis County Fair Association $3,500,
Lewisburg Shanghai (Greenbrier) $2,000, Lincoln County
Fall Festival $8,000, Lincoln County Winterfest $5,000,
Lincoln District Fair (Marion) $2,500, Lindside 4th of July
(Monroe) $500, Little Birch Days Celebration (Braxton)
$500, Little Levels Heritage Festival $2,000, Logan County
Arts and Crafts Fair $4,000, Logan Freedom Festival
$15,000, Lost Creek Community Festival $7,000, Maddie
Carroll House (Cabell) $7,500, Mannington District Fair
(Marion) $6,000, Maple Syrup Festival (Randolph) $1,000,
Marion County FFA Farm Fest $2,500, Marmet Annual
Labor Day Celebration (Kanawha) $2,000, Marshall County
Antique Power Show $2,500, Marshall County Fair $7,500,
Marshall County Historical Society $8,500, Mason County
Fair $5,000, Mason Dixon Festival (Monongalia) $7,000,
Matewan Massacre Reenactment (Mingo) $6,000, Matewan-
Magnolia Fair (Mingo) $45,000, McARTS-McDowell
County $20,000, McCoy Theater (Hardy) $20,000,
McDowell County Fair $2,500, McGrew House History Day
$2,000, McNeill's Rangers (Mineral) $8,000, Meadow
Bridge Hometown Festival (Fayette) $1,250, Meadow River
Days Festival $3,000, Mercer Bluestone Valley Fair $2,000,
Mercer County Fair $2,000, Mid Ohio Valley Antique
Engine Festival (Wood) $3,000, Milton Christmas in the
Park (Cabell) $2,500, Milton Fourth of July Celebration
(Cabell) $2,500, Mineral County Fair $1,750, Mineral
County Veterans Day Parade $1,500, Molasses Festival
(Calhoun) $2,000, Monroe County Farmer's Day - Union
$2,000, Monroe County Harvest Festival $2,000, Moon
Over Mountwood Fishing Festival (Wood) $3,000, Morgan
APPROPRIATIONS

220 County Fair-History Wagon $1,500, Morgantown Theater
221 Company $20,000, Mothers' Day Festival (Randolph)
222 $2,500, Moundsville Bass Festival $4,000, Moundsville July
223 4th Celebration (Marshall) $5,000, Mount Liberty Fall
224 Festival (Barbour) $2,500, Mountain Fest (Monongalia)
225 $20,000, Mountain Festival (Mercer) $4,625, Mountain
226 Heritage Arts and Crafts Festival (Jefferson) $5,000,
227 Mountain Music Festival (McDowell) $2,500, Mountain
228 State Apple Harvest Festival (Berkeley) $7,500, Mountain
229 State Arts and Crafts Fair (Jackson) $40,000, Mountain
230 State Arts Crafts Fair Cedar Lakes (Jackson) $5,000,
231 Mountaineer Boys' State (Lewis) $10,000, Mountaineer Hot
232 Air Balloon Festival (Monongalia) $4,000, Mud River
233 Festival (Lincoln) $8,000, Mullens Dogwood Festival
234 (Wyoming) $7,000, Multi-Cultural Festival of West
235 Virginia $20,000, Music Hall of Fame (Marion) $5,000,
236 Nettle Festival (Pocahontas) $5,000, New Cumberland
237 Christmas Parade (Hancock) $3,000, New Cumberland
238 Fourth of July Fireworks (Hancock) $5,000, New River
239 Bridge Day Festival (Fayette) $40,000, Newburg Volunteer
240 Fireman's Field Day (Preston) $1,000, Newell Annual Clay
241 Festival (Hancock) $3,000, Nicholas County Fair $5,000,
242 Nicholas County Potato Festival $3,500, Nicholas Old Main
243 Foundation (Nicholas) $2,000, Norman Dillon Farm
244 Museum (Berkeley) $10,000, North Preston Farmers Club -
245 Civil War Times $1,000, North River Valley Festival
246 (Hampshire) $1,000, Northern Preston Mule Pull and
247 Farmers Days $4,000, Oak Leaf Festival (Fayette) $6,000,
248 Oceana Heritage Festival (Wyoming) $6,000, Oglebay City
249 Park - Festival of Lights (Ohio) $80,000, Oglebay Festival
250 (Ohio) $10,000, Ohio County Fair $9,000, Ohio Valley Beef
251 Association (Wood) $2,500, Old Central City Fair
252 (Huntington) $5,000, Old Opera House Theater Company
253 (Jefferson) $15,000, Old Tyme Christmas (Jefferson)
254 $2,400, Paden City Labor Day Festival (Wetzel) $6,500,
255 Parkersburg Arts Center $20,000, Parkersburg Homecoming
256 (Wood) $12,000, Patty Fest (Monongalia) $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, 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) $7,000, Pineville Festival (Wyoming) $6,000, Pleasants County Agriculture Youth Fair $5,000, Poca Heritage Days (Putnam) $3,000, Pocahontas County Pioneer Days $7,000, Point Pleasant Stern Wheel Regatta (Mason) $5,000, Potomac Highlands Maple Festival (Grant) $6,000, Princeton Street Fair (Mercer) $5,000, Putnam County Fair $5,000, Quartets on Parade (Hardy) $4,000, Ripley Fall Festival (Greenbrier) $3,000, Raleigh County All Wars Museum $10,000, Rand Community Center Festival (Kanawha) $2,500, Randolph County Community Arts Council $3,000, Randolph County Fair $7,000, Randolph County Ramp and Rails $2,000, Ranson Christmas Festival (Jefferson) $5,000, Ranson Festival (Jefferson) $5,000, Ravenswood Octoberfest (Jackson) $8,000, Reedsville VFD Fair (Preston) $2,000, Renick Liberty Festival (Greenbrier) $1,000, Rhododendron Girls' State (Ohio) $10,000, Riders of the Flood (Greenbrier) $3,000, Ripley 4th of July (Jackson) $15,000, Ritchie County Fair and Exposition $5,000, Ritchie County Pioneer Days $1,000, River City Festival (Preston) $1,000, Riverfest (Marion) $2,000, Roane Co. 4-H and FFA Youth Livestock Program $5,000, Roane County Agriculture Field Day $3,000, Ronceverte River Festival (Greenbrier) $5,000, Rowlesburg Labor Day Festival (Preston) $1,000, Rupert Country Fling (Greenbrier) $3,000, Saint Spyridon Greek Festival (Harrison) $2,500, Salem Apple Butter Festival (Harrison) $4,000, Scottish Heritage Society/N.Central WV Central
294 (Harrison) $5,000, Sistersville 4th of July Fireworks (Tyler)
295 $5,500, Smoke on the Water (Kanawha) $2,000, Smoke on
296 the Water (Wetzel) $3,000, Society for the Preservation of
297 McGrew House (Preston) $3,500, Soldiers' Memorial
298 Theater (Raleigh) $10,000, South Charleston Summerfest
299 (Kanawha) $10,000, Southern Wayne County Fall Festival
300 $1,000, Southern WV Veterans' Museum (Summers)
301 $4,500, Spirit of Grafton Celebration (Taylor) $7,000, Spirit
302 of Grafton Celebration (Taylor) $3,000, Spring Mountain
303 Festival (Grant) $4,000, Springfield Peach Festival
304 (Hampshire) $1,200, St. Albans City of Lights - December
305 (Kanawha) $5,000, Stoco Reunion (Raleigh) $2,500,
306 Stonewall Jackson Heritage Arts and Crafts $11,000,
307 Storytelling Festival (Lewis) $500, Strawberry Festival
308 (Upshur) $30,000, Summers County Historic Landmark
309 Commission $5,000, Tacy Fair (Barbour) $1,000, Taste of
310 Parkersburg (Wood) $5,000, Taylor County Fair $5,500,
311 Terra Alta VFD 4th of July Celebration (Preston) $1,000,
312 Those Who Served War Museum (Mercer) $4,000, Three
313 Rivers Avian Center (Summers) $15,000, Three Rivers Coal
314 Festival (Marion) $7,750, Thunder on the Tygart - Mothers'
315 Day Celebration $15,000, Town of Anawalt 60th year Inc.
316 Ceremony (McDowell) $1,500, Town of Delbarton 4th of
317 July Celebration $3,000, Town of Fayetteville Heritage
318 Festival (Fayette) $7,500, Town of Matoaka Hog Roast
319 (Mercer) $1,000, Treasure Mountain Festival (Pendleton)
320 $25,000, Tri-County Fair (Grant) $15,000, Tucker County
321 Arts Festival and Celebration $18,000, Tucker County Fair
322 $4,750, Tucker County Health Fair $2,000, Tug Valley Arts
323 Council (Mingo) $5,000, Tug Valley Chamber of
324 Commerce Coal House (Mingo) $2,000, Tunnelton Depot
325 Days (Preston) $1,000, Tunnelton Historical Society
326 (Preston) $2,000, Tunnelton Volunteer Fire Department
327 (Preston) $1,000, Turkey Festival (Hardy) $3,000, Tyler
328 County Fair $5,200, Tyler County Fourth of July $500,
329 Uniquely West Virginia Festival (Morgan) $2,000, Upper
330 Ohio Valley Italian Festival (Ohio) $12,000, Upshur County
Fair $7,000, Valley District Fair- Reedsville (Preston)
$3,500, Veterans Welcome Home Celebration (Cabell)
$3,000, Vietnam Veterans of America Christmas Party (Cabell)
$1,000, Volcano Days at Mountwood Park (Wood)
$5,000, War Homecoming Fall Festival $1,500, Wardensville Fall Festival (Hardy)
$5,000, Wayne County Fair $5,000, Wayne County Fall Festival
$5,000, Wayne County Fair $5,000, Webb Chapel Cemetery Association Event (Preston)
$2,000, Webster County Wood Chopping Festival $15,000, Webster Wild Water Weekend $2,000, Weirton July 4th Celebration (Hancock)
$20,000, Wellsburg 4th of July Celebration (Brooke)
$7,500, Wellsburg Apple Festival of Brooke County
$5,000, West Virginia Blackberry Festival (Harrison)
$5,000, West Virginia Chestnut Festival (Preston)
$1,000, West Virginia Coal Festival (Boone)
$10,000, West Virginia Dairy Cattle Show $10,000, West Virginia Dandelion Festival (Greenbrier)
$5,000, West Virginia Fair and Exposition (Wood)
$8,100, West Virginia Fireman's Rodeo (Fayette)
$2,500, West Virginia Honey Festival (Wood)
$2,000, West Virginia Museum of Glass (Lewis)
$5,000, West Virginia Music Hall Fame (Kanawha)
$3,000, West Virginia Oil and Gas Festival (Tyler)
$11,000, West Virginia Poultry Festival (Hardy)
$5,000, West Virginia Pumpkin Festival (Cabell)
$10,000, West Virginia Roundhouse Rail Days (Berkeley)
$10,000, West Virginia State Folk Festival (Gilmer)
$5,000, West Virginia State Folk Festival (Gilmer)
$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 Sterwheel Regatta (Ohio)
$10,000, Wheeling Vintage Raceboat Regatta (Ohio)
$20,000, Whipple Community Action (Fayette)
$2,500, Widen Days Festival (Clay) $2,000, Wileyville
368 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 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.

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.

256-Library Commission - Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2010 Org 0433

1 Books and Films ...................... 179 $ 450,000
2 Services to Libraries ................. 180 550,000
3 Grants to Public Libraries .......... 182 8,348,884
4 Other Post Employee Benefits - Transfer 289 0
5 Digital Resources ..................... 309 219,992
6 Libraries - Special Projects .......... 625 784,000
7 Infomine Network ..................... 884 842,005
8 Total ................................ 11,194,881

257-Bureau of Senior Services - Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2010 Org 0508
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services .............. 001</td>
<td>$137,542</td>
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<tr>
<td>2</td>
<td>Annual Increment ............. 004</td>
<td>2,600</td>
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<tr>
<td>3</td>
<td>Employee Benefits ............. 010</td>
<td>60,120</td>
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<td>4</td>
<td>Unclassified .................. 099</td>
<td>350,448</td>
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<tr>
<td>5</td>
<td>Local Programs Service Delivery Costs .............. 200</td>
<td>2,475,250</td>
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<td>6</td>
<td>Silver Haired Legislature ........ 202</td>
<td>15,000</td>
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<td>7</td>
<td>Area Agencies Administration .... 203</td>
<td>78,685</td>
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<td>8</td>
<td>Other Post Employee Benefits -Transfer 289</td>
<td>0</td>
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<tr>
<td>9</td>
<td>Senior Citizen Centers and Programs (R) .... 462</td>
<td>2,600,000</td>
</tr>
<tr>
<td>10</td>
<td>Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (R) .... 539</td>
<td>23,822,578</td>
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<tr>
<td>11</td>
<td>Roger Tompkins Alzheimers Respite Care ........... 643</td>
<td>1,796,248</td>
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<td>12</td>
<td>Regional Aged and Disabled Resource Center .................. 767</td>
<td>1,000,000</td>
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<tr>
<td>13</td>
<td>Senior Services Medicaid Transfer . 871</td>
<td>8,670,000</td>
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<tr>
<td>14</td>
<td>Legislative Initiatives for the Elderly 904</td>
<td>10,000,000</td>
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<tr>
<td>15</td>
<td>Long Term Care Ombudsman ..... 905</td>
<td>321,325</td>
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<td>16</td>
<td>BRIM Premium .................. 913</td>
<td>7,243</td>
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<tr>
<td>17</td>
<td>West Virginia Elder Watch ...... 934</td>
<td>150,000</td>
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<tr>
<td>18</td>
<td>In-Home Services and Nutrition for Senior Citizens ........ 917</td>
<td>5,700,000</td>
</tr>
<tr>
<td>19</td>
<td>Total ..............................</td>
<td>$57,187,039</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, activity 462), and Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (fund 5405, activity 539) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

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.

258-Community and Technical College —
Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2010 Org 0442

1 Debt Service - Total (R) ........... 310 $ 5,000,000

Any unexpended balance remaining in the appropriation for Debt Service - Total (fund 4908, activity 310) at the close of fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

259-Higher Education Policy Commission -
Lottery Education -
Higher Education Policy Commission -
Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2010 Org 0441

1 Marshall Medical School -
2 RHI Program and Site Support (R) 033 $ 449,326
3 WVU Health Sciences -
4 RHI Program and Site Support (R) 035 1,236,178
5 RHI Program and Site Support -
6 District Consortia (R) ........... 036 2,332,340
7 RHI Program and Site Support -
8 RHEP Program Administration (R) . 037 178,004
9 RHI Program and Site Support -
10 Grad Med Ed and Fiscal
11 Oversight (R) ................. 038 101,727
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>[Ch. 10]</th>
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</thead>
<tbody>
<tr>
<td>12</td>
<td>Higher Education Grant Program (R) 164</td>
<td>3,240,668</td>
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<tr>
<td>13</td>
<td>Tuition Contract Program (R) .......... 165</td>
<td>1,020,834</td>
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<td>14</td>
<td>Minority Doctoral Fellowship (R) .......... 166</td>
<td>150,000</td>
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<td>15</td>
<td>Underwood—Smith Scholarship Program - Student Awards (R) 167</td>
<td>141,142</td>
</tr>
<tr>
<td>16</td>
<td>Health Sciences Scholarship (R) .......... 176</td>
<td>250,900</td>
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<tr>
<td>17</td>
<td>Other Post Employee Benefits - Transfer 289</td>
<td>0</td>
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<tr>
<td>18</td>
<td>Vice Chancellor for Health Sciences —</td>
<td></td>
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<tr>
<td>19</td>
<td>Rural Health Residency Program (R) 601</td>
<td>262,713</td>
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<tr>
<td>20</td>
<td>MA Public Health Program and Health Science Technology (R) .. 623</td>
<td>60,030</td>
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<tr>
<td>21</td>
<td>Marshall University Graduate College Writing Project (R) ...... 807</td>
<td>24,193</td>
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<td>22</td>
<td>WV Engineering, Science, and Technology Scholarship Program (R) 868</td>
<td>470,473</td>
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<tr>
<td>23</td>
<td>Health Sciences Career Opportunities Program (R) .......... 869</td>
<td>363,675</td>
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<tr>
<td>24</td>
<td>HSTA Program (R) ....................... 870</td>
<td>1,343,803</td>
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<tr>
<td>25</td>
<td>WV Autism Training Center (R) ... 932</td>
<td>2,012,918</td>
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<tr>
<td>26</td>
<td>Center for Excellence in Disabilities (R) 967</td>
<td>277,458</td>
</tr>
<tr>
<td>27</td>
<td>Total ..........................</td>
<td>$13,916,382</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

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.
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 W.Va. Code 18C-5-3.

Total TITLE II, Section 4 - Lottery Revenue $ 166,010,000

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.

After first funding the appropriations required by W.V. Code §29-22-18a, the director of the lottery shall provide funding from the state excess lottery revenue fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the state excess lottery revenue fund are not sufficient to meet all the appropriations made pursuant to this section, then the director of the lottery shall first provide the necessary funds to meet the appropriation for Fund 7208, activity 482 of this section; next, to provide the funds necessary for Fund 7208, activity 095 of this section; next, to provide the funds necessary for Fund 3517, activity 775 of this section; next, to provide the funds necessary for Fund 3517, activity 062, Technology System Specialists of this section; next, to provide the funds necessary for Fund 3517, activity 978 of this section. Allocation of the funds for each appropriation shall be allocated in succession before any funds are provided for the next subsequent appropriation.

260-Lottery Commission -
Refundable Credit

Fund 7207 FY 2010 Org 0705
### Lottery Activity Funds

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>402</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under chapter eleven, article twenty-one, section twenty-one of the code. The amount of the required transfer shall be determined solely by the state tax commissioner and shall be completed by the director of the lottery upon the commissioner's request.

### 261-Lottery Commission - General Purpose Account

**Fund 7206 FY 2010 Org 0705**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>402</td>
<td>$65,000,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the General Revenue Fund as determined by the director of the lottery.

### 262-Education Improvement Fund

**Fund 4295 FY 2010 Org 0441**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>402</td>
<td>$29,000,000</td>
</tr>
</tbody>
</table>

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

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of
the Program to provide for the award of scholarships within the limits of available appropriations.

263-Economic Development Authority - Economic Development Project Fund

Fund 9065 FY 2010 Org 0944

1 Debt Service - Total ............... 310 $19,000,000

Pursuant to subsection (t), section eighteen-a, article twenty-two, chapter twenty-nine of the code, excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and subsection (f), section eighteen, article twenty-two, chapter twenty-nine of the code.

264-School Building Authority

Fund 3514 FY 2010 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 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

265-West Virginia Infrastructure Council

Fund 3390 FY 2010 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.

266-Higher Education Improvement Fund

Fund 4297 FY 2010 Org 0441

1 Unclassified - Total .................. 096 $10,000,000

267-State Park Improvement Fund

Fund 3277 FY 2010 Org 0310

1 Unclassified - Total (R) ............. 096 $5,000,000

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

Appropriations to the State Park Improvement Fund are not to be expended on personal services or employee benefits.

268-Lottery Commission - Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2010 Org 0705

1 Teachers’ Retirement Savings
2 Realized ............................... 095 $6,688,000
3 Other Post Employee Benefits - Transfer 289 0
4 Unclassified - Transfer ............... 482 62,900,000
5 School Access Safety .................. 978 0
6 Total ................................. $ 69,588,000
The above appropriation for Unclassified - Transfer (fund 7208, activity 482) shall be transferred to the General Revenue Fund.

The above appropriation for Teachers’ Retirement Savings Realized (fund 7208, activity 095) shall be transferred to the Employee Pension and Health Care Benefit Fund.

269—Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2010 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 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

270—Governor’s Office

(WV Code Chapter 5)

Fund 1046 FY 2010 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 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

271-Division of Finance

Fund 2208 FY 2010 Org 0209

Enterprise Resource Planning System
Planning Project ................. 087 $ 0
Any unexpended balance remaining in the appropriation Enterprise Resource Planning System Planning Project (fund 2208, activity 087) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

The above appropriation for Enterprise Resource Planning System Planning Project, activity 087, shall be expended upon consultation with the executive and legislative branches.

272—Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2010 Org 0231

Any unexpended balance remaining in the appropriation for Unclassified - Lottery Surplus (fund 2532, activity 928) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

273—West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2010 Org 0307

Any unexpended balances remaining in the appropriations for Recreational Grants or Economic Development Loans (fund 3170, activity 253), Economic Development Assistance (fund 3170, activity 900), and Connectivity Research and Development - Lottery Surplus (fund 3170, activity 923) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.
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.

274-State Department of Education

Fund 3517 FY 2010 Org 0402

1 Student Enrichment Program . . . . . 879 $ 0
2 Retirement Systems-Unfunded Liability 775 30,530,000
3 School Access Safety . . . . . . . . . . 978 10,000,000
4 Technology System Specialists . . 062 *5,000,000 0
5 Total . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $ 45,530,000

*From the above appropriation for Technology System Specialists (activity 062), the State Department of Education shall make available matching grants of $40,000 to county boards of education for each learning technology proficient school with a minimum net enrollment of 450 students for a full-time Technology System Specialist to be employed within the school. The grants shall be awarded until funds are exhausted. The grants shall be determined on a competitive basis by the West Virginia State Department of Education and report guidelines and procedures to the Legislative Oversight Committee on Education Accountability (LOCEA). The State Department of Education shall enter an agreement with each county board of education receiving a grant specifying a county board matching obligation of at least $20,000 of the total employment costs represented by each grant-funded position.

*CLERK'S NOTE: The Governor reduced the amount on line 4 from $5,000,000 to $0; and he deleted language on line 6 through line 28.
and the Technology System Specialist job description and qualifications. Learning technology proficient school is hereby defined as a public school having at least one classroom computer for every five students, at least one digital projector for every five classrooms and at least one interactive whiteboard, as evidenced by the West Virginia Department of Education 2008 Digital Divide Survey.

From the above appropriation for Retirement Systems - Unfunded Liability (fund 3517, activity 775) shall be transferred to the Consolidated Public Retirement Board-West Virginia Teachers' Retirement System Employers Accumulation Fund (fund 2601).

The above appropriation for School Access Safety (fund 3517, activity 978), shall be transferred to the School Access Safety Fund (fund 3516).

From the above appropriation for School Access Safety (activity 978) up to $5,000,000 may be used to work with public schools throughout the state for tactical surveys of the school facilities.

275—Higher Education Policy Commission - Administration - Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2010 Org 0441

Any unexpended balances remaining in the appropriations for Advanced Technology Centers (fund 4932, activity 028), and HEAPS Grant Program (fund 4932, activity 867) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

276-Division of Health — Central Office
(WV Code Chapter 16)

Fund 5219 FY 2010 Org 0506

1. Any unexpended balances remaining in the appropriations for Chief Medical Examiner — Capital Improvements — Lottery Surplus (fund 5219, activity 051), and Capital Outlay and Maintenance (fund 5219, activity 755) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.

277—Department of Military Affairs and Public Safety - Office of the Secretary

(WV Code Chapter 5F)

Fund 6005 FY 2010 Org 0601

1. Any unexpended balance remaining in the appropriation for Interoperable Communications System (fund 6005, activity 303) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

278—Division of Corrections - Correctional Units

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

Fund 6283 FY 2010 Org 0608

1. Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 6283, activity 589), and Capital Outlay and Maintenance (fund 6283, activity 755) at the close of the fiscal year 2009 are hereby reappropriated for expenditure during the fiscal year 2010.
279—Tax Division

(WV Code Chapter 11)

Fund 7082 FY 2010 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 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

Total TITLE II, Section 5 - Excess Lottery Funds $312,118,000

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 ten.

LEGISLATIVE

280-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2010 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Fund</th>
</tr>
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<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$1,314,969</td>
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<tr>
<td>Federal Economic Stimulus</td>
<td>$348,230</td>
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<tr>
<td>Total</td>
<td>$1,663,199</td>
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</table>
JUDICIAL

281-Supreme Court

Fund 8867 FY 2010 Org 2400

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

EXECUTIVE

282-Governor's Office - American Recovery and Reinvestment Act

(WV Code Chapter 5)

Fund 8701 FY 2010 Org 0100

1 Federal Economic Stimulus ........ 891 $266,468,000

2 The above appropriation for Federal Economic Stimulus shall be used in accordance with regulations and guidelines provided by the U.S. Department of Education which include restoring funding levels in the public education funding formula and higher education institutions.

283-Governor's Office - Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2010 Org 0100

1 Unclassified - Total ................. 096 $7,272,541
2 Federal Economic Stimulus ........ 891 $25,000,000
3 Total .............................. $32,272,541
### 284-Governor's Office - Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2010 Org 0100

<table>
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<tbody>
<tr>
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<tr>
<td>Federal Economic Stimulus</td>
<td>174,851</td>
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<tr>
<td>Total</td>
<td>$5,837,360</td>
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</table>

### 285-Auditor's Office - National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2010 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$14,006,826</td>
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</table>

### 286-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2010 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$4,303,826</td>
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<tr>
<td>Federal Economic Stimulus</td>
<td>716,000</td>
</tr>
<tr>
<td>Total</td>
<td>$5,019,826</td>
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</tbody>
</table>

### 287-Department of Agriculture - Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2010 Org 1400
288-Department of Agriculture -
State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2010 Org 1400

1 Unclassified - Total .................. 096  $ 852,868

290-Secretary of State -
State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2010 Org 1600

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

DEPARTMENT OF ADMINISTRATION

291-West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2010 Org 0228

1 Unclassified - Total .................. 096  $ 81,343
### 292—Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2010 Org 0230

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified - Total</td>
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<td>$37,948,479</td>
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### DEPARTMENT OF COMMERCE

#### 293-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2010 Org 0305

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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified - Total</td>
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<tr>
<td>Federal Economic Stimulus</td>
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<td>7,000,000</td>
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<tr>
<td>Total</td>
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#### 294-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2010 Org 0306

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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#### 295-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2010 Org 0307

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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.

300-Division of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2010 Org 0328

1 Unclassified - Total ................. 096 $1,505,435
2 Federal Economic Stimulus ........ 891 27,000,000
3 Total .................................. $ 28,505,435

DEPARTMENT OF EDUCATION

301-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2010 Org 0402

1 Unclassified - Total ................. 096 $235,000,000
2 Federal Economic Stimulus ........ 891 85,000,000
3 Total .................................. $ 320,000,000

302-State Department of Education - School Lunch Program
Ch. 10] APPROPRIATIONS 227

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2010 Org 0402

1 Unclassified - Total ............... 096 $ 115,000,000
2 Federal Economic Stimulus .... 891 650,000
3 Total ................................ $115,650,000

303-State Board of Education -
Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2010 Org 0402

1 Unclassified - Total ............... 096 $ 16,250,000

304-State Department of Education -
Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2010 Org 0402

1 Unclassified - Total ............... 096 $ 106,800,000
2 Federal Economic Stimulus .... 891 80,000,000
3 Total ................................ $ 186,800,000

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 5F)

Fund 8841 FY 2010 Org 0431
1 Unclassified - Total ................. 096  $ 325,000
2 Federal Economic Stimulus .......... 891  ___50,000
3 Total ..................................  $ 375,000

306-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2010 Org 0432

1 Unclassified - Total ................. 096  $ 2,233,324
2 Federal Economic Stimulus .......... 891  ___300,000
3 Total ..................................  $ 2,533,324

307-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2010 Org 0433

1 Unclassified - Total ................. 096  $ 1,950,351

308-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2010 Org 0439

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

309-State Board of Rehabilitation - Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2010 Org 0932
### APPROPRIATIONS

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**Fund 8890 FY 2010 Org 0932**

- State Board of Rehabilitation - Division of Rehabilitation Services - Disability Determination Services

(WV Code Chapter 18)

- Unclassified - Total: $21,731,781

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

**Fund 8708 FY 2010 Org 0313**

- Unclassified - Total: $153,476,907
- Federal Economic Stimulus: $64,700,000
- Total: $218,176,907

### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

**Fund 8723 FY 2010 Org 0506**

- Unclassified - Total: $7,325,557
### 313-Division of Health - Central Office

(WV Code Chapter 16)

**Fund 8802 FY 2010 Org 0506**

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### 314-Division of Health - West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

**Fund 8824 FY 2010 Org 0506**

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### 315-West Virginia Health Care Authority

(WV Code Chapter 16)

**Fund 8851 FY 2010 Org 0507**

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### 316-Human Rights Commission

(WV Code Chapter 5)

**Fund 8725 FY 2010 Org 0510**

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### Ch. 10] APPROPRIATIONS 231

1. **Unclassified - Total ............... 096 $ 438,899**

317-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2010 Org 0511

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DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

318-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2010 Org 0601

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319-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 8726 FY 2010 Org 0603

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320-Division of Homeland Security and Emergency Management
### APPROPRIATIONS

(WV Code Chapter 15)

**321-Division of Corrections**

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

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**322-West Virginia State Police**

(WV Code Chapter 15)

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**323-Division of Veterans’ Affairs**

(WV Code Chapter 9A)

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**324-Division of Veterans' Affairs - Veterans' Home**

(WV Code Chapter 9A)

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**324-Division of Veterans' Affairs - Veterans' Home**

(WV Code Chapter 9A)
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**325-Fire Commission**

(WV Code Chapter 29)

Fund 8819  FY 2010  Org 0619

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**326-Division of Criminal Justice Services**

(WV Code Chapter 15)

Fund 8803  FY 2010  Org 0620

| 1 | Unclassified - Total | 096 | $13,146,311 |
| 2 | Federal Economic Stimulus | 891 | 10,045,566 |
| 3 | Total | | $23,191,877 |

**DEPARTMENT OF REVENUE**

**327-Tax Division - Consolidated Federal Fund**

(WV Code Chapter 11)

Fund 8899  FY 2010  Org 0702

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**328-Insurance Commissioner**

(WV Code Chapter 33)

Fund 8883  FY 2010  Org 0704
### DEPARTMENT OF TRANSPORTATION

329-**Division of Motor Vehicles**

(WV Code Chapter 17B)

Fund 8787 FY 2010 Org 0802

| 1 | Unclassified - Total | 096 | $18,167,668 |

330-**Division of Public Transit**

(WV Code Chapter 17)

Fund 8745 FY 2010 Org 0805

| 1 | Unclassified - Total | 096 | $23,127,478 |
| 2 | Federal Economic Stimulus | 891 | 10,051,239 |
| 3 | Total | | $33,178,717 |

331-**Public Port Authority**

(WV Code Chapter 17)

Fund 8830 FY 2010 Org 0806

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

### BUREAU OF SENIOR SERVICES

332-**Bureau of Senior Services**

(WV Code Chapter 29)

Fund 8724 FY 2010 Org 0508
1 Unclassified - Total ............... 096 $14,515,250
2 Federal Economic Stimulus ....... 891 340,092
3 Total ................................ $14,855,342

MISCELLANEOUS BOARDS AND COMMISSIONS

333-Board of Pharmacy

(WV Code Chapter 30)

Fund 8857 FY 2010 Org 0913

1 Unclassified - Total ............... 096 $260,000

334-Public Service Commission -
Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2010 Org 0926

1 Unclassified - Total ............... 096 $1,562,171

335-Public Service Commission -
Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2010 Org 0926

1 Unclassified - Total ............... 096 $282,370

336-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2010 Org 0941
1 **Unclassified - Total** ............. 096 $ 600,000

**337-Coal Heritage Highway Authority**

(WV Code Chapter 29)

Fund 8861 FY 2010 Org 0942

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

Total TITLE II, Section 6 - Federal Funds $ 4,108,936,130

**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 2010.

**338-Governor's Office -**

*Office of Economic Opportunity*

*Community Services*

Fund 8799 FY 2010 Org 0100

1 **Unclassified - Total** ............. 096 $ 9,632,952
2 Federal Economic Stimulus ........ 891 $ 5,597,000
3 Total ................................ $15,229,952

**339-West Virginia Development Office -**

*Community Development*

Fund 8746 FY 2010 Org 0307

1 **Unclassified - Total** ............. 096 $38,351,067
2 Federal Economic Stimulus ........ 891 $ 5,000,000
3 Total ................................ $43,351,067

**340-Workforce West Virginia -**

*Workforce Investment Act*
Ch. 10]

APPROPRIATIONS

237

Fund 8749 FY 2010 Org 0323

1 Unclassified - Total ............... 096 $25,030,749
2 Federal Economic Stimulus ....... 891 7,555,357
3 Total ................................ $32,586,106

341-Division of Energy - Energy and Conservation

Fund 8702 FY 2010 Org 0328

1 Federal Economic Stimulus ........ 891 $10,000,000

342-Division of Health - Maternal and Child Health

Fund 8750 FY 2010 Org 0506

1 Unclassified - Total ............... 096 $10,974,424

343-Division of Health - Preventive Health

Fund 8753 FY 2010 Org 0506

1 Unclassified - Total ............... 096 $ 2,244,387

344-Division of Health - Substance Abuse Prevention and Treatment

Fund 8793 FY 2010 Org 0506

1 Unclassified - Total ............... 096 $11,586,339

345-Division of Health - Community Mental Health Services
Fund 8794 FY 2010 Org 0506

1 Unclassified - Total ............... 096 $ 3,345,285

346-Division of Health - Abstinence Education Program

Fund 8825 FY 2010 Org 0506

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

347-Division of Human Services - Energy Assistance

Fund 8755 FY 2010 Org 0511

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

348-Division of Human Services - Social Services

Fund 8757 FY 2010 Org 0511

1 Unclassified - Total ............... 096 $16,007,529

349-Division of Human Services - Temporary Assistance for Needy Families

Fund 8816 FY 2010 Org 0511

1 Unclassified - Total ............... 096 $130,250,890
2 Federal Economic Stimulus .......... 891 $30,000,000
3 Total ................................ $160,250,890

350-Division of Human Services - Child Care and Development
Sec. 8. Awards for claims against the state. – There are hereby appropriated for fiscal year 2010, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $80,942, special revenue funds in the amount of $305,999 and state road funds in the amount of $508,746 for payment of claims against the state.

Sec. 9. Special revenue appropriations. - There are hereby appropriated for expenditure during the fiscal year two thousand ten 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 ten, 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 ten 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.

CHAPTER 11

(S.B. 403 - By Senators Helmick, McCabe, Chafin, Edgell, D. Facemire, Fanning, Green, Prezioso, White, Boley, K. Facemyer and Sypolt)

[Passed March 11, 2009; in effect from passage.]
[Approved by the Governor on March 23, 2009.]

AN ACT supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2009, organization 0803, for the fiscal year ending June 30, 2009, by supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 2009, which
included the statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less net appropriation balances forwarded and regular appropriations for the fiscal year 2009; and

WHEREAS, It thus appears from the Governor’s Executive Budget Document, 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 June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Road Fund, fund 9017, fiscal year 2009, organization 0803, be supplemented and amended to read as follows:

1 TITLE II--APPROPRIATIONS.

2 Sec. 2. Appropriations from State Road Fund.

3 DEPARTMENT OF TRANSPORTATION

4 93-Division of Highways

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2009 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$50,000,000</td>
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<tr>
<td>Maintenance</td>
<td>$326,769,000</td>
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<tr>
<td>Maintenance, Contract Paving and Bridge Repair and Replacement</td>
<td>$46,000,000</td>
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<tr>
<td>Secondary Road Maintenance</td>
<td>$113,000,000</td>
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<tr>
<td>Inventory Revolving</td>
<td>$4,000,000</td>
</tr>
</tbody>
</table>
Ch. 11] APPROPRIATIONS 245

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Line</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 7</td>
<td>Equipment Revolving</td>
<td>276</td>
<td>20,000,000</td>
</tr>
<tr>
<td>17 8</td>
<td>General Operations</td>
<td>277</td>
<td>46,371,000</td>
</tr>
<tr>
<td>18 9</td>
<td>Interstate Construction</td>
<td>278</td>
<td>134,000,000</td>
</tr>
<tr>
<td>19 10</td>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>339,700,000</td>
</tr>
<tr>
<td>20 11</td>
<td>Appalachian Programs</td>
<td>280</td>
<td>114,078,000</td>
</tr>
<tr>
<td>21 12</td>
<td>Nonfederal Aid Construction</td>
<td>281</td>
<td>45,000,000</td>
</tr>
<tr>
<td>22 13</td>
<td>Highway Litter Control</td>
<td>282</td>
<td>1,699,000</td>
</tr>
<tr>
<td>23 14</td>
<td>Federal Economic Stimulus</td>
<td>891</td>
<td>40,000,000</td>
</tr>
<tr>
<td>24</td>
<td>Total</td>
<td></td>
<td>$1,280,617,000</td>
</tr>
</tbody>
</table>

25 The above appropriations are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the Code of West Virginia.

28 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.

34 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 of West Virginia.

39 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.
The purpose of this supplemental appropriation bill is to supplement, amend, decrease, increase and add items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending June 30, 2009.

CHAPTER 12

(S.B. 771 - By Senators Helmick, McCabe, Bowman, Chafin, Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, White, Unger, Wells, K. Facemyer, Guills and Sypolt)

[Passed April 12, 2009; in effect from passage.]
[Approved by the Governor on April 17, 2009.]

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 June 30, 2009, to the Crime Victims Compensation Fund, fund 8738, fiscal year 2009, organization 2300, to the Governor’s Office - Office of Economic Opportunity, fund 8797, fiscal year 2009, organization 0100, to the Governor’s Office - Commission for National and Community Service, fund 8800, fiscal year 2009, organization 0100, to the Department of Agriculture, fund 8736, fiscal year 2009, organization 1400, to the Division of Forestry, fund 8703, fiscal year 2009, organization 0305, to the State Department of Education, fund 8712, fiscal year 2009, organization 0402, to the State Department of Education - School Lunch Program, fund 8713, fiscal year 2009, organization 0402, to the State Department of Education - Aid for Exceptional Children, fund 8715, fiscal year 2009, organization 0402, to the State Board of Rehabilitation -
Division of Rehabilitation Services, fund 8734, fiscal year 2009, organization 0932, Division of Environmental Protection, fund 8708, fiscal year 2009, organization 0313, Division of Health - Central Office, fund 8802, fiscal year 2009, organization 0506, Division of Health - West Virginia Safe Drinking Water Treatment, fund 8824, fiscal year 2009, organization 0506, to the West Virginia Health Care Authority, fund 8851, fiscal year 2009, organization 0507, to the Division of Human Services, fund 8722, fiscal year 2009, organization 0511, to the Adjutant General - State Militia, fund 8726, fiscal year 2009, organization 0603, to the West Virginia State Police, fund 8741, fiscal year 2009, organization 0612, to the Division of Criminal Justice Services, fund 8803, fiscal year 2009, organization 0620, to the Division of Public Transit, fund 8745, fiscal year 2009, organization 0805, to the Bureau of Senior Services, fund 8724, fiscal year 2009, organization 0508, to the Workforce West Virginia - Workforce Investment Act, fund 8749, fiscal year 2009, organization 0323, to the Division of Human Services - Temporary Assistance for Needy Families, fund 8816, fiscal year 2009, organization 0511, and to the Division of Human Services - Child Care and Development, fund 8817, fiscal year 2009, organization 0511, all supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2009, 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 June 30, 2009, to fund 8738, fiscal year 2009, organization 2300, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

LEGISLATIVE

271-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2009 Org 2300

Federal Activity Funds

3a Federal Economic Stimulus . . . . . . 891 $ 348,230

And that the total appropriation for the fiscal year ending
June 30, 2009, to fund 8797, fiscal year 2009, organization
0100, be supplemented and amended by adding a new item
of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

EXECUTIVE

273-Governor's Office -
Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2009 Org 0100

2 Federal Economic Stimulus . . . . . . 891 $ 6,000,000

And that the total appropriation for the fiscal year ending
June 30, 2009, to fund 8800, fiscal year 2009, organization
24 0100, be supplemented and amended by adding a new item
25 of appropriation as follows:

26 TITLE II--APPROPRIATIONS.

27 Sec. 6. Appropriations of federal funds.

28 EXECUTIVE

29 274-Governor’s Office -
30 Commission for National and Community Service
31 (WV Code Chapter 5)
32 Fund 8800 FY 2009 Org 0100
33 2 Federal Economic Stimulus . . . . . 891 $ 150,000
34 And that the total appropriation for the fiscal year ending
35 June 30, 2009, to fund 8736, fiscal year 2009, organization
36 1400, be supplemented and amended by adding a new item
37 of appropriation as follows:

38 TITLE II--APPROPRIATIONS.

39 Sec. 6. Appropriations of federal funds.

40 EXECUTIVE

41 276-Department of Agriculture
42 (WV Code Chapter 19)
43 Fund 8736 FY 2009 Org 1400
44 2 Federal Economic Stimulus . . . . 891 $ 716,000
45 And that the total appropriation for the fiscal year ending
46 June 30, 2009, to fund 8703, fiscal year 2009, organization
be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF COMMERCE

282-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2009 Org 0305

2 Federal Economic Stimulus . . . . 891 $ 2,000,000

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8712, fiscal year 2009, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

290-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2009 Org 0402

2 Federal Economic Stimulus . . . . 891 $ 32,000,000

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8713, fiscal year 2009, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:
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71 TITLE II--APPROPRIATIONS.

72 Sec. 6. Appropriations of federal funds.

73 DEPARTMENT OF EDUCATION

74 291-State Department of Education -
School Lunch Program

76 (WV Code Chapters 18 and 18A)

78 2 Federal Economic Stimulus . . . . . . 891 $ 325,000

79 And that the total appropriation for the fiscal year ending
80 June 30, 2009, to fund 8715, fiscal year 2009, organization
81 0402, be supplemented and amended by adding a new item
82 of appropriation as follows:

83 TITLE II--APPROPRIATIONS.

84 Sec. 6. Appropriations of federal funds.

85 DEPARTMENT OF EDUCATION

86 293-State Department of Education -
Aid for Exceptional Children

88 (WV Code Chapters 18 and 18A)

89 Fund 8715 FY 2009 Org 0402

90 2 Federal Economic Stimulus . . . . . . 891 $ 40,000,000

91 And that the total appropriation for the fiscal year ending
92 June 30, 2009, to fund 8734, fiscal year 2009, organization
93 0932, be supplemented and amended by adding a new item
94 of appropriation as follows:
TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION AND THE ARTS

298-State Board of Rehabilitation -
Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2009 Org 0932

2 Federal Economic Stimulus . . . . . 891 $1,000,000

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8708, fiscal year 2009, organization 0313, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

300-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2009 Org 0313

2 Federal Economic Stimulus . . . . . 891 $35,602,400

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8802, fiscal year 2009, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

302-Division of Health - Central Office

(WV Code Chapter 16)

Fund 8802 FY 2009 Org 0506

2 Federal Economic Stimulus . . . . . . 891 $ 4,256,000

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8824, fiscal year 2009, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

303-Division of Health - West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2009 Org 0506

2 Federal Economic Stimulus . . . . . . 891 $ 5,000,000

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8851, fiscal year 2009, organization
0507, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

304-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2009 Org 0507

2 Federal Economic Stimulus . . . . 891 $ 50,000

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8722, fiscal year 2009, organization 0511, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

306-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2009 Org 0511

4a Federal Economic Stimulus . . . . 891 $ 126,367,951

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8726, fiscal year 2009, organization
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

308-Adjutant General - State Militia
(WV Code Chapter 15)

Fund 8726 FY 2009 Org 0603

2 Federal Economic Stimulus . . . . . 891 $4,535,000

And that the total appropriation for the fiscal year ending
June 30, 2009, to fund 8741, fiscal year 2009, organization
0612, be supplemented and amended by adding a new item
of appropriation as follows:

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

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

Fund 8741 FY 2009 Org 0612

2 Federal Economic Stimulus . . . . . 891 $485,386
And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8803, fiscal year 2009, organization 0620, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

315-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2009 Org 0620

2 Federal Economic Stimulus . . . . . 891 $ 8,192,846

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8745, fiscal year 2009, organization 0805, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF TRANSPORTATION

319-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2009 Org 0805

2 Federal Economic Stimulus . . . . . 891 $ 4,000,000
And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8724, fiscal year 2009, organization 0508, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

BUREAU OF SENIOR SERVICES

321-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2009 Org 0508

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8749, fiscal year 2009, organization 0323, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

330-Workforce West Virginia - Workforce Investment Act

Fund 8749 FY 2009 Org 0323

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8816, fiscal year 2009, organization 0511, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

338-Division of Human Services -
Temporary Assistance for Needy Families

Fund 8816 FY 2009 Org 0511

2 Federal Economic Stimulus . . . . 891 $12,000,000

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8817, fiscal year 2009, organization 0511, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

339-Division of Human Services -
Child Care and Development

Fund 8817 FY 2009 Org 0511

2 Federal Economic Stimulus . . . . 891 $6,523,500

The purpose of this supplementary appropriation bill is to supplement, increase and add an item of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2009.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2009, to the Department of Agriculture - General John McCausland Memorial Farm, fund 1409, fiscal year 2009, organization 1400, to the Department of Transportation - Division of Motor Vehicles - Motor Vehicle Fees Fund, fund 8223, fiscal year 2009, organization 0802, to the Bureau of Senior Services - Community-Based Service Fund, fund 5409, fiscal year 2009, organization 0508, and to a new item of appropriation designated to the West Virginia Northern Community and Technical College - WVNCC Land Sale Account, fund 4732, fiscal year 2009, organization 0489, supplementing and amending chapter ten, Acts of the Legislature, regular session, 2008, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Agriculture - General John McCausland Memorial Farm, fund 1409, fiscal year 2009, organization 1400, in the Department of Transportation - Division of Motor Vehicles - Motor Vehicle Fees Fund, fund 8223, fiscal year 2009, organization 0802, in the Bureau of Senior Services - Community-Based Service Fund, fund 5409, fiscal year 2009,
organization 0508, and in the West Virginia Northern Community and Technical College - WVNCC Land Sale Account, fund 4732, fiscal year 2009, organization 0489, available for expenditure during the fiscal year ending June 30, 2009, 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 June 30, 2009, to fund 1409, fiscal year 2009, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>TITLE II--APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3. Appropriations from other funds.</td>
</tr>
<tr>
<td>EXECUTIVE</td>
</tr>
<tr>
<td>105--Department of Agriculture - General John McCausland Memorial Farm</td>
</tr>
<tr>
<td>(WV Code Chapter 19)</td>
</tr>
<tr>
<td>Fund 1409 FY 2009 Org 1400</td>
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<table>
<thead>
<tr>
<th>Activity Funds</th>
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</thead>
<tbody>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Unclassified - Total ................ 096 $ 110,000</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 8223, fiscal year 2009, organization 0802, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>TITLE II--APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3. Appropriations from other funds.</td>
</tr>
</tbody>
</table>
DEPARTMENT OF TRANSPORTATION

224–Division of Motor Vehicles -  
Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2009 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$ 159,800</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending June 30, 2009, to fund 5409, fiscal year 2009, organization 0508, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

BUREAU OF SENIOR SERVICES

227–Bureau of Senior Services -  
Community Based Service Fund

(WV Code Chapter 22)

Fund 5409 FY 2009 Org 0508

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$ 250,000</td>
</tr>
</tbody>
</table>

And that chapter ten, Acts of the Legislature, regular session, 2008, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:
TITLE I-- APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

HIGHER EDUCATION

231a-West Virginia Northern Community and Technical
College -
WVNCC Land Sale Account

(WV Code Chapter 18B)

Fund 4732 FY 2009 Org 0489

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total (R)</td>
<td>096</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be used for the purchase of additional real property or technology, or for capital improvements at the institution.

Any unexpended balance remaining in Unclassified - Total (fund 4732, activity 096) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the budget act; and provide for a new item of appropriation to be established therein to appropriate funds for the designated spending units for expenditure during the fiscal year 2009.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2009, to a new item of appropriation designated to the Department of Agriculture - Land Protection Authority, fund 8896, fiscal year 2009, organization 1400, by supplementing and amending chapter ten, Acts of the Legislature, regular session, 2008, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Agriculture - Land Protection Authority, fund 8896, fiscal year 2009, organization 1400, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter ten, Acts of the Legislature, regular session, 2008, known as the Budget Bill, be supplemented and amended by adding to Title II, section six thereof, the following:

1 TITILE II--APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.
### Executive

278a-Department of Agriculture - Land Protection Authority

<table>
<thead>
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<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$60,000</td>
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</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for the fiscal year ending June 30, 2009, by providing for a new item of appropriation to be established therein to appropriate funds to the designated spending unit for expenditure during the fiscal year 2009.

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### CHAPTER 15

(Com. Sub. for S.B. 532 - By Senators Minard, Jenkins and Kessler)

[Passed April 9, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §31-17-1, §31-17-2, §31-17-3, §31-17-4, §31-17-5, §31-17-7, §31-17-11, §31-17-12, §31-17-13 and §31-17-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §31-17A-1, §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-5, §31-17A-6, §31-17A-7, §31-17A-8,
§31-17A-9, §31-17A-10, §31-17A-11, §31-17A-12, §31-17A-13, §31-17A-14, §31-17A-15, §31-17A-16, §31-17A-17, §31-17A-18, §31-17A-19 and §31-17A-20; and to amend and reenact §46A-4-102 of said code, all relating to the Division of Banking’s participation in the Nationwide Mortgage Licensing System and Registry; complying with the SAFE Mortgage Licensing Act; amending and creating definitions; exempting federally insured depository institutions from broker licensing; allowing the Division of Banking to participate in the Nationwide Mortgage Licensing System and Registry; permitting the Nationwide Mortgage Licensing System and Registry to process background and credit checks on behalf of the Commissioner of Banking; creating a tiered bond structure for licensed lenders and brokers; reducing the license processing time for lenders and brokers; requiring a new application for certain changes in control of mortgage licensees; clarifying the fee for licensee office relocation; synchronizing the mortgage annual report requirement with the Nationwide Mortgage Licensing System and Registry; outlining the purpose of the West Virginia SAFE Mortgage Licensing Act; defining terms associated with the SAFE Mortgage Licensing Act; requiring licensing and registration of mortgage loan originators; creating an application procedure for mortgage loan originators with minimum standards; requiring prelicensure education of mortgage loan originators; implementing a prelicensure testing requirement for mortgage loan originators; explaining standards for mortgage loan originator license renewal; clarifying annual continuing education requirements for mortgage loan originators; granting the commissioner authority to require mortgage loan originator licensing through the Nationwide Mortgage Licensing System and Registry; requiring the commissioner to create a challenge process for the Nationwide Mortgage Licensing System and Registry; creating enforcement authority for mortgage loan originators; defining violations and penalties of the SAFE Mortgage Licensing Act; requiring a surety bond to cover
licensed mortgage loan originators that is tied to the amount of mortgage originations by each lender, broker or regulated consumer lender licensee; creating confidentiality provisions; granting investigation and examination authority to the Commissioner of Banking for violations of the SAFE Mortgage Licensing Act; outlining prohibited acts and practices for mortgage loan originators; requiring the Commissioner of Banking to report to the Nationwide Mortgage Licensing System and Registry; clarifying the use of unique identifiers; creating a severability section; defining effective dates; requiring the licensure of mortgage loan originators employed by licensed regulated consumer lenders; and implementing a bond requirement for regulated consumer lenders that originate mortgage loans.

Be it enacted by the Legislature of West Virginia:

That §31-17-1, §31-17-2, §31-17-3, §31-17-4, §31-17-5, §31-17-7, §31-17-11, §31-17-12, §31-17-13 and §31-17-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §31-17A-1, §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-5, §31-17A-6, §31-17A-7, §31-17A-8, §31-17A-9, §31-17A-10, §31-17A-11, §31-17A-12, §31-17A-13, §31-17A-14, §31-17A-15, §31-17A-16, §31-17A-17, §31-17A-18, §31-17A-19 and §31-17A-20; and that §46A-4-102 of said code be amended and reenacted, all to read as follows:

Chapter 17. West Virginia Residential Mortgage Lender, Broker and Servicer Act.

Chapter 17A. West Virginia Safe Mortgage Licensing Act.

CHAPTER 31. CORPORATIONS.
ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-1. Definitions and general provisions.

§31-17-2. License required for lender and broker originator; exemptions.

§31-17-3. Supervision by Commissioner of Banking; rules and regulations; personnel; participation in the Nationwide Mortgage Licensing System and Registry.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

§31-17-5. Refusal or issuance of license.

§31-17-7. License not transferable or assignable; license may not be franchised; renewal of license.

§31-17-11. Records and reports; examination of records; analysis.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

§31-17-20. Effective date.

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (a) "Additional charges" means every type of charge arising out of the making or acceptance of a primary or subordinate mortgage loan, except finance charges, including, but not limited to, official fees and taxes, reasonable closing costs and certain documentary charges and insurance premiums and other charges which definition is to be read in conjunction with and permitted by section one hundred nine, article three, chapter forty-six-a of this code;

10 (b) "Affiliated" means persons under the same ownership or management control. As to corporations, limited liability companies or partnerships, where common owners manage or control a majority of the stock, membership interests or general partnership interests of one or more such corporations, limited liability companies or partnerships,
those persons are considered affiliated. In addition, persons under the ownership or management control of the members of an immediate family shall be considered affiliated. For purposes of this section, "immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and grandchildren;

(c) "Amount financed" means the total of the following items to the extent that payment is deferred:

(1) The cash price of the goods, services or interest in land, less the amount of any down payment, whether made in cash or in property traded in;

(2) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(3) If not included in the cash price:

(A) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(B) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(C) Additional charges permitted by this article;

(d) "Applicant" means a person who has applied for a lender or broker license;

(e) "Broker" means any person acting in the regular course of business who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, or originates or assigns a primary or subordinate mortgage loan between a lender and a borrower. A person is considered to be acting in the regular course of
business if he or she negotiates or arranges, or offers to negotiate or arrange, or originates, processes or assigns any primary or subordinate mortgage loans in any one calendar year; or if he or she seeks to charge a borrower or receive from a borrower money or other valuable consideration in any primary or subordinate mortgage transaction before completing performance of all broker services that he or she has agreed to perform for the borrower;

(f) "Brokerage fee" means the fee or commission or other consideration charged by a broker or loan originator for the services described in subdivision(e) of this section;

(g) "Commissioner" means the Commissioner of Banking of this state;

(h) "Finance charge" means the sum of all interest and similar charges payable directly or indirectly by the debtor imposed or collected by the lender incident to the extension of credit as coextensive with the definition of "loan finance charge" set forth in section one hundred two, article one, chapter forty-six-a of this code;

(i) "Lender" means any person who makes or offers to make or accepts or offers to accept or purchases or services any primary or subordinate mortgage loan in the regular course of business. A person is considered to be acting in the regular course of business if he or she makes or accepts, or offers to make or accept, any primary or subordinate mortgage loans in any one calendar year;

(j) "Licensee" means any person duly licensed by the commissioner under the provisions of this article or article seventeen-a of this chapter as a lender, broker or mortgage loan originator;
(k) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage brokers and lenders licensed under this article and mortgage loan originators licensed under article seventeen-a of this chapter;

(l) "Person" means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof;

(m) "Primary mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling;

(n) "Servicing" or "servicing a residential mortgage loan" means through any medium or mode of communication the collection or remittance for, or the right or obligation to collect or remit for another lender, note owner or noteholder, payments of principal, interest, including sales finance charges in a consumer credit sale, and escrow items as insurance and taxes for property subject to a residential mortgage loan; and

(o) "Subordinate mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling and is subject to the lien of one or more prior recorded mortgages or deeds of trust.
§31-17-2. License required for lender and broker originator; exemptions.

(a) A person may not engage in this state in the business of lender or broker unless and until he or she first obtains a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation may engage in business in this state unless it is registered with the Secretary of State to transact business in this state.

(b) All mortgage loan originators, as that term is defined by section two, article seventeen-a of this chapter, shall obtain a mortgage loan originator license pursuant to said article.

(c) Brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders and loan originators are exempt from the tax imposed by article fifteen, chapter eleven of this code beginning on January 1, 2004.

(d) The provisions of this article do not apply to loans made by the following:

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;

(4) Any other lender under the regular supervision and examination for consumer compliance of any agency of the federal government;

(5) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;
(6) By a nonprofit community development organization making mortgage loans to promote home ownership or improvements for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or

(7) Habitat for Humanity International, Inc., and its affiliates providing low-income housing within this state. Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

e) The provisions of this article do not apply to loans brokered by a federally insured depository institution.

(f) A person or entity designated in subsection (d) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

(g) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee may not subject the warehouser or final securitization holder or trustee to the provisions of this article: Provided, That the warehouser, final securitization
holder or trustee under an arrangement is either a licensee, or
person or entity entitled to make exempt loans of that type
under this section, or the loan is held with right of recourse
to a licensee.

§31-17-3. Supervision by Commissioner of Banking; rules and
regulations; personnel; participation in the
Nationwide Mortgage Licensing System and
Registry.

(a) It shall be the duty of the commissioner to enforce the
provisions of this article and, to implement and make
effective such provisions, he or she is hereby authorized and
empowered to promulgate reasonable rules in accordance
with the provisions of article three, chapter twenty-nine-a of
this code and to employ such personnel as may be necessary.

(b) The commissioner may participate in the Nationwide
Mortgage Licensing System and Registry and permit such
system to process applications for mortgage lender and
mortgage broker licenses in this state and receive and
maintain records related to such licenses that are allowed or
required to be maintained by the commissioner. The
commissioner is authorized to establish relationships or
contracts with the Nationwide Mortgage Licensing System
and Registry or other entities designated by the Nationwide
Mortgage Licensing System and Registry to collect and
maintain records and process transaction fees or other fees
related to licensees subject to this article. The Nationwide
Mortgage Licensing System and Registry shall transfer
electronically all fees payable to the Division of Banking
directly to the credit of the commissioner’s special revenue
account with the State Treasurer.

(c) Mortgage lenders and brokers licensed pursuant to
this article shall submit renewals for calendar year 2010 on
or before October 1, 2009, in accordance with the
amendments to this article and on a form prescribed by the commissioner. Beginning January 2, 2010, licensees shall transition to the Nationwide Mortgage Licensing System and Registry according to the terms established by that system.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

(a) In connection with an application for licensing as a mortgage lender or mortgage broker, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) In order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this article, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting
25 information from and distributing information to the
26 Department of Justice or any governmental agency.

27 (c) In order to reduce the points of contact which the
28 commissioner may have to maintain, for purposes of this
29 article, the commissioner may use the Nationwide Mortgage
30 Licensing System and Registry as a channeling agent for
31 requesting and distributing information to and from any
32 source so directed by the commissioner.

33 (d) Application for a lender's or broker's license shall
34 each year be submitted under oath, in the form prescribed by
35 the commissioner, and shall contain the full name and
36 address of the applicant and, if the applicant is a partnership,
37 limited liability company or association, of every member
38 thereof, and, if a corporation, of each officer, director and
39 owner of ten percent or more of the capital stock thereof and
40 further information as the commissioner may reasonably
41 require. Background and credit checks shall be conducted in
42 accordance with this section for any officer, director or
43 owner, directly or indirectly, of ten percent or more of the
44 capital stock of a corporation or any member of a limited
45 liability or partnership with, directly or indirectly, a ten
46 percent or greater ownership interest. Any application shall
47 also disclose the location at which the business of lender or
48 broker is to be conducted.

49 (e) At the time of making application for a lender's
50 license, the applicant therefor shall:

51 (1) If a foreign corporation, submit a certificate from the
52 Secretary of State certifying that the applicant is registered
53 with the Secretary of State to transact business in this state;

54 (2) Submit proof that he or she has available for the
55 operation of the business at the location specified in the
56 application net worth of at least $250,000;
(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 $100,000 for licensees with West Virginia annual loan originations of $0 to $3 million, $150,000 for West Virginia annual loan originations greater than $3 million and up to $10 million, and $250,000 for West Virginia annual loan originations over $10 million 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 lender licensees who service West Virginia mortgage loans shall file with the commissioner a bond under the same conditions listed above in the amount of $200,000;

(4) Pay to the commissioner a license fee of $1,250 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Mortgage Licensing System and Registry. 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 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.

(f) 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 $10,000;

(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 $50,000 for licensees with West Virginia loan originations of $0 to $3 million, $75,000 for West Virginia loan originations greater than $3 million and up to $10 million, and $100,000 for West Virginia loan originations over $10 million 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 $150,000 before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of $350 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Mortgage Licensing System and Registry; and

(5) Submit 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.

(g) 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.

(h) 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.

(i) 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.

(j) Every broker and lender licensee shall pay a fee of $5 for each residential mortgage loan originated, made or brokered in a calendar year. This fee shall be paid annually 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 previous calendar year. If a licensee ceases operation, it shall remit any fees due since the last reporting period when it relinquishes its license.

(k) 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.

§31-17-5. Refusal or issuance of license.

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to the applicant and his or her application for a lender's or broker's license, as the case may be. Upon the basis of the application
and all other information before him or her, the commissioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:

1. The applicant does not have available the net worth required by the provisions of section four of this article, if applicable;

2. The financial responsibility, character, reputation, experience or general fitness of the applicant, including its officers, directors, principals and employees, reasonably warrants the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article; and

3. The applicant has done any act or has failed or refused to perform any duty or obligation for which the license sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant a lender's or broker's license which shall entitle the applicant to engage in the business of lender or broker, as the case may be, during the period, unless sooner suspended or revoked, for which the license is issued.

(b) Every application for a lender's or broker's license shall be passed upon and the license issued or refused within sixty days after the applicant therefor has fully complied with the provisions of this article. Under no circumstances whatever may a person or licensee act as a broker and lender in the same transaction. Whenever an application for a lender's or broker's license is denied and the license sought is refused, which refusal has become final, the commissioner shall retain all fees to cover administrative costs of processing the broker or lender application.
§31-17-7. License not transferable or assignable; license may not be franchised; renewal of license.

(a) A license may not be transferable or assignable. A licensee may not offer a franchise under that license to another person. The commissioner may allow licensees to have branch offices without requiring additional licenses provided the location of all branch offices is registered with the Division of Banking by the licensee. Whenever a licensee changes his or her place of business to a location other than that set forth in his or her license and branch registration, he or she shall give written notice thirty days prior to such change to the commissioner and pay a relocation fee of $100 for each office relocation.

(b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire on December 31 of each year and any license may be renewed each year in the same manner, for the same license fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of this article. All applications for the renewal of licenses shall be filed with the Nationwide Mortgage Licensing System and Registry according to the renewal schedule published for the system, but no later than sixty days before the expiration thereof.

(c) Any change in control of a licensee whereby equitable interest of fifty percent or more is transferred to an outside party, a new application must be submitted according to this article.

§31-17-11. Records and reports; examination of records; analysis.

(a) Every lender and broker licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state, at his or her principal place
of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each licensee shall file with the commissioner a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year upon participation in the Nationwide Mortgage Licensing System and Registry and on a date established by the Nationwide Mortgage Licensing System and Registry. For license years 2008 and 2009, all licensees shall submit an annual report to the Division of Banking on or before March 15, 2009, and March 15, 2010, respectively, on a form prescribed by the commissioner.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every lender or broker licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each lender and broker licensee is complying with the provisions hereof and for the purpose of verifying each lender or broker licensee's annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually an aggregate analysis of the information furnished in accordance with the provisions of subsection (b) or (c) of this section, but the
individual reports are not public records and may not be open
to public inspection.

The commissioner may enter into cooperative and
information-sharing agreements with regulators in other
states or with federal authorities to discharge his or her
responsibilities under this article.

§31-17-12. Grounds for suspension or revocation of license;
suspension and revocation generally;
reinstatement or new license.

(a) The commissioner may suspend or revoke any broker
or lender license issued hereunder if he or she finds that the
licensee or any owner, director, officer, member, partner,
stockholder, employee or agent of the licensee:

(1) Has knowingly violated any provision of this article
or any order, decision or rule of the commissioner lawfully
made pursuant to the authority of this article;

(2) Has knowingly made any material misstatement in the
application for the license;

(3) Does not have available the net worth required by the
provisions of section four of this article, if applicable;

(4) Has failed or refused to keep the bond required by this
article in full force and effect, if applicable;

(5) In the case of a foreign corporation, does not remain
qualified to do business in this state;

(6) Has committed any fraud or engaged in any dishonest
activities with respect to any mortgage loan business in this
state or failed to disclose any of the material particulars of
any mortgage loan transaction in this state to anyone entitled
to the information; or
(7) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section may not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the license of a licensee if he or she finds the existence of any ground upon which the license could have been refused or any ground which would be cause for refusing a license to the licensee were he or she then applying for the same. The commissioner may also suspend or revoke the license of a licensee pursuant to his or her authority under section thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any licensee does not impair or affect the obligation of any preexisting lawful mortgage loan between the licensee and any obligor.

(c) The commissioner may reinstate a suspended license, or issue a new license to a licensee whose license has been revoked, if the grounds upon which any license was suspended or revoked have been eliminated or corrected and the commissioner is satisfied that the grounds are not likely to recur.

(d) In addition to the authority conferred under this section, the commissioner may impose a fine or penalty not exceeding $1000 upon any lender or broker required to be
licensed under this chapter who the commissioner determines has violated any of the provisions of this chapter. For the purposes of this section, each separate violation is subject to the fine or penalty herein prescribed and each day after the date of notification, excluding Sundays and holidays, that an unlicensed person engages in the business or holds himself or herself out to the general public as a mortgage lender or broker shall constitute a separate violation.

§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

(a) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, he shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee, as the case may be. The commissioner shall also submit a copy of any such order for publication by the Nationwide Mortgage Licensing System and Registry.

(b) It shall be the duty of the licensee to comply with any such order: (i) Immediately if the license was suspended either following a hearing or for failure to keep the bond required by the provisions of section four of this article in full force and effect; or otherwise (ii) following expiration of the period provided in section fourteen of this article in which such licensee, if not previously provided the opportunity to a hearing on the matter, may demand a hearing before the commissioner without such demand having been timely made.

§31-17-20. Effective date.

The amendments to this article enacted during the regular session of the Legislature in the year 2009 shall be effective as of July 1, 2009.
ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-1. Purpose.

The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon West Virginia’s consumers, West Virginia’s economy, the neighborhoods and communities of West Virginia and the housing and real estate industry. The Legislature finds that accessibility to mortgage credit is vital to the state’s citizens. The Legislature also finds that it is essential for the protection of the citizens of West Virginia and the stability of West Virginia’s economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The Legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this article is to protect consumers seeking mortgage loans and to ensure that the
mortgage lending industry is operating without unfair, deceptive and fraudulent practices on the part of mortgage loan originators.

§31-17A-2. Definitions.

For purposes of this article, the following definitions shall apply:

(1) "Depository institution" has the same meaning as in section three of the Federal Deposit Insurance Act and includes any federally insured credit union.

(2) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration and the Federal Deposit Insurance Corporation.

(3) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. This includes stepparents, stepchildren, stepsiblings and adoptive relationships.

(4) "Individual" means a natural person.

(5) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under article seventeen of this chapter.

(A) For purposes of this subsection, "clerical or support duties" may include subsequent to the receipt of an application: (i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and (ii)
communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(B) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(6) “Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan and is sponsored by a mortgage lender, broker or regulated consumer lender licensed by the Division of Banking.

(A) “Mortgage loan originator” does not include:

(i) An individual engaged solely as a loan processor or underwriter except as otherwise provided in section three of this article;

(ii) A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with West Virginia law, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator;

(iii) A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code; and
(iv) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the sales transaction.

(7) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) Acting as a real estate agent or real estate broker for a buyer, seller, lessee or lessee of real property;

(B) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(C) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property other than in connection with providing financing with respect to any such transaction;

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) Offering to engage in any activity, or act in any capacity, described in subsection (1), (2), (3) or (4) of this section.

(8) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage brokers and lenders licensed pursuant to article seventeen of this chapter and mortgage loan originators licensed pursuant to this article.
(9) "Nontraditional mortgage product" means any mortgage product other than a fixed rate mortgage.

(10) "Person" means a natural person, corporation, company, limited liability company, partnership or association.

(11) "Registered mortgage loan originator" means any individual who:

(A) Meets the definition of mortgage loan originator and is an employee of:

(i) A depository institution;

(ii) A subsidiary that is:

(1) Owned and controlled by a depository institution; and

(2) Regulated by a federal banking agency; or

(iii) An institution regulated by the Farm Credit Administration; and

(B) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(12) "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling.
§31-17A-3. License and registration required.

(a) An individual, unless specifically exempted under subsection (c) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this article. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(b) To facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (a) of this section:

(1) For all individuals other than individuals described in subdivision (2) of this subsection shall be January 31, 2010; and

(2) For all individuals licensed as mortgage loan originators before July 1, 2009, shall be January 1, 2011.

(c) The following are exempt from this article:

(1) Registered Mortgage Loan Originators, when acting for an entity described in subdivision (11), section two of this article;
(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence; and

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator.

(d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection (a) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) To implement an orderly and efficient licensing and transition process, the commissioner may establish interim policies and procedures for licensing and acceptance of applications as follows:

(1) Mortgage loan originators employed by or under exclusive contract to licensed mortgage brokers after the effective date of this article shall submit an application on a form prescribed by the commissioner, including all necessary information, fees and authorizations for investigation as the commissioner may determine necessary, and must meet the standards for licensure set forth in this article. Any license
issued under this subdivision and any license current as of the effective date of this article will expire on December 31, 2010: Provided, That notwithstanding the licensing requirements under this section, an individual acting exclusively as an employee of a servicer who is engaging in loss mitigation efforts with respect to an existing mortgage transaction serviced by his or her employer is not required to meet the education, testing, background and licensing standards of this article until July 1, 2011, to the extent that this extension of time is not denied by guideline, rule, regulation or interpretive letter issued by the United States Department of Housing and Urban Development. In the event this extension of time is denied, such individuals shall apply for a license under this section within ninety days of the denial; and

(2) Mortgage loan originators employed by or under exclusive contract to licensed mortgage lenders and regulated consumer lenders shall comply with this article and submit all applications through the Nationwide Mortgage Licensing System and Registry on or before January 31, 2010.

§31-17A-4. State license application and issuance.

(a) Applicants for a license must apply in a form as prescribed by the commissioner. Each form shall contain content as set forth by instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this article. The application must be submitted with an application fee of $50 plus the actual cost of fingerprint processing, together with any processing fee assessed by the Nationwide Mortgage Licensing System and Registry.

(b) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by
the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

(c) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant’s identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(d) To reduce the points of contact which the Federal Bureau of Investigation may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.
(e) To reduce the points of contact which the commissioner may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(f) Nonresident mortgage loan originators 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.

§31-17A-5. Issuance of license.

The commissioner may not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation may not be considered a revocation.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court: Provided, That any pardon of a conviction may not be a conviction for purposes of this subsection:

(1) During the seven-year period preceding the date of the application for licensing and registration; or

(2) At any time preceding the date of application if the felony involved an act of fraud, dishonesty or a breach of trust, or money laundering.
(c) The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of this article.

For purposes of this subsection a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The commissioner shall not use a credit score as the sole basis for license denial. A determination that an individual has not shown financial responsibility may include, but not be limited to:

1. Current outstanding judgments, except judgments solely as a result of medical expenses;
2. Current outstanding tax liens or other government liens and filings;
3. Foreclosures within the past three years; and
4. A pattern of seriously delinquent accounts within the past three years.

(d) The applicant has completed the prelicensing education requirement described in section six of this article.

(e) The applicant has passed a written test that meets the test requirement described in section seven of this article.

(f) The applicant has met the surety bond requirement as required pursuant to section thirteen of this article.

§31-17A-6. Prelicensing and relicensing education of loan originators.
(a) To meet the prelicensing education requirement, a person must complete at least twenty hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) Two hours of training related to West Virginia mortgage and consumer laws or issues.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1), (2), (3) and (4), subsection (a) of this
section for any state shall be accepted as credit towards completion of prelicensing education requirements in West Virginia.

(f) A person previously licensed under this article subsequent to July 1, 2009, applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.


(a) To meet the written test requirement, an individual must pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test may not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination; and

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.
(c) Nothing in this section prohibits a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual may not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(e) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(f) A licensed mortgage loan originator who fails to maintain a valid license for a period of five consecutive years or longer must retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

§31-17A-8. Standards for license renewal.

(a) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under section five of this article;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in section nine of this article; and
(3) The mortgage loan originator has paid all required fees for renewal of the license.

(b) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.


(a) To meet the annual continuing education requirements, a licensed mortgage loan originator must complete at least eight hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) One hour of West Virginia law or regulations.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any education course, as approved by the Nationwide Mortgage Licensing
System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) Except for subsection (b), section eight of this article and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator’s own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1), (2) and (3), subsection (a) of this section for any state shall be accepted as credit towards completion of continuing education requirements in West Virginia.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which
the license was held prior to issuance of a new or renewed license.

(i) A person meeting the renewal requirements of subsections (a)(1) and (3) of section eight may make up any deficiency in continuing education as established by the commissioner.

§31-17A-10. Authority to require license.

In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. The commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry to carry out this requirement. The commissioner may establish requirements as necessary, including, but not limited to:

(1) Background checks for:

(A) Criminal history through fingerprint or other databases;

(B) Civil or administrative records;

(C) Credit history; or

(D) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(2) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

(3) The setting or resetting as necessary of renewal or reporting dates;
21 (4) Requirements for amending or surrendering a license; and

23 (5) Any other activities the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.


The commissioner shall establish a process in accordance with the Administrative Procedures Act, provided in article five, chapter twenty-nine-a of this code, whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

§31-17A-12. Enforcement authorities, violations and penalties.

(a) To ensure the effective supervision and enforcement of this article, the commissioner may:

(1) Deny, suspend, revoke, condition or decline to renew a license issued under this article for a violation of this article or rules or order or directive entered under this article;

(2) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section five or eight of this article, or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) Order restitution against persons subject to this article for violations of this article;
(4) Impose civil administrative penalties on persons subject to this article pursuant to subsections (b), (c) and (d) of this section; and

(5) Issue orders or directives under this article as follows:

(A) Order or direct persons subject to this article to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(B) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to cease and desist;

(C) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under section three if the commissioner determines that such license was erroneously issued or the licensee is currently in violation of this article; and

(D) Order or direct such other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil administrative penalty on a mortgage loan originator or person subject to this article if the commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this article has violated or failed to comply with any requirement of this article or any rule prescribed by the commissioner under this article or order issued under authority of this article.

(c) The maximum amount of penalty for each act or omission described in subsection (b) of this section shall be $25,000.
(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.


(a) Each mortgage loan originator must be covered by a surety bond in accordance with this section in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or unpaid examination invoice. If the mortgage loan originator is an employee or exclusive agent of a person subject to this article, article seventeen of this chapter, or article four, chapter forty-six-a of this code, the surety bond of those other such persons may be used in lieu of the mortgage loan originator’s individual surety bond requirement.

(1) The surety bond must provide coverage for each mortgage loan originator in an amount as prescribed in subsection (b) of this section.

(2) The surety bond shall be in a form as prescribed by the commissioner.

(3) The commissioner may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this article.

(b) The penal sum of the surety bond shall be maintained in an amount as required by article seventeen of this chapter for licensed mortgage lenders and brokers or article four, chapter forty-six-a of this code for regulated consumer lenders.

(c) When an action is commenced on a licensee’s bond or any bond covering the activities of a licensee under this
article, the commissioner may require the filing of a new
bond.

(d) Immediately upon recovery upon any action on a
bond covering any licensee under this article, a new bond
shall be filed.


(a) Except as otherwise provided in Public Law 110-289,
Section 1512, the requirements under any federal law or any
provision of this code regarding the privacy or confidentiality
of any information or material provided to the Nationwide
Mortgage Licensing System and Registry, and any privilege
arising under federal or state law, including the rules of any
federal or state court, with respect to the information or
material, shall continue to apply to the information or
material after the information or material has been disclosed
to the Nationwide Mortgage Licensing System and Registry.
This information and material may be shared with all state
and federal regulatory officials with mortgage industry
oversight authority without the loss of privilege or the loss of
confidentiality protections provided by federal law or any
provision of this code.

(b) For these purposes, the commissioner is authorized to
enter agreements or sharing arrangements with other
governmental agencies, the Conference of State Bank
Supervisors, the American Association of Residential
Mortgage Regulators or other associations representing
governmental agencies as established by rule or order of the
commissioner.

(c) Information or material that is subject to a privilege or
confidentiality under subsection (a) of this section may not be
subject to:
(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, the privilege.

(d) Any provision of this code relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) of this section that is inconsistent with said subsection shall be superseded by the requirements of this section.

(e) This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

§31-17A-15. Investigation and examination authority.

(a) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this article, the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to:
(1) Criminal, civil and administrative history information, including nonconviction data;

(2) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(3) Any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(b) For the purposes of investigating violations or complaints arising under this article, or for the purposes of examination, the commissioner may review, investigate or examine any licensee, individual or person subject to this article and his or her employer or sponsoring company as often as necessary. The commissioner may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena or order such person to produce books, accounts, records, files and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee, individual or person subject to this article, including his or her employer or sponsoring company, must make available to the commissioner upon request the books and records relating to the operations of the licensee, individual or person subject to this article. The commissioner shall have access to the books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents and customers of the licensee, individual or person subject to this article concerning their business.
(d) Each licensee, individual or person subject to this article, including his or her employer or sponsoring company, shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including, but not limited to:

1. Accounting compilations;
2. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
3. Such other information considered necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this article, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, an individual or person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this article, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) In order to carry out the purposes of this section, the commissioner may:

1. Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to
71 conduct or assist in the conduct of examinations or
72 investigations;

73 (2) Enter into agreements or relationships with other
74 government officials or regulatory associations in order to
75 improve efficiencies and reduce regulatory burden by sharing
76 resources, standardized or uniform methods or procedures
77 and documents, records, information or evidence obtained
78 under this section;

79 (3) Use, hire, contract or employ public or privately
80 available analytical systems, methods or software to examine
81 or investigate the licensee, individual or person subject to this
82 article;

83 (4) Accept and rely on examination or investigation
84 reports made by other government officials, within or without
85 this state; or

86 (5) Accept audit reports made by an independent certified
87 public accountant for the licensee, individual or person
88 subject to this article in the course of that part of the
89 examination covering the same general subject matter as the
90 audit and may incorporate the audit report in the report of the
91 examination, report of investigation or other writing of the
92 commissioner.

93 (g) The authority of this section shall remain in effect
94 whether a licensee, individual or person subject to this article
95 acts or claims to act under any licensing or registration law of
96 this state or claims to act without that authority.

97 (h) A licensee, individual or person subject to
98 investigation or examination under this section may not
99 knowingly withhold, abstract, remove, mutilate, destroy or
100 secrete any books, records, computer records or other
101 information.
§31-17A-16. Prohibited acts and practices.

It is a violation of this article for a person or individual subject to this article to:

1. Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person.

2. Engage in any unfair or deceptive practice toward any person.

3. Obtain property by fraud or misrepresentation.

4. Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower.

5. Solicit, advertise or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting.

6. Conduct any business covered by this article without holding a valid license as required under this article, or assist or aide and abet any person in the conduct of business under this article without a valid license as required under this article.

7. Fail to make disclosures as required by this article and any other applicable state or federal law including rules and regulations thereunder.

8. Fail to comply with this article or rules promulgated under this article, or fail to comply with any other state or
28 federal law, including the rules and regulations thereunder,
29 applicable to any business authorized or conducted under this
30 article.

31 (9) Make, in any manner, any false or deceptive
32 statement or representation with regard to the rates, points or
33 other financing terms or conditions for a residential mortgage
34 loan, or engage in bait and switch advertising.

35 (10) Negligently make any false statement or knowingly
36 and willfully make any omission of material fact in
37 connection with any information or reports filed with a
38 governmental agency or the Nationwide Mortgage Licensing
39 System and Registry or in connection with any investigation
40 conducted by the commissioner or another governmental
41 agency.

42 (11) Make any payment, threat or promise, directly or
43 indirectly, to any person for the purposes of influencing the
44 independent judgment of the person in connection with a
45 residential mortgage loan, or make any payment threat or
46 promise, directly or indirectly, to any appraiser of a property
47 for the purposes of influencing the independent judgment of
48 the appraiser with respect to the value of the property.

49 (12) Collect, charge, attempt to collect or charge or use
50 or propose any agreement purporting to collect or charge any
51 fee prohibited by this article.

52 (13) Cause or require a borrower to obtain property
53 insurance coverage in an amount that exceeds the
54 replacement cost of the improvements as established by the
55 property insurer.

56 (14) Fail to truthfully account for moneys belonging to a
57 party to a residential mortgage loan transaction.
§31-17A-17. Report to mortgage licensing system and registry.

The commissioner is required to report violations of this act, as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions of section fourteen of this article.

§31-17A-18. Unique identifier shown.

The unique identifier of any person originating a residential mortgage loan must be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.


If any provision of this article or its application to any person or circumstance is held invalid, the remainder of the article or the application of the provision to other persons or circumstances is not affected.

§31-17A-20. Effective date.

The effective date of this article shall be July 1, 2009.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-102. License to make regulated consumer loans.

(1) The commissioner shall receive and act on all applications for licenses to make regulated consumer loans
under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner and contain the information the commissioner requires to make an evaluation of the financial responsibility, experience, character and fitness of the applicant and the findings required of him or her before he or she may issue a license. At the time of the filing of the application, the sum of $750 shall be paid to the commissioner as an investigation fee.

(2) A license may not be issued to a supervised financial organization other than to one primarily engaged in the business of making consumer loans through offices located within this state or to one licensed under the provisions of the West Virginia Mortgage Loan Act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code. A license will not be granted to any office located outside this state: Provided, That the limitation of licensing contained in this subsection does not prevent any supervised financial organization from making regulated consumer loans when the applicable state or federal statute, law, rule or regulation permits. A license may not be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at least $10,000 in capital and has, for each specified location of operation, assets of at least $2,000.
(3) Upon written request, the applicant is entitled to a hearing on the question of his or her qualifications for a license if: (a) The commissioner has notified the applicant in writing that his or her application has been denied; or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him or her that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license for each such new license. Each license shall remain in full force and effect until surrendered, forfeited, suspended or revoked.

(5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may: (a) Change the location of any place of business located within a municipality to any other location within that same municipality; or (b) change the location of any place of business located outside of a municipality to a location no more than five miles from the originally licensed location, but in no case may a licensee move any place of business located outside a municipality to a location within a municipality. A licensee may not move the location of any place of business located within a municipality to any other location outside of that municipality.

(6) A licensee may conduct the business of making regulated consumer loans only at or from a place of business
for which he or she holds a license and not under any other name than that stated in the license.

(7) A license issued under the provisions of this section shall not be transferable or assignable.

(8) A licensee must be incorporated under the laws of this state. The licensee may, however, be a subsidiary of an out-of-state company or financial institution.

(9) All mortgage loan originators, as defined in article seventeen-a, chapter thirty-one of this code, who are employed by a licensed regulated consumer lender must be licensed and issued a unique identifier by the Nationwide Mortgage Licensing System and Registry pursuant to the requirements provided in article seventeen-a, chapter thirty-one of this code.

(10) All regulated consumer lenders must 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 $100,000 for licensees with West Virginia mortgage loan originations of $0 to $3 million, $150,000 for West Virginia mortgage loan originations greater than $3 million and up to $10 million, and $200,000 for West Virginia mortgage loan originations over $10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state.
AN ACT to amend and reenact §31A-2A-1 of the Code of West Virginia, 1931, as amended, relating to providing that the definition of "financial institution" includes regulated consumer lenders, residential mortgage lenders, brokers and servicers, licensed money services businesses and all entities which are by law under the jurisdiction and supervision of the Commissioner of Banking.

Be it enacted by the Legislature of West Virginia:

That §31A-2A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.


1 As used in this article:

2 (a) "Customer" means any person or his or her duly authorized representative who has transacted business with or has used the services of a financial institution or for whom
a financial institution has acted as a fiduciary in relation to an account maintained in such person's name;

(b) "Financial institution" means a bank, a savings and loan association, a trust company or a credit union chartered pursuant to any state or federal law, a regulated consumer lender licensed under article four, chapter forty-six-a of this code, a mortgage lender broker or servicer licensed under article seventeen, chapter thirty-one of this code, a money service business licensed under article two, chapter thirty-two-a of this code or other institutions which are by law under the jurisdiction and supervision of the Commissioner of Banking;

(c) "Financial record" means the original or a copy of any record or document held by a financial institution pertaining to a customer of the financial institution, including any record of a transaction conducted by means of a customer bank communication terminal or other electronic device. "Financial record" also means any information derived from such records or documents;

(d) "Investigation" includes, but is not limited to, any inquiry by a state or local law-enforcement officer, sheriff or prosecuting attorney or any inquiry made by a state or local governmental entity for the purpose of determining whether there has been a violation of any law which is punishable by imprisonment or by a fine or other monetary liability;

(e) "Person" means an individual, partnership, corporation, limited liability company, association, trust or any other legal entity;

(f) "State entity" means any state or local governmental office, officer, department, division, bureau, board or commission, including the Legislature, and any other state or
AN ACT to amend and reenact §31A-3-1 of the Code of West Virginia, 1931, as amended, relating to providing reimbursement to members of Board of Banking and Financial Institutions for actual reasonable expenses for attending meetings in accordance with the regulations and policies of the State Purchasing Division.

Be it enacted by the Legislature of West Virginia:

That §31A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.
§31A-3-1. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

(a) The West Virginia Board of Banking and Financial Institutions is continued and shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the Governor, by and with the advice and consent of the Senate. Three of the members shall be executive officers of state banking institutions. When a vacancy occurs among the executive officers of state banking institutions, the commissioner shall list all state banking institutions according to each bank's asset size and then divide the list into three groups so that there is an equal number of banking institutions in each group. The vacancy shall then be filled from the appropriate group to ensure that each group has a representative on the board. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or owner of five percent or more of the outstanding shares of any financial institution. A member shall not hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity or any of their instrumentalities or agencies or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years and in every instance shall serve until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of that term. Any member appointed for less than a full six-year term is eligible for reappointment for a full term. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by
section five, article IV of the constitution of this state. The Governor shall, within sixty days following the occurrence of a vacancy on the board, fill the vacancy by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating the office. The Governor may remove any member in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board constitutes a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his or her own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. A member shall not participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party and of which he or she is, or was at any time in the preceding twelve months, a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself or herself from participation in a proceeding for any other cause determined by him or her to be sufficient. Each member shall receive compensation in an amount equal to that authorized by section five, article two-a, chapter four of this code for members of the Legislature for interim duties for each day or portion of a day spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary actual expenses incurred to his or her duties as a member of the board as determined in accordance with regulations and policies issued by the travel management unit of the state Purchasing Division.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance required by the board.
CHAPTER 18

(S.B. 424 - By Senators Minard and Jenkins)

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §31A-4A-1, §31A-4A-2, §31A-4A-3 and §31A-4A-4 of the Code of West Virginia, 1931, as amended, all relating to the conversion of banks and other financial institutions to a West Virginia state-chartered bank; and allowing any bank, thrift or credit union organized under the laws of the United States or any other state to convert into a state-chartered bank.

Be it enacted by the Legislature of West Virginia:

That §31A-4A-1, §31A-4A-2, §31A-4A-3 and §31A-4A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. CONVERSION OF OTHER FINANCIAL INSTITUTIONS TO STATE-CHARTERED BANKS.

§31A-4A-1. Conversion of bank, thrift or credit union into state bank authorized.
§31A-4A-2. Procedure for conversion of national bank into state bank.
§31A-4A-3. Effect of conversion into state bank.
§31A-4A-4. Filing of incorporation or organization.

§31A-4A-1. Conversion of bank, thrift or credit union into state bank authorized.
Any bank, thrift or credit union organized under the laws of the United States or any other state may, by a majority vote of its directors or other governing body, convert into a state bank with any name approved by the Board of Banking and Financial Institutions in accordance with this article.

§31A-4A-2. Procedure for conversion of national bank into state bank.

(a) A converting institution shall file an application with the division on a form prescribed by the commissioner along with articles of incorporation, bylaws for the proposed state bank and a check for $2,500. The application shall declare that a majority of the converting institution's board of directors or other governing body has authorized the representatives of the converting institutions to make such application and to convert into a state bank.

(b) The application to convert to a West Virginia state bank shall be subject to the same requirements and procedures as established for a newly organizing state bank at sections five, six and seven, article four of this chapter.

(c) The examination and investigation by the Board of Banking and Financial Institutions pursuant to section six, article four of this chapter shall include an examination of the safety and soundness of the applicant. The scope of the examination shall be determined at the discretion of the commissioner.

§31A-4A-3. Effect of conversion into state bank.

(a) When the Board of Banking and Financial Institutions has provided the converting institution an order that this article has been complied with, the converting institution and all its stockholders or members, officers and employees shall have the same powers and privileges and duties, liabilities
6 and regulations as shall have been prescribed for banks
7 originally organized under the laws of West Virginia.

8 (b) At the time when such conversion into a state bank
9 becomes effective, all the property of the converting
10 institution, including all its rights, title and interest in and to
11 all property of whatsoever kind, whether real, personal or
12 mixed, and things in action, and every right, privilege,
13 interest and asset of any conceivable value or benefit then
14 existing, belonging to it or which would inure to it, shall
15 immediately, by act of law and without any conveyance or
16 transfer and without any further act or deed, become the
17 property of the state bank, which shall have in its own right
18 as fully and to the same extent as if the same were possessed,
19 held and enjoyed by the converting institution.

20 (c) Upon such conversion becoming effective, the state
21 bank shall be considered to be a continuation of the entity
22 and of the identity of the converting institution and all the
23 rights, obligations and relations of the converting institution
24 to or in respect to any person, estate, creditor, depositor,
25 trustee or beneficiary of any trust shall remain unimpaired.
26 The state bank, as of the time the conversion takes place,
27 shall succeed to all such rights, obligations, relations and
28 trusts and the duties and liabilities connected therewith and
29 shall execute and perform each and every trust or relation in
30 the same manner as if the state bank had itself originally
31 assumed the trust or relation, including the obligations and
32 liabilities connected therewith.

33 (d) Any reference to the converting institution in any
34 contract, will or document shall be considered a reference to
35 the state bank unless expressly provided to the contrary in the
36 contract, will or document.

§31A-4A-4. Filing of incorporation or organization.
After the Board of Banking and Financial Institutions issues an order granting a state charter to the converting institution, the bank shall file in the office of the Secretary of State a certificate of incorporation in compliance with chapter thirty-one-d of this code or articles of organization in compliance with chapter thirty-one-b of this code as applicable under section five, article four of this chapter.

CHAPTER 19

(S.B. 503 - By Senators Minard, Jenkins and McCabe)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, all relating to branching procedures; and creating a definition for “sound financial condition”.

Be it enacted by the Legislature of West Virginia:

That §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.
§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

(a) A banking institution may not engage in business in this state at any place other than at its principal office in this state, at a branch bank in this state, at a customer bank communication terminal permitted by section twelve-b of this article or at any loan origination office permitted by section twelve-c of this article:

(1) Acceptance of a deposit or allowing a withdrawal at the banking offices of any subsidiary affiliate, as defined in section one, article eight-a of this chapter, for credit or debit to the customer's account at any other subsidiary of the same bank holding company is permissible and does not constitute branch banking. In addition, the conduct of activity at branch offices as an agent for any bank subsidiary of the same bank holding company shall be permitted to the same extent allowed by federal law for national banks pursuant to 12 U. S. C. § 1828 and does not constitute branch banking; nor does this activity constitute a violation of section forty-two, article four of this chapter. However, a banking institution may not utilize that agency relationship to evade state consumer protection laws, including usury laws, or any other applicable laws of this state or to conduct any activity that is not financially related as that term is defined by section two, article eight-c of this chapter;

(2) A banking institution located in a county where there is also a higher educational institution as defined in section...
two, article one, chapter eighteen-b of this code may establish
a temporary business office on the campus of any educational
institution located in the county for the limited purposes of
opening accounts and accepting deposits for a period not in
excess of four business days per semester, trimester or
quarter. However, prior to opening any temporary office, a
banking institution must first obtain written permission from
the institution of higher education. The term "business days",
for the purpose of this subsection, means days exclusive of
Saturdays, Sundays and legal holidays as defined in section
one, article two, chapter two of this code;

(3) Any banking institution which on January 1, 1984,
was authorized to operate an off-premises walk-in or drive-in
facility, pursuant to the law then in effect, may, as of June 7,
1984, operate such facility as a branch bank and it is not
necessary, for the continued operation of the branch bank, to
obtain additional approvals, notwithstanding the provisions
of subsection (d) of this section and subdivision (6),
subsection (b), section two, article three of this chapter.

(b) Except for a bank holding company, it is unlawful for
any individual, partnership, society, association, firm,
institution, trust, syndicate, public or private corporation, or
any other legal entity, or combination of entities acting in
concert, to directly or indirectly own, control or hold with
power to vote, twenty-five percent or more of the voting
shares of each of two or more banks, or to control in any
manner the election of a majority of the directors of two or
more banks.

(c) A banking institution may establish branch banks
either by:

(1) The construction, lease or acquisition of branch bank
facilities within any county of this state; or
(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

(d) Subject to and in furtherance of the board's authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter and subsection (g) of this section, the board, by order, may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The main office or a branch of a West Virginia state banking institution may not be relocated without the approval by order of the commissioner.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide the same banking services and exercise the same powers at each such branch bank as may be provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application to establish a branch bank under the provisions of this section, provide notice of the application to all banking institutions. A banking institution may, within ten days after receipt of the notice, file a petition to intervene and shall, if it files a petition, thereupon become a party to any hearing relating thereto before the board.

(h) The commissioner shall prescribe the form of the application for a branch bank under the provisions of this section and shall collect an examination and investigation fee of $500 for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility and $500 for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of or merger or consolidation
with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of $100. The commissioner may require an examination of a financial institution or an office of a financial institution that is being merged into a state-chartered bank. If an examination is required, the applicant is responsible for paying the examination costs at a rate of $50 per examiner hour. The board shall complete the examination and investigation within ninety days from the date on which the application and fee are received, unless the board requests in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution. If the board makes that request, the ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of the request and the date the additional information and disclosures are received.

(i) Upon completion of the examination and investigation with respect to the application, the board shall, if a hearing be required pursuant to subsection (j) of this section, forthwith give notice and hold a hearing pursuant to the following provisions:

(1) Notice of hearing must be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code and the hearing and the administrative procedures in connection therewith are governed by all of the provisions of article five, chapter twenty-nine-a of this code and must be held at a time and place set by the board but may not be less than ten nor more than thirty days after the notice is given;
(2) At the hearing a party may represent himself or herself or be represented by an attorney at law admitted to practice before any circuit court of this state;

(3) After the hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code and a copy of the order and accompanying findings and conclusions shall be served upon all parties to the hearing and their attorneys of record, if any.

(j) A state banking institution may not establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving an application for that branch bank. However, a hearing is not required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

(1) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition. For purposes of this subdivision, "sound financial condition" means that a state banking institution meets the required minimum level to be adequately capitalized for each capital measure as determined by its primary federal regulator and is not subject to supervisory action by either a state or federal financial regulatory agency;

(2) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state;
(3) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that proposed branch bank are clearly outweighed in the public interest by the probable effect of the establishment of the proposed branch bank in meeting the convenience and needs of the community to be served by that proposed branch bank;

(4) The applicant state-chartered banking institution meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

(5) The applicant state-chartered banking institution meets a satisfactory standard of compliance with federal and state consumer compliance law and regulations as evidenced by its most recent state or federal regulatory examination;

(6) The applicant state-chartered banking institution meets acceptable standards for investment in premises and fixed assets as permitted by section thirteen, article four of this chapter; and

(7) The applicant state-chartered banking institution does not present a significant supervisory concern or raise a significant legal or policy issue by filing the application.

(k) Any party who is adversely affected by the order of the board is entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the Supreme Court of Appeals in the manner provided in article six, chapter twenty-nine-a of this code.
Pursuant to the resolution of its board of directors and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days' prior public notice given in such form and manner as the commissioner prescribes.

Any violation of any provision of this section is a misdemeanor offense punishable by applicable penalties as provided in section fifteen of this article.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

(a) As an alternative to using the procedures established in subdivisions (g) through (j), section twelve of this article, a banking institution desiring to establish a branch bank by de novo construction or lease may file a notice, containing information as prescribed by the commissioner, of its intent which must be received by the commissioner at least thirty-five days prior to the date on which the proposed branch will be established accompanied by a fee of $250. The commissioner must provide written notice of his or her acceptance or rejection of the branch notice prior to the expiration of the 35-day period. However, if the commissioner requests additional information from the branching institution, the period for the commissioner's consideration of the notice shall be extended an additional fifteen days from the time the information requested is received by the commissioner.

(b) A state banking institution may not establish a branch bank under this section until the commissioner provides written approval of the notice for that branch bank. The commissioner's approval or rejection of the notice must be accompanied by findings of fact on whether the applicant bank:
(1) Satisfies such reasonable and appropriate requirements as to sound financial condition. For purposes of this subdivision, "sound financial condition" means that a state banking institution meets the required minimum level to be well capitalized for each capital measure as determined by its primary federal regulator and is not subject to supervisory action by either a state or federal financial regulatory agency;

(2) Meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

(3) Meets a satisfactory standard of compliance with federal and state consumer compliance law and regulations as evidenced by its most recent state or federal regulatory examination;

(4) Meets the acceptable standards for investment in premises and fixed assets as permitted by section thirteen, article four of this chapter; and

(5) Does not present a significant supervisory concern or raise a significant legal or policy issue by filing the application.

(c) Any party who is adversely affected by an action of the commissioner taken pursuant to the criteria established by subsection (b) of this section may appeal within ten business days of the commissioner's decision to the Board of Banking and Financial Institutions which must, after holding a hearing pursuant to the provisions of subdivision (12), subsection (b), section two, article three of this chapter, affirm, reverse or modify the order of the commissioner. Any party who is adversely affected by an order of the Board of Banking and Financial Institutions issued pursuant to the provisions of this subsection is entitled to judicial review in the same manner as provided by the provisions of subsection (k), section twelve of this article.
AN ACT to amend and reenact §11-16-3 of the Code of West Virginia, 1931, as amended, relating to “nonintoxicating beer”; defining “nonintoxicating craft beer”; including “nonintoxicating craft beer with the definition of “nonintoxicating beer”; and increasing the maximum alcohol level in the stated definition of “nonintoxicating beer.”

Be it enacted by the Legislature of West Virginia:

That §11-16-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context clearly requires differently:

3 (1) "Brewer" or "manufacturer" means any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign
country nonintoxicating beer for sale at wholesale to any licensed distributor.

(2) "Brewpub" means a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal regulations and guidelines, a portion of which premises are designated for retail sales.

(3) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

(4) "Distributor" means and includes any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.

(5) "Nonintoxicating beer" means all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers containing at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

(6) "Nonintoxicating craft beer" means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight.
"Original container" means the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

"Person" means and includes an individual, firm, partnership, limited partnership, association or corporation.

"Resident brewer" means any person, firm, association, partnership, or corporation whose principal place of business is within the state.

"Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, any malt cooler, at his or her established and licensed place of business.

"Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the commissioner's designee.

CHAPTER 21

(H.B. 3083 - By Delegates Andes, Border, Anderson, Perdue, Hamilton, Caputo, Perry, Miley, Hatfield, Wooton and Webster)

[Passed March 26, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2009.]

AN ACT to amend and reenact §16-21-1 of the Code of West Virginia, 1931, as amended, relating to donating blood by persons sixteen years of age with parental consent.

Be it enacted by the Legislature of West Virginia:
That §16-21-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. BLOOD DONATIONS.

§16-21-1. Donations by seventeen year old minors without parental permission.

Notwithstanding any other provision of law to the contrary, any person seventeen years of age or older may donate blood without the permission or authorization of a parent or guardian and any person sixteen years of age may donate blood with the permission or authorization of a parent or legal guardian: Provided, That a parent or guardian may not be liable for any medical expense which may occur as a result of a minor donating blood under the provisions of this section: Provided, however, That nothing herein may be construed as permitting a minor of age seventeen or older, or a minor of age sixteen, to give blood for compensation in any form.

CHAPTER 22

(S.B. 588 - By Senator Bowman)

[Passed April 6, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to repeal §5-16-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5F-2-1 of said code, relating to abolishing the Public Insurance Agency Advisory Board.
Be it enacted by the Legislature of West Virginia:

That §5-16-6 of the Code of West Virginia, 1931, as amended, be repealed; and that §5F-2-1 of said code be amended and reenacted to read as follows:

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

1. Building Commission provided in article six, chapter five of this code;
2. Public Employees Insurance Agency provided in article sixteen, chapter five of this code;
3. Governor's Mansion Advisory Committee provided in article five, chapter five-a of this code;
4. Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;
5. West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;
6. Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;
7. Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;
8. Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;
(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Division provided in article ten, chapter five-a of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;
(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Services;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis; and

(8) Division of Energy provided in article two-f, chapter five-b of this code.

(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.
(d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the office of the Governor:

(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;

(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and

(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:
(1) Library Commission provided in article one, chapter ten of this code;

(2) Educational Broadcasting Authority provided in article five, chapter ten of this code;

(3) Division of Culture and History provided in article one, chapter twenty-nine of this code;

(4) Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and
(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter twenty-nine of this code;

(9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;
160 (10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and
161
162 (11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.
163
164 (i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:
165
166 (1) Tax Division provided in article one, chapter eleven of this code;
167
168 (2) Racing Commission provided in article twenty-three, chapter nineteen of this code;
169
170 (3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;
171
172 (4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;
173
174 (5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;
175
176 (6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;
177
178 (7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;
179
180 (8) Division of Banking provided in article two, chapter thirty-one-a of this code;
181
182 (9) The State Budget Office provided in article two of this chapter;
(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

(7) Port Authority provided in article sixteen-b, chapter seventeen of this code.

(k) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of
administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(1) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(m) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(n) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.
AN ACT to repeal §13-1-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §13-1-4, §13-1-14, §13-1-15, §13-1-15a, §13-1-16, §13-1-17, §13-1-19 and §13-1-21 of said code, all relating to updating the code for consistency with the current practices and procedures required for issuing general obligation bonds through competitive sale and the West Virginia Constitution; providing that the issuer is not required to designate the series of bonds in the election order; providing that the bond resolution does not have to set forth the date of issuance, the denominations of the bonds, the medium with which the bonds are payable or the terms of redemption; allowing issuers to establish a maximum rate of interest in the bond resolution; allowing issuers to make semiannual payments on principal and interest; lengthening the time an issuer is required to begin making debt service payments by a year from the date of issuance; requiring issuers to register bonds and eliminating reference to coupon bonds; allowing issuers to accept electronic bids; and allowing an issuer to publish an abbreviated sale of notice when advertising the sale of bonds.

Be it enacted by the Legislature of West Virginia:
That §13-1-18 of the Code of West Virginia, 1931, as amended, be repealed; and that §13-1-4, §13-1-14, §13-1-15, §13-1-15a, §13-1-16, §13-1-17, §13-1-19 and §13-1-21 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-4. Bond issue proposal to be submitted to voters; election order.
§13-1-15. Bonds to be payable in annual or semiannual installments.
§13-1-15a. Bonds may be subject to redemption.
§13-1-16. Recital of certification that bonds are issued in conformity with constitution and statutes; effect thereof with Attorney General’s endorsement.
§13-1-17. Bonds shall be registered.

§13-1-4. Bond issue proposal to be submitted to voters; election order.

1 No debt shall be contracted or bonds issued under this article until all questions connected with the same are first submitted to a vote of the qualified electors of the political division for which the bonds are to be issued, and receive three fifths of all the votes cast for and against the same:

Provided, That a county board of education may contract indebtedness and issue bonds for public school purposes when submitted to a vote of the people of the county if the question of contracting indebtedness and issuing bonds is approved by a majority of all the votes cast for and against the same pursuant to section ten, article X of the constitution.

The governing body of any political division referred to in this article may, and when requested so to do by a petition in writing, praying that bonds be issued and stating the purpose and amount thereof, signed by legal voters of the political division equal to twenty percent of the votes cast in a county for Governor, or in a municipal corporation or school district for mayor or member of the board of education, as the case may be, shall, by order entered of record, direct that an election be held for the purpose of submitting to the voters of
the political division all questions connected with the contracting of debt and the issuing of bonds. The order shall state:

(a) The necessity for issuing the bonds or, if a petition has been filed as provided herein, that the petition has been filed;

(b) If for the construction of a county-district road or bridge thereon, a summary of the engineer's report provided for in the following section setting forth the approximate extent and the estimated cost of the proposed improvement and the kind or class of work to be done thereon;

(c) Purpose or purposes for which the proceeds of bonds are to be expended;

(d) Valuation of the taxable property as shown by the last assessment thereof for state and county purposes;

(e) Indebtedness, bonded or otherwise;

(f) Amount of the proposed bond issue;

(g) Maximum term of bonds;

(h) Maximum rate of interest;

(i) Date of election;

(j) That the levying body is authorized to lay a sufficient levy annually to provide funds for the payment of the interest upon the bonds and the principal at maturity and the approximate rate of levy necessary for this purpose;

(k) In the case of school bonds, that the bonds, together with all existing bonded indebtedness, will not exceed in the
aggregate five percent of the value of the taxable property in
the school district ascertained in accordance with section
eight, article X of the constitution; and that the bonds will be
payable from a direct annual tax levied and collected in each
year on all taxable property in the school district sufficient to
pay the principal and the interest maturing on the bonds in
that year, together with any deficiencies for prior years,
within, and not exceeding thirty-four years, which tax levies
will be laid separate and apart and in addition to the
maximum rates provided for tax levies by school districts on
the several classes of property in section one, article X of the
constitution, but in the same proportions as the maximum
rates are levied on the several classes of property; and the tax
may be levied outside the limits fixed by section one, article
X of the constitution.

Any other provision which does not violate any provision
of law, or transgress any principle of public policy, may be
incorporated in the order.

§13-1-14. Resolution authorizing issuance and fixing terms of
bonds.

If the required amount of all the votes, pursuant to
section four of this article, cast for and against the
proposition to incur debt and issue negotiable bonds is in
favor of the same, the governing body of the political
division shall, by resolution, authorize the issuance of the
bonds in an amount not exceeding the amount stated in the
proposition; establish the maximum rate or rates of interest
which the bonds shall bear within the maximum rate stated in
the proposition submitted to vote; require that the bonds shall
be made payable at the office of the Municipal Bond
Commission and at any other place or places as the body
issuing the same designates; provide for a sufficient levy to
pay the annual interest on the bonds and the principal at
maturity; fix the times within the maximum period, as
contained in the proposition submitted to vote, when the
bonds shall become payable, which shall not exceed
thirty-four years from the date thereof; determine whether all
or a portion of the bonds will be subject to redemption prior
to the maturity thereof; and prescribe a form for executing
the bonds authorized.

§13-1-15. Bonds to be payable in annual or semiannual
installments.

Bonds shall be made payable in annual or semiannual
installments beginning not more than three years after the
date thereof and the amount payable in each year may be so
fixed that when the annual interest is added to the principal
amount to be paid, the total amount payable in each year in
which part of the principal is payable shall be as nearly equal
as practicable. Once principal payments commence, it shall
be an immaterial variance if the difference between the
largest and smallest amounts of principal and interest payable
annually or semiannually during the term of the bonds shall
not exceed five percent of the total authorized issue. Bonds
may be payable in annual or semiannual installments
beginning not more than three years after the date thereof,
each installment being as nearly equal in principal amount as
practicable.

§13-1-15a. Bonds may be subject to redemption.

All or a portion of the bonds may be subject to
redemption prior to the maturity thereof at the option of the
body issuing the same as established by resolution of the
governing body authorizing the bonds. The body issuing the
bonds may not levy taxes in connection with the redemption
of any bonds in excess of the taxes that would have been
levied for the payment of principal of and interest on the
bonds in any year.
§13-1-16. Recital of certification that bonds are issued in conformity with constitution and statutes; effect thereof with Attorney General's endorsement.

1 The resolution authorizing the bonds provided for in section fourteen of this article may direct that they contain the following recital:

"It is certified that this bond is authorized by and is issued in conformity with the requirements of the Constitution and Statutes of the State of West Virginia."

2 The recital, when the bonds have been endorsed by the Attorney General as provided in section twenty-eight of this article, are considered an authorized declaration by the governing body of the political division and to import that there is constitutional and statutory authority for incurring the debts and issuing the bonds; that all the proceedings therefor are regular; that all the acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the bonds have existed, happened and been performed in due time, form and manner as required by law; that the amount of the bond and the issue of which it forms a part, together with all other indebtedness, does not exceed any limit or limits prescribed by the constitution or statutes of this state; and that all questions connected with incurring the debt and issuing the bonds have been first submitted to a vote of the people and have received the required amount of all the votes, pursuant to section four of this article, cast for and against the same at an election regularly called and held for the purpose after notice published and posted in the manner required by law. If any bond be issued containing the recital, and also containing the endorsement of the Attorney General as aforesaid, it shall be conclusively presumed that the recital, construed according to the import hereby declared, is true and neither the political division nor any taxpayer thereof shall be permitted to question the
validity or regularity of the obligation in any court or in any action or proceeding.

§13-1-17. Bonds shall be registered.

The bonds issued hereunder shall be issued only in fully registered form and shall carry registration privileges as set forth in the resolution authorizing the bonds.


All bonds issued under this article by any county shall be signed by the president of the county commission and countersigned by the clerk of the county commission; bonds issued by any municipality shall be signed by the mayor or other chief executive and countersigned by the clerk, recorder or secretary; bonds issued by a county board of education shall be signed by the president of the board of education and countersigned by the secretary thereof. The seal of the political division shall be affixed to the bonds. The delivery of any bonds so executed at any time thereafter shall be valid, although before the date of delivery the person signing the bonds shall have ceased to hold office.


The governing body of the political division issuing bonds pursuant to this article shall sell the same and collect the proceeds, which proceeds shall be deposited with its treasurer. The governing body of the political division shall advertise such bonds for sale, on sealed bids or electronic bids if the governing body elects to utilize an electronic bidding procedure, which advertisement shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the political division. The first publication shall be made at least fourteen
days before the date fixed for the reception of bids. The advertisement shall also be published in the Bond Buyer or similar publication and the advertisement may be published electronically. Provided, That all advertisements required by this section may consist of an abbreviated notice of the sale of the bonds. The governing body may reject any and all bids. If the bonds are not sold pursuant to the advertisement, they may, within one hundred twenty days after the date advertised for the reception of bids, be sold by the governing body at private sale, but no private sale shall be made at a price less than the highest bid which is received. If not sold, the bonds shall be readvertised in the manner herein provided. In no event shall bonds be sold for less than their par value.

CHAPTER 24

(H.B. 3189 - By Delegates Morgan, Boggs, Caputo, Fragale, White, Webster and M. Poling)

[Passed April 7, 2009; in effect from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §4-8-1 of the Code of West Virginia, 1931, as amended, relating to adding members to the Capitol Building Commission.

Be it enacted by the Legislature of West Virginia:

That §4-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. CAPITOL BUILDING COMMISSION.
§4-8-1. Creation; composition; qualifications.

(a) The Capitol Building Commission is continued, and is composed of nine members, five of which are appointed by the Governor, with the advice and consent of the Senate.

(b) One member is appointed by the President of the Senate, one member is appointed by the Speaker of the House of Delegates, one member is appointed by the Supreme Court of Appeals, plus the Secretary of the Department of Administration, who are all nonvoting members.

(c) Of the members appointed by the Governor, no more than three members may be of the same political party. One member shall be an architect selected from three persons recommended by the Board of Architects, one member shall be a registered professional engineer selected from three persons recommended by the Board of Engineers, one member is the Commissioner of the Division of Culture and History, who is the chairperson of the commission. Two members shall be selected from the public at large.

CHAPTER 25

(Com. Sub. for S.B. 715 - By Senators Snyder, Unger, Helmick, McCabe, Plymale and Kessler)

[Amended and again passed May 29, 2009, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-11-30, relating to the protection of the Chesapeake Bay Watershed;
establishing a nutrient trading and offset program; proposing nutrient performance standards for wastewater treatment facilities; and recommending a program to fund capital improvements needed to meet nutrient removal requirements.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §22-11-30, to read as follows:

**ARTICLE 11. WEST VIRGINIA WATER POLLUTION CONTROL ACT.**

**§22-11-30. Chesapeake Bay Restoration Initiative.**

(a) The Legislature finds and declares that:

(1) The Chesapeake Bay and its tributaries are valuable natural resources providing both recreational and economic opportunities to citizens living in and around the Chesapeake Bay watershed. Eight West Virginia counties, and a collective population of more than two hundred thousand citizens, are within the Chesapeake Bay watershed. The protection and promotion of the environmental health and integrity of the Chesapeake Bay is accordingly in the best interests of the State of West Virginia.

(2) The Chesapeake Bay has been identified by the United States Environmental Protection Agency as an impaired water due to excess nitrogen and phosphorous entering the bay from its various tributaries. These pollutants, commonly referred to as nutrients, result in depleted dissolved oxygen supplies and other factors which impact the overall health of the Chesapeake Bay and its watershed.
(b) West Virginia is among six states from which nutrients flow into the Chesapeake Bay. In order to restore the Chesapeake Bay, these states have agreed to reduce the amount of nutrients contributed to the Chesapeake Bay by sources located within their respective jurisdictions.

(c) Among the sources of nutrients discharged into the Chesapeake Bay watershed are wastewater discharged by West Virginia wastewater treatment facilities, stormwater discharged from various sources, wastewater discharged from agriculture-related activities and other sources of wastewater related to both natural and man-made impacts which are not specifically set forth herein.

(d) The need to provide and maintain affordable and high-quality public infrastructure services and to safeguard existing industrial and agricultural sectors of the economy in the Chesapeake Bay watershed are essential to the continued economic growth and quality of life of West Virginia communities within the watershed. Protection of these communities' economic vitality and the Chesapeake Bay are critical interests of the state. The capital costs of nutrient removal processes, if borne by individual rate customers of sewer services or by individual business owners, would result in significant increases in rates for an essential public service, deferral or cancellation of other critical infrastructure extensions and/or improvements and act as a disincentive for business growth, both commercial and agricultural, in these communities, if not the shrinking of industrial and agricultural activity in the watershed. Therefore, a holistic program, while assuring the protection of the Chesapeake Bay, must include: (1) A nutrient trading and off-set program to allow for efficiencies within the watershed to assure that public moneys are placed to best use; and (2) a capital improvement program to assist those required to install capital improvements to obtain the reductions in nutrients previously agreed to by the state.
(e) The secretary, in consultation with affected stakeholders, is hereby directed to establish no later than June 1, 2011, a program of nutrient trading and off-sets. Pending establishment of such a program, the secretary is authorized to consider and implement interim trading and offset programs as necessary and appropriate for individual permittees in order to protect the Chesapeake Bay and its tributaries.

(f) The secretary is hereby directed, no later than June 1, 2010, and in consultation with affected stakeholders, to report to the Joint Legislative Commission on State Water Resources the status of proposed performance standards necessary for wastewater treatment facilities in the Chesapeake Bay watershed for any reduction of nutrients in the watershed required to protect water quality in the Bay.

(g) The secretary and stakeholders shall, no later than June 1, 2010, consider and recommend to the Legislature a program establishing a new and independent source of funding for capital improvements for public facilities made necessary by the imposition of nutrient removal requirements.

(h) Should it be determined based upon new information or the issuance of a final total maximum daily load for the Chesapeake Bay that modifications to nutrient loading requirements contained in West Virginia/National Pollutant Discharge Elimination System permits are necessary to be consistent with this new information or the final total maximum daily load, the secretary shall recalculate such loading requirements and modify such permits consistent with this information.
AN ACT to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §49-2E-1, §49-2E-2, §49-2E-3 and §49-2E-4, all relating to early childhood; requiring county boards to report certain information to the Secretary of the Department of Health and Human Resources and the state superintendent relating to the use of community-based programs to provide early childhood education services; quality rating and improvement system applicable to certain child care providers; findings and intent; Secretary of Department of Health and Human Resources rules; Quality Rating and Improvement System Advisory Council; statewide quality rating system rules; statewide implementation; system components; review, reduction, suspension or disqualification; statewide quality improvement system; financial plan for implementation and quality improvement; plan components; pilot projects; third-party evaluator; reports to Legislature; gradual implementation; conditioning requirements on legislative appropriation; prioritization of components for funding; and PIECES advisory council.

Be it enacted by the Legislature of West Virginia:

That §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding
thereto a new article, designated §49-2E-1, §49-2E-2, §49-2E-3 and 
§49-2E-4, all to read as follows:

Chapter
  18. Education.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-44. Early childhood education programs.

1 (a) For the purposes of this section, "early childhood 
education" means programs for children who have attained 
the age of four prior to September 1 of the school year in 
which the pupil enters the program created in this section.

5 (b) Findings. --

6 (1) Among other positive outcomes, early childhood 
education programs have been determined to:

8 (A) Improve overall readiness when children enter 
school;

10 (B) Decrease behavioral problems;

11 (C) Improve student attendance;

12 (D) Increase scores on achievement tests;

13 (E) Decrease the percentage of students repeating a 
grade; and

15 (F) Decrease the number of students placed in special 
education programs;
(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor’s degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, thirteen thousand one hundred thirty-five students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately two thousand seven hundred four students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year olds, but the program was established in a manner that resulted in unequal implementation among the counties which helped create deficit financial situations for several county boards;
(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the pupil enters the early childhood education program.

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except, upon enrollment, the provisions of section one, article eight of this chapter apply to an enrolled student; and

(2) It may be for fewer than five days per week and may be less than full day.

(e) Enrollment of students in Head Start, in any other program approved by the state superintendent as provided in subsection (k) of this section shall be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:
(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, \textit{et seq.};

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, \textit{et seq.};

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, \textit{et seq.};

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and
(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs;

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of subsection (k) of this section; and

(3) If the Secretary of the Department of Health and Human Resources finds that the county board has not met one or more of the requirements of this subsection, but that the county board has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall
provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

(l) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early
166 childhood education programs in the same manner in which
167 they apply to kindergarten programs.

168 (n) Annually, the state board shall report to the
169 Legislative Oversight Commission on Education
170 Accountability on the progress of implementation of this
171 section.

172 (o) Except as required by federal law or regulation, no
173 county board may enroll students who will be less than four
174 years of age prior to September 1 for the year they enter
175 school.

176 (p) Neither the state board nor the state department may
177 provide any funds to any county board for the purpose of
178 implementing this section unless the county board has a plan
179 approved pursuant to subsections (h), (i) and (j) of this
180 section.

181 (q) The state board shall promulgate a rule in accordance
182 with the provisions of article three-b, chapter twenty-nine-a
183 of this code for the purposes of implementing the provisions
184 of this section. The state board shall consult with the
185 Secretary of the Department of Health and Human Resources
186 in the preparation of the rule. The rule shall contain the
187 following:

188 (1) Standards for curriculum;

189 (2) Standards for preparing students;

190 (3) Attendance requirements;

191 (4) Standards for personnel; and

192 (5) Any other terms necessary to implement the
193 provisions of this section.
(r) The rule shall include the following elements relating to curriculum standards:

1. A requirement that the curriculum be designed to address the developmental needs of four-year old children, consistent with prevailing research on how children learn;

2. A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

3. A method for including a broad range of content that is relevant, engaging and meaningful to young children;

4. A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

5. A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

6. A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

7. A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

8. A requirement that the curriculum emphasize the development of thinking, reasoning, decisionmaking and problem-solving skills;
(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(s) The secretary and the state superintendent shall submit a report to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance which addresses, at a minimum, the following issues:

(1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;

(2) An analysis of the total cost to the state and county boards of implementing the plans;

(3) A separate analysis of the impact of the plans on counties with increasing enrollment; and

(4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.

The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible manner, make any necessary program improvements based on reported information prior to implementation of the early childhood education programs.

(t) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:
252 (1) Documentation indicating the extent to which county
253 boards are maximizing resources by using the existing
254 capacity of community-based programs, including, but not
255 limited to Head Start and child care; and

(2) For those county boards that are including eligible
257 children attending approved, contracted community-based
258 programs in their net enrollment for the purposes of
259 calculating state aid pursuant to article nine-a of this chapter,
260 documentation that the county board is equitably distributing
261 funding for all children regardless of setting.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2E. QUALITY RATING AND IMPROVEMENT
SYSTEM.

§49-2E-1. Findings and intent; advisory council.
§49-2E-2. Creation of statewide quality rating system; legislative rule required; minimum
provisions.
§49-2E-3. Creation of statewide quality improvement system; financial plan to support
implementation and quality improvement required as part of rules.
§49-2E-4. Quality rating and improvement system pilot projects; independent third-party
evaluation; modification of proposed rule and financial plan; report to
Legislature; limitations on implementation.

§49-2E-1. Findings and intent; advisory council.

(a) The Legislature finds that:

(1) High quality early childhood development
substantially improves the intellectual and social potential of
children and reduces societal costs;

(2) A child care program quality rating and improvement
system provides incentives and resources to improve the
quality child care programs; and

(3) A child care program quality rating and improvement
system provides information about the quality of child care
programs to parents so they may make more informed decisions about the placement of their children.

(b) It is the intent of the Legislature to require the Secretary of the Department of Health and Human Resources promulgate a legislative rule and establish a plan for the phased implementation of a child care program quality rating and improvement system not inconsistent with the provisions of this article.

(c) The Secretary of the Department of Health and Human Resources shall create a Quality Rating and Improvement System Advisory Council to provide advice on the development of the rule and plan for the phased implementation of a child care program quality rating and improvement system and the ongoing program review and policies for quality improvement. The secretary shall facilitate meetings of the advisory council. The advisory council shall include representatives from the provider community, advocacy groups, the Legislature, providers of professional development services for the early childhood community, regulatory agencies and others who may be impacted by the creation of a quality rating and improvement system.

(d) Nothing in this article requires an appropriation, or any specific level of appropriation, by the Legislature.

§49-2E-2. Creation of statewide quality rating system; legislative rule required; minimum provisions.

(a) The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement a quality rating and improvement system. The quality rating and improvement system shall be applicable to licensed child care centers and facilities and registered family child care homes. If other
types of child care settings such as school-age child care programs become licensed after the implementation of a statewide quality rating and improvement system, the secretary may develop quality criteria and incentives that will allow the other types of child care settings to participate in the quality rating and improvement system. The rules shall include, but are not limited to, the following:

(1) A four-star rating system for registered family child care homes and a four-star rating system for all licensed programs, including family child care facilities and child care centers, to easily communicate to consumers four progressively higher levels of quality child care. One star indicating meeting the minimum acceptable standard and four stars indicating meeting or exceeding the highest standard. The system shall reflect the cumulative attainment of the standards at each level and all lesser levels: Provided, that any program accredited by the National Association for the Education of Young Children or the National Association for Family Child Care, as applicable, shall automatically be awarded four-star status;

(2) Program standards for registered family child care homes and program standards for all licensed programs, including family child care facilities and child care centers, that are each divided into four levels of attributes that progressively improve the quality of child care beginning with basic state registration and licensing requirements at level one, through achievement of a national accreditation by the appropriate organization at level four. Participation beyond the first level is voluntary. The program standards shall be categorized using the West Virginia State Training and Registry System Core Knowledge Areas or its equivalent;

(3) Accountability measures that provide for a fair, valid, accurate and reliable assessment of compliance with quality standards, including, but not limited to:
(A) Evaluations conducted by trained evaluators with appropriate early childhood education and training on the selected assessment tool and with a demonstrated inter-rater reliability of eighty-five percent or higher. The evaluations shall include an on-site inspection conducted at least annually to determine whether programs are rated correctly and continue to meet the appropriate standards. The evaluations and observations shall be conducted on at least a statistically valid percentage of center classrooms, with a minimum of one class per age group;

(B) The use of valid and reliable observation and assessment tools, such as environmental rating scales for early childhood, infant and toddler, school-age care and family child care as appropriate for the particular setting and age group;

(C) An annual self-assessment using the proper observation and assessment tool for programs rated at two stars; and

(D) Model program improvement planning shall be designed to help programs improve their evaluation results and level of program quality.

(b) The rules required pursuant to this section shall include policies relating to the review, reduction, suspension or disqualification of child care programs from the quality rating and improvement system.

(c) The rules shall provide for implementation of the statewide quality rating system effective July 1, 2011, subject to section four of this article.

§49-2E-3. Creation of statewide quality improvement system; financial plan to support implementation and quality improvement required as part of rules.
Attached to the proposed rules required in section two of this article, the Secretary of the Department of Health and Human Resources shall submit a financial plan to support the implementation of a statewide quality rating and improvement system and help promote quality improvement. The financial plan shall be considered a part of the rule and shall include specific proposals for implementation of the provisions of this section as determined by the Secretary. The plan shall address, but is not limited to, the following:

(1) State agency staffing requirements, including, but not limited to:

(A) Highly trained evaluators to monitor the assessment process and ensure inter-rater reliability of eighty-five percent or higher;

(B) Technical assistance staff responsible for career advising, accreditation support services, improvement planning, portfolio development and evaluations for improvement planning only. The goal for technical assistance staffing is to ensure that individualized technical assistance is available to participating programs;

(C) A person within the department to collaborate with other professional development providers to maximize funding for training, scholarships and professional development. The person filling this position also shall encourage community and technical colleges to provide courses through nontraditional means such as online training, evening classes and off-campus training;

(D) Additional infant and toddler specialists to provide high level professional development for staff caring for infants and to provide on-site assistance with infant and toddler issues;
(E) At least one additional training specialist at each of the child care resource and referral agencies to support new training topics and to provide training for school-age child care programs. Training providers such as the child care resource and referral agencies shall purchase new training programs on topics such as business management, the Devereux Resiliency Training and Mind in the Making; and

(F) Additional staff necessary for program administration;

(2) Implementation of a broad public awareness campaign and communication strategies that may include, but are not limited to:

(A) Brochures, internet sites, posters, banners, certificates, decals and pins to educate parents; and

(B) Strategies such as earned media campaigns, paid advertising campaigns, e-mail and internet-based outreach, face-to-face communication with key civic groups and grassroots organizing techniques; and

(3) Implementation of an internet-based management information system that meets the following requirements:

(A) The system shall allow for multiple agencies to access and input data;

(B) The system shall provide the data necessary to determine if the quality enhancements result in improved care and better outcomes for children;

(C) The system shall allow access by Department of Health and Human Resources subsidy and licensing staff, child care resource and referral agencies, the agencies that provide training and scholarships, evaluators and the child care programs;
(D) The system shall include different security levels in order to comply with the numerous confidentiality requirements;

(E) The system shall assist in informing practice; determining training needs; and tracking changes in availability of care, cost of care, changes in wages and education levels; and

(F) The system shall provide accountability for child care programs and recipients and assure funds are being used effectively;

(4) Financial assistance for child care programs needed to improve learning environments, attain high ratings and sustain long-term quality without passing additional costs on to families that may include, but are not limited to:

(A) Assistance to programs in assessment and individual program improvement planning and providing the necessary information, coaching and resources to assist programs to increase their level of quality;

(B) Subsidizing participating programs for providing child care services to children of low-income families in accordance with the following:

(i) Base payment rates shall be established at the seventy-fifth percentile of market rate; and

(ii) A system of tiered reimbursement shall be established which increases the payment rates by a certain amount above the base payment rates in accordance with the rating tier of the child care program;

(C) Two types of grants shall be awarded to child care programs in accordance with the following:
(i) An incentive grant shall be awarded based on the type of child care program and the level at which the child care program is rated with the types of child care programs having more children and child care programs rated at higher tiers being awarded a larger grant than the types of child care programs having less children and child care programs rated at lower tiers; and

(ii) Grants for helping with the cost of national accreditation shall be awarded on an equitable basis.

(5) Support for increased salaries and benefits for program staff to increase educational levels essential to improving the quality of care that may include, but are not limited to:

(A) Wage supports and benefits provided as an incentive to increase child care programs ratings and as an incentive to increase staff qualifications in accordance with the following:

(i) The cost of salary supplements shall be phased in over a five-year period;

(ii) The Secretary of the Department of Health and Human Resources shall establish a salary scale for each of the top three rating tiers that varies the salary support based on the education of the care giver and the rating tier of the program; and

(iii) Any center with at least a tier two rating that employs at least one staff person participating in the scholarship program required pursuant to paragraph (B) of this subsection or employs degree staff may apply to the Secretary of the Department of Health and Human Resources for funding to provide health care benefits based on the Teacher Education and Compensation Helps model in which insurance costs are shared among the employees, the employer and the state; and
(B) The provision of scholarships and establishment of professional development plans for center staff that would promote increasing the credentials of center staff over a five-year period; and

(6) Financial assistance to the child care consumers whose income is at two hundred percent of the federal poverty level or under to help them afford the increased market price of child care resulting from increased quality.

§49-2E-4. Quality rating and improvement system pilot projects; independent third-party evaluation; modification of proposed rule and financial plan; report to Legislature; limitations on implementation.

(a) The Secretary of the Department of Health and Human Resources may promulgate emergency rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement a quality rating and improvement system in up to five counties as pilot projects beginning July 1, 2009. The pilot quality rating and improvement systems shall be in accordance with the provisions of this article for the statewide system. The purpose of the pilot projects is to test the rating system, assess the quality of existing child care providers, provide a basis for estimating the financial requirements of the various elements of a statewide system as set forth in this article and to inform future policy decisions. Notwithstanding any provision of this article to the contrary, the rating or potential rating of a child care provider participating in the study may not be individually disclosed. The secretary may modify and develop additional policies consistent with this article as appropriate.

(b) The secretary shall contract with an independent third-party evaluator to assist the department and the Quality
Rating and Improvement System Advisory Council with establishing and evaluating the pilot project quality rating and improvement system and conducting research on statewide implementation. The secretary also may contract with the evaluator for ongoing evaluation and research for quality improvement. The evaluator shall have access to all project data including data in the management information system provided for in section two of this article.

(c) The secretary shall report annually to the Legislature on the progress on development and implementation of a child care quality rating and improvement system and its impact on improving the quality of child care in the state. The secretary may propose amendments to the rules and financial plan necessary to promote implementation of the quality rating and improvement system and improve the quality of child care and may recommend needed legislation. Nothing in this article requires the implementation of a quality rating and improvement system unless funds are appropriated therefore. The secretary may prioritize the components of the financial plan for implementation and quality improvement for funding purposes. If insufficient funds are appropriated for full implementation of the quality rating and improvement system beginning on July 1, 2011, the rules shall provide for gradual implementation over a period of several years.

(d) The Legislature recognizes that expenditures, especially one-time types of expenditures or expenditures of a limited duration, may be funded with moneys derived through the American Recovery and Reinvestment Act of 2009. A study of the cost of implementing a quality rating and improvement system statewide is expected to be conducted over the next two years.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5B-5a, relating to creating the Juvenile Services Reimbursement Offender Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-5B-5a, to read as follows:

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-5B-5a. Creating the Juvenile Services Reimbursement Offender Fund.

There is hereby created within the State Treasury a special revenue account designated “The Juvenile Services Status Offender Fund” within and for the benefit of the Division of Juvenile Services for expenses incurred in housing juvenile status offenders in need of stabilization and specialized supervision due to chronic runaway behavior.
Moneys shall be paid into the account by the Department of Health and Human Resources based upon an established per diem rate. The Department of Health and Human Resources and the Division of Juvenile Services shall jointly establish the per diem rate to be paid into the fund by the Department of Health and Human Resources for each juvenile status offender in need of stabilization and specialized supervision due to chronic runaway behavior housed in a Division of Juvenile Services staff secure facility pursuant to the provisions of this article and by cooperative agreement. The Director of Juvenile Services is authorized to make expenditures from the fund in accordance with the provisions of article three, chapter twelve of this code to offset expenses incurred by the Division of Juvenile Services in housing, treatment and caring for juvenile offenders.

CHAPTER 28

(Com. Sub. for S.B. 341 - By Senators Kessler and White)

[Passed April 3, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §49-7-32 of the Code of West Virginia, 1931, as amended, relating to transferring the authority to administer the juvenile justice database from the Department of Military Affairs and Public Safety to the West Virginia Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

That §49-7-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 7. GENERAL PROVISIONS.

§49-7-32. Juvenile justice database.

The West Virginia Supreme Court of Appeals is responsible for collecting, compiling and disseminating information in the juvenile justice database. Notwithstanding any other provision of this code to the contrary, the court shall grant the Division of Criminal Justice Services access to confidential juvenile records for the limited purpose of the collection and analysis of statistical data: Provided, That the division shall keep the records confidential and not publish any information that would identify any individual juvenile.
State Fire Marshal to review effectiveness of the law and report to the Legislature; providing the State Fire Marshal with rule-making authority; authorizing inspections by State Tax Commissioner; authorizing the sale of existing inventory; permitting manufacturers to sell noncompliant cigarettes to other states and foreign countries; preemption if federal law or regulations establish a national standard; preemption of local regulations; and establishing effective dates.

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 §47-25-1, §47-25-2, §47-25-3, §47-25-4, §47-25-5, §47-25-6, §47-25-7, §47-25-8, §47-25-9, §47-25-10, 47-25-11, §47-25-12 and §47-25-13, all to read as follows:

ARTICLE 25. REDUCED CIGARETTE IGNITION PROPENSITY.

§47-25-1. Short title.
§47-25-5. Marking of cigarette packaging.
§47-25-6. Penalties.
§47-25-8. Inspection.
§47-25-10. Sales outside of West Virginia.
§47-25-12. Local regulation.

§47-25-1. Short title.

This article shall be known and may be cited as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act.

(a) "Agent" means any person authorized by the State Tax Commissioner to purchase and affix stamps on packages of cigarettes.

(b) "Cigarette" means:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described in this subsection.

(c) "Manufacturer" means:

(1) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;

(2) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) Any entity that becomes a successor of an entity described in subdivision (1) or (2) of this subsection.

(d) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the
results of the testing. The program shall ensure that the testing repeatability remains within the required repeatability values stated in subdivision (6), subsection (a), section three of this article for all test trials used to certify cigarettes in accordance with this article.

(e) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.

(f) "Retail dealer" has the same meaning as in section two, article seventeen, chapter eleven of this code.

(g) "Sale" has the same meaning as in section two, article seventeen, chapter eleven of this code.

(h) "Wholesale dealer" means any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.


(a) Except as provided in subsection (g) of this section and in section ten of this article, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state, unless: (i) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section; (ii) a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section four of this article; and (iii) the cigarettes have been marked in accordance with section five of this article.

(1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM)
standard E2187-04, standard test method for measuring the ignition strength of cigarettes.

(2) Testing shall be conducted on ten layers of filter paper.

(3) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by this section shall only be applied to a complete test trial.

(5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (ISO) or other comparable accreditation standard.

(6) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(7) This section does not require additional testing if cigarettes are tested consistent with this article for any other purpose.

(8) Testing performed to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

(b) Each cigarette listed in a certification submitted pursuant to section four of this article that uses lowered permeability bands in the cigarette paper to achieve
compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(c) A manufacturer of a cigarette that cannot be tested in accordance with the test method prescribed in subdivision (1), subsection (a) of this section shall propose a test method and performance standard for the cigarette to the State Fire Marshal. If the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subdivision (3) of said subsection, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to section four of this article. If another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this article and the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the manufacturer may employ the alternative test method and performance standard to certify cigarettes for sale in this state, unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under this article. All other applicable requirements of this section apply to the manufacturer.

(d) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale
for a period of three years and shall make copies of these reports available to the State Fire Marshal upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed $10,000 for each day after the sixtieth day that the manufacturer does not make the copies available.

(e) A subsequent ASTM standard test method for measuring the ignition propensity of cigarettes may be used, if the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in subdivision (3), subsection (a) of this section.

(f) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature, if appropriate, recommendations for legislation to improve the effectiveness of this article. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(g) The requirements of subsection (a) of this section shall not prohibit:

1. Wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this article if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date and the wholesale or retail dealer can establish that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or
(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of those cigarettes, using only the quantity of cigarettes that is reasonably necessary for the assessment.

(h) This article shall be implemented and construed as to effectuate its general purpose to make uniform the law of those states that have enacted reduced cigarette ignition propensity laws.


(a) Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with section three of this article; and

(2) Each cigarette listed in the certification meets the performance standard set forth in section three of this article,

(b) Each cigarette listed in the certification shall be described with the following information:

(1) Brand or trade name on the package;

(2) Style, such as light or ultra light;

(3) Length in millimeters;

(4) Circumference in millimeters;

(5) Flavor, if applicable;
(6) Filter or nonfilter;

(7) Package description, such as soft pack or box;

(8) Marking pursuant to section five of this article;

(9) The name, address and telephone number of the laboratory, if different from the manufacturer that conducted the test; and

(10) The date that the testing occurred.

(c) The certifications shall be made available to the State Fire Marshal for the purposes of ensuring compliance with this section.

(d) Each cigarette certified under this section shall be recertified every three years.

(e) At the time it submits a written certification under this section, a manufacturer shall pay a fee of $1,000 to the State Fire Marshal for each brand family of cigarettes listed in the certification. The fee shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three-year certification period.

(f) All moneys collected as certification fees submitted by manufacturers shall be deposited in a special account in the State Treasury to be known as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund. The fund shall be administered by the Tax Commissioner. 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 the fulfillment of the provisions
set forth in article two, chapter eleven-b of this code:

Provided, That for the fiscal year ending June 30, 2010, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. The fund shall, in addition to any other moneys made available for those purposes, be equally divided and distributed without appropriation between the State Fire Marshal and the State Tax Commissioner to support fire prevention activities and processing, testing, enforcement and oversight activities under this article.

(g) If a manufacturer has certified a cigarette pursuant to this section and thereafter makes any change to the cigarette that is likely to alter the cigarette's compliance with the reduced cigarette ignition propensity standards required by this article, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in section three of this article and maintains records of that retesting as required by section three of this article. Any altered cigarette which does not meet the performance standard set forth in section three of this article may not be sold in this state.

§47-25-5. Marking of cigarette packaging.

(a) Cigarettes that are certified by a manufacturer in accordance with section four of this article shall be marked to indicate compliance with the requirements of section three of this article. The marking shall be in eight-point type or larger and consist of:

(1) Modification of the product UPC code to include a visible mark printed at or around the area of the UPC code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the UPC;
(2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap; or

(3) Printed, stamped, engraved or embossed text that indicates that the cigarettes meet the standards of this article.

(b) A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons and cases, and brands marketed by that manufacturer.

(c) The State Tax Commissioner shall be notified as to the marking that is selected.

(d) Prior to the certification of any cigarette, a manufacturer shall submit its proposed marking to the State Tax Commissioner for approval. Upon receipt of the request, the State Tax Commissioner shall approve or disapprove the marking offered, except that the State Tax Commissioner shall approve:

(1) Any marking in use and approved for sale in another state; or

(2) The letters "FSC", which signifies fire standards compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

(e) A manufacturer shall not modify its approved marking unless the modification has been approved by the State Tax Commissioner in accordance with this section.

(f) Manufacturers certifying cigarettes in accordance with section four of this article shall provide a copy of the certifications to all wholesale dealers and agents to which
they sell cigarettes and shall also provide sufficient copies of
an illustration of the package marking used by the
manufacturer pursuant to this section for each retail dealer to
which the wholesale dealers or agents sell cigarettes.
Wholesale dealers and agents shall provide a copy of these
package markings received from manufacturers to all retail
dealers to which they sell cigarettes. Wholesale dealers,
agents and retail dealers shall permit the State Tax
Commissioner and its agents to inspect markings of cigarette
packaging marked in accordance with this section.

§47-25-6. Penalties.

(a) A manufacturer, wholesale dealer, agent or any other
person or entity who knowingly sells or offers to sell
cigarettes, other than through retail sale, in violation of
section three of this article, is subject to a civil penalty not to
exceed $100 for each pack of the cigarettes sold or offered
for sale: Provided, That in no case shall the penalty against
that person or entity exceed $100,000 during any thirty-day
period.

(b) A retail dealer who knowingly sells or offers to sell
cigarettes in violation of section three of this article is subject
to a civil penalty not to exceed $100 for each pack of the
cigarettes sold or offered for sale: Provided, That in no case
shall the penalty against that retail dealer exceed $25,000 for
sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, any
manufacturer of cigarettes that knowingly makes a false
certification pursuant to section four of this article is subject
to a civil penalty of at least $75,000 and not to exceed
$250,000 for each false certification.

(d) Any person violating any other provision in this
article is subject to a civil penalty for a first offense not to
In addition to any other remedy provided by law, the State Fire Marshal or the State Tax Commissioner may file an action in circuit court for a violation of this article, including petitioning for injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent or any other person or entity to enjoin that entity from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this article, or to recover any costs or damages suffered by the state because of a violation of this article, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this article or of rules promulgated under this article constitutes a separate civil violation for which the State Fire Marshal or the State Tax Commissioner may obtain relief. Upon obtaining injunctive relief under this section, the State Fire Marshal or the State Tax Commissioner shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

Whenever any law-enforcement personnel or duly authorized representative of the State Tax Commissioner discovers any cigarettes for which no certification has been filed as required by section four of this article or that have not been marked in the manner required by section five of this article, they may seize and take possession of the cigarettes. The cigarettes shall be forfeited to the state. The State Tax Commissioner shall destroy any cigarettes seized pursuant to this section: Provided, That prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand may inspect the cigarette.

(a) The State Fire Marshal or the State Tax Commissioner may promulgate rules, pursuant to the Administrative Procedures Act, chapter twenty-nine-a of this code, necessary to effectuate the purposes of this article.

(b) The State Tax Commissioner in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under article seventeen, chapter eleven of this code, may inspect the cigarettes to determine if the cigarettes are marked as required by section five of this article.

§47-25-8. Inspection.

To enforce the provisions of this article, the State Tax Commissioner and its duly authorized representatives may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control or occupancy of any premises where cigarettes are placed, sold or offered for sale, shall give the State Tax Commissioner and its duly authorized representatives the means, facilities and opportunity for the examinations authorized by this section.


All moneys collected as civil penalties under section six of this article shall be deposited in a special account in the State Treasury to be known as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund. The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for that
purpose, be equally divided between the State Fire Marshal and the State Tax Commissioner to support fire safety and prevention programs and tax department enforcement activities.

§47-25-10. Sales outside of West Virginia.

Nothing in this article shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section three of this article, if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this state.


This article shall have no force and effect if a federal law or regulation establishing a national reduced cigarette ignition propensity standard is adopted and becomes effective.

§47-25-12. Local regulation.

Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation relating to cigarette fire safety standards conflicting with any provision of this article.


Except as otherwise specifically provided in this section, the provisions of this article take effect on January 1, 2010. The provisions of section twelve of this article take effect on the effective date of this article.
AN ACT to amend and reenact §29-6-24 of the Code of West Virginia, 1931, as amended, relating to clarifying provisions relating to postings of job openings after a vacancy is created.

Be it enacted by the Legislature of West Virginia:

That §29-6-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-24. Posting of job openings.

(a) Whenever a job opening occurs within the classified service, the appointing authority shall, in addition to any other requirement of law or regulation for the posting of job opening notices, at least ten days before making an appointment to fill the job opening, post a notice within the building or facility where the duties of the job will be performed and throughout the agency, which notice states that a job opening has occurred and describes the duties to be performed by a person employed in that position.

(b) If an individual selected for a posted vacancy within the first ten work days of employment: (1) Refuses the offer
of employment; (2) fails to report to work; or (3) resigns or otherwise separates from employment, the appointing authority is not required to repost the vacancy prior to another appointment to the position if the appointment is made within thirty days and the selection is made from the pool of eligible applicants from which the first employee was hired.

CHAPTER 31

(Com. Sub. for S.B. 404 - By Senators Unger, Tomblin, Mr. President, Snyder, Foster, McCabe, Stollings and White)

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-13-1, §4-13-2, §4-13-3, §4-13-4, §4-13-5, §4-13-6 and §4-13-7, all relating to establishing a West Virginia Sesquicentennial of the American Civil War Commission; establishing findings and purpose; setting forth membership and terms; providing for compensation and expense reimbursement; defining quorums; requiring meeting to be held in accordance with the Open Governmental Proceedings Act; authorizing the commission to establish an advisory council; setting forth powers and duties of the commission; limiting duration of contracts; and providing for the termination of the commission.

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 §4-13-1, §4-13-2,
§4-13-3, §4-13-4, §4-13-5, §4-13-6 and §4-13-7, all to read as follows:

ARTICLE 13. WEST VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION AND FUND.

§4-13-1. Findings; West Virginia Sesquicentennial of the American Civil War Commission established; purpose.

(a) The Legislature finds that the role of West Virginia, its creation as a state and the roles of individual West Virginians in the American Civil War, from the time of John Brown’s Raid through the formation of the State of West Virginia and the conclusion of the American Civil War, are of such historical significance as to warrant their commemoration.

(b) There is hereby created the West Virginia Sesquicentennial of the American Civil War Commission.

(c) The purpose of the commission is to prepare for and commemorate the sesquicentennial of West Virginia’s participation in the American Civil War.

§4-13-2. Membership; terms; filling vacancies; election of chair and vice chair.

(a) The Governor shall appoint eleven members as follows:
(1) Three academic historians;

(2) The Secretary of the Department of Education and the Arts, or a designee;

(3) One representative of the Division of Culture and History;

(4) One representative of the Division of Tourism;

(5) Five citizens members, no more than one of whom may be from any one state senatorial district;

(6) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates, who shall serve as an ex officio nonvoting member of the commission; and

(7) One member of the Senate, to be appointed by the President of the Senate, who shall serve as an ex officio nonvoting member of the commission.

(b) The members shall serve until July 1, 2021.

(c) Appointments to fill vacancies shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

(d) The commission shall elect a chair and a vice chair from among its members.

§4-13-3. Expense reimbursement.

(a) Members shall serve without compensation.

(b) The commission may reimburse members for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a commission member, in a manner consistent with the guidelines of the travel
management office of the Department of Administration, subject to availability of funds received pursuant to subdivision (1), subsection (a), section six of this article. No provision of this section may be construed to require any appropriation of funds by the Legislature.

§4-13-4. Quorum; meetings.

(a) A simple majority of the members serving on the board at a given time constitutes a quorum for the transaction of business.

(b) Meetings shall be held in accordance with the provisions of article nine-a, chapter six of this code.

§4-13-5. Advisory council.

The commission may establish an advisory council composed of citizens at large who have knowledge of American Civil War history and interest in its sesquicentennial celebration to assist the commission in its work.

§4-13-6. Powers; duties; limitation on duration of contracts.

(a) The commission may:

(1) Solicit, accept, use and dispose of gifts, grants, donations, bequests or other funds or real or personal property for the purpose of aiding or facilitating the work of the commission, upon compliance with the provisions of section two, article two, chapter twelve of this code;

(2) Procure supplies, services and property and make or enter into contracts, leases or other legal agreement as necessary to carry out its duties: Provided, That no contract, lease or other legal agreement may be entered into by the commission with terms which would extend beyond the termination date of the commission;
(3) Plan, develop and carry out programs and activities appropriate to commemorate the sesquicentennial of the American Civil War;

(4) Encourage civic, historical, educational, economic and other organizations throughout West Virginia to organize and participate in activities to expand the understanding and appreciation of the American Civil War;

(5) Provide technical assistance to localities and nonprofit organizations to further the commemoration of the sesquicentennial of the American Civil War;

(6) Develop programs and facilities to ensure that the sesquicentennial commemoration of the American Civil War result in a positive legacy and long-term public benefit;

(7) Encourage the development and conduct of programs designed to involve all citizens in activities that commemorate the sesquicentennial of the American Civil War; and

(8) Focus its activities on the role of West Virginia and its creation as a state and the roles of individual West Virginians in the American Civil War.

(b) The commission shall report to the Legislature at each regular session and at the same time report to the Governor concerning the action taken by the commission during the previous year in carrying out the provisions of this article and make such special reports as may be required by the Legislature and Governor.

§4-13-7. Termination of the commission.

The commission shall terminate on June 30, 2021.
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Administration; Department of Environmental Protection; Department of Health and Human Resources; Division of Banking; Division of Corrections; Division of Highways; Division of Motor Vehicles; Division of Personnel; Division of Tourism; Insurance Commission; Public Service Commission; Regional Jail and Correctional Facility Authority and the State Fire Commission to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the state and agencies thereof and in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in
respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the 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.

Claims against the Department of Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Fort Henry Realty Inc. dba Advanced Communications Company ............... $13,266.78

(TO BE PAID FROM SPECIAL REVENUE FUND)

(2) Infoprint Solutions Company .......... $187,763.14

(b) Claim against the Department of Environmental Protection:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Groundworks Reclamation Inc. ....... $12,000.00

(c) Claim against the Department of Health and Human Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Laboratory Corporation of America Holdings ........................................ $34,043.38

(d) Claim against the Division of Banking:
(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Federal Deposit Insurance Corporation . . $551.24

(e) Claims against the Division of Corrections:

(2) John Earl Crider Jr. .................. $611.22

35 (3) Timothy J. Kittle ................... $48.92

36 (4) Verizon .......................... $3,705.75

37 (5) Curtis Yanko ....................... $36.00

(f) Claims against the Division of Highways:

(6) Betty R. Badzek ..................... $450.00

40 (7) Melissa M. Baker

41 and Daniel J. Baker Jr. ............... $872.78
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145 (87) Penny Sisk ......................... $793.51
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<td>158</td>
<td>Dawn E. Warfield and Thomas M. Knight</td>
<td>$250.00</td>
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<tr>
<td>159</td>
<td>William J. Waskevich and Jessica Waskevich</td>
<td>$169.00</td>
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<tr>
<td>160</td>
<td>Angela R. Weikle</td>
<td>$837.84</td>
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<tr>
<td>161</td>
<td>Kimberly Ann Wilcox</td>
<td>$714.71</td>
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<tr>
<td>162</td>
<td>David Josh Williams</td>
<td>$1,183.37</td>
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<tr>
<td>163</td>
<td>Carl W. Withrow II</td>
<td>$61.37</td>
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<tr>
<td>164</td>
<td>Brandy Womack</td>
<td>$500.00</td>
</tr>
<tr>
<td>165</td>
<td>Claim against the Division of Motor Vehicles:</td>
<td></td>
</tr>
</tbody>
</table>
CLAIMS

(1) Brenda F. Hayworth ..................... $164.00

(h) Claim against Division of Personnel:

(1) Debra A. Dangerfield .................... $600.00

(i) Claim against the Division of Tourism:

(1) Cambridge Center LLC ................ $12,472.42

(j) Claims against the Insurance Commission:

(1) Konica Minolta Business Solutions .... $4,042.12

(2) Sandra Koutsunis, dba AAA Court Reporting ......................... $237.20

(k) Claims against the Public Service Commission:

(1) David J. Ellis ......................... $2,250.00

(2) William Carl Freeman ................ $39.96

(3) Pomeroy IT Solutions Sales Company Inc. ......................... $1,639.83

(4) Royal Automotive Company ............ $3,533.58
Claim against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Marvin D. Adams ................... $150.00
(2) Mark A. Held ..................... $1,035.00
(3) Jaime Navarrete Ortiz .............. $1,200.00
(4) Paul Twyman ...................... $190.00
(5) Josh Webster ...................... $100.00

Claim against the state Fire Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Pomeroy IT Solutions Sales Company Inc. ......................... $154.81

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 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 and the Division of Natural Resources 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, 1931, 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) Camden-Clark Memorial Hospital ...... $ 4,372.43
(2) Monongalia General Hospital ........ $ 477.60
(3) Montgomery General Hospital ........ $ 19,360.21
(4) Montgomery Medcorp ............... $ 3,598.00
(5) West Virginia University Hospitals, Inc. $ 40,247.49
(6) WVU Medical Corporation dba University Health Associates ...... $ 2,507.00
(7) WVU Physicians of Charleston ...... $ 5,027.00

(b) Claim against the Division of Natural Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Harry Lee Scott dba H & J Superette ... $ 30,584.00
CHAPTER 34

(S.B. 572 - By Senator Bowman)

[Passed April 6, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to repeal §SA-1-10 of the Code of West Virginia, 1931, as amended, relating to abolishing the Public Employee Leave Benefit Analysis Board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§1. Repeal of section relation to the Public Employees Leave Benefit Analysis Board.

1 Section ten, article one, chapter five-a of the Code of West Virginia, 1931, as amended, is hereby repealed.

CHAPTER 35

(H.B. 3011 - By Delegates Brown, Guthrie and Hatfield)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to repeal §18-10A-11 of the Code of West Virginia, 1931, as amended, relating to limitation on political activity of officers or employees in the administration of the Vocational Rehabilitation Program.
Be it enacted by the Legislature of West Virginia:

ARTICLE 10A. REHABILITATION SERVICES.

§1. Repeal of section relating to limitation on political activity.

§18-10A-11 of the Code of West Virginia, 1931, as amended, is hereby repealed.

CHAPTER 36

(H.B. 2652 - By Delegates Talbott, Argento, Pethtel, Swartzmiller, Tabb, Beach, Williams, Anderson, Evans, Schoen and C. Miller)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]


Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the tree fruit industry self-improvement act of 1984.

CHAPTER 37

(H.B. 2651 - By Delegates Talbott, Argento, Pethtel, Swartzmiller, Tabb, Beach, Williams, Anderson, Evans, Schoen and C. Miller)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to repeal §19-10-1, §19-10-2, §19-10-3, §19-10-4, §19-10-5, §19-10-6, §19-10-7, §19-10-8, §19-10-9, §19-10-10, §19-10-11, §19-10-12 and §19-10-13 of the Code of West Virginia, 1931, as amended; relating to male breeding animals.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article regulating male breeding animals.


CHAPTER 38

(H.B. 2742 - By Delegates Talbott, Argento, Pethtel, Swartzmiller, Tabb, Beach, Williams, Anderson, Evans, Schoen and C. Miller)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

§1. Repeal of article regulating vinegars.


CHAPTER 39

(S.B. 425 - By Senators Minard, Jenkins and Deem)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §46A-4-111 of the Code of West Virginia, 1931, as amended, relating to refinancing or consolidation of certain loans or consumer credit sales by regulated consumer lenders; requiring disclosure of a higher annual percentage rate in any refinancing or consolidation of a nonrevolving consumer loan or consumer credit sale; and requiring documentation of a reasonable, net tangible benefit to the borrower of any refinancing or consolidation of a nonrevolving consumer loan or consumer credit sale secured by residential real estate.

Be it enacted by the Legislature of West Virginia:

That §46A-4-111 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. REGULATED CONSUMER LENDERS.
§46A-4-111. Disclosure of higher annual percentage rate upon refinancing of a loan not secured by real estate at higher rate; requiring documentation of a reasonable net tangible benefit to the borrower of any refinancing of a real estate secured loan.

(1) Any nonrevolving consumer loan or consumer credit sale that is not secured by residential real estate that is refinanced or consolidated with a new loan under this article after September 1, 2009, at a higher annual percentage rate than the consumer loan or consumer credit sale being refinanced must provide the consumer the following disclosures:

"If you do agree to refinance or consolidate your existing obligation, you will be paying an annual percentage rate of ____% on the existing balance of $____, instead of the annual percentage rate of _____% which you are now paying.

I acknowledge receipt of this information ________ (initials of borrower)."

Nothing in this subsection shall prohibit the receipt of goods or services by the borrower at the time the consolidated loan agreement is made, nor shall this subsection prohibit or pertain to any loan where the refinancing or consolidation results in the consumer paying the same or a lower annual percentage rate.

(2) No nonrevolving consumer loan or consumer credit sale that is secured by residential real estate may be refinanced or consolidated with a new loan secured by residential real estate and made under this article unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of
28 the new loan and the borrower's circumstances. The
29 reasonable, tangible net benefit shall be documented in
30 writing on a form prescribed by the commissioner and
31 maintained in the loan file.

CHAPTER 40

(Com. Sub. for H.B. 2407 - By Delegates Perry, Boggs,
Morgan, Ellem and Webster)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §25-1-3a and §25-1-3b of the Code
of West Virginia, 1931, as amended, all relating to trustee
accounts and funds; providing for disposition of certain
earnings and personal property of inmates; authorizing uses of
moneys in the inmate benefit fund.

Be it enacted by the Legislature of West Virginia:

That §25-1-3a and §25-1-3b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND
CORRECTIONS MANAGEMENT.

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

§25-1-3b. Inmate benefit funds.

§25-1-3a. Trustee accounts and funds, earnings and personal
property of inmates.
(a) The Commissioner of Corrections is authorized to establish at each institution under his or her jurisdiction a "Trustee Fund". The warden or administrator of each institution shall receive and take charge of the money and personal property, as defined by policy, of all inmates in his or her institution and all money or personal property, as defined by policy, sent to the inmates or earned by the inmates as compensation for work performed while they are domiciled there. The warden or administrator shall credit the money and earnings to the inmate entitled to it and shall keep an accurate account of all the money and personal property so received, which account is subject to examination by the Commissioner of Corrections. The warden or administrator shall deposit the moneys in one or more responsible banks in accounts to be designated a "Trustee Fund".

(b) For all inmates, except those serving life without mercy and those the warden determines are likely to serve the remainder of their natural lives in the custody of the Division of Corrections due to their age and the length of their sentences, the warden or administrator shall keep in an account at least ten percent of all money earned during the inmate's incarceration and pay the money to the inmate at the time of the inmate's release. The warden may authorize the inmate to withdraw money from his or her mandatory savings for the purpose of preparing the inmate for reentry into society.

(c) The Commissioner of Corrections may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state toward the cost of his or her incarceration.

(d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs of his or her incarceration, the commissioner, or his or her designee, shall consider the following:
(A) The offender’s ability to pay;

(B) The nature and extent of the offender’s responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court’s sentence; and

(D) The effect, if any, that reimbursement might have on the offender’s rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed $500 per month unless the offender gives his or her express consent.

(3) The Commissioner of Corrections shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the division for the care and supervision of those individuals in his or her custody.

(e) The chief executive officer of any correctional institution, on request of an inmate, may expend up to one half of the money earned by the inmate on behalf of the family of the inmate if the ten percent mandatory savings has first been set aside and other fees owed by the inmate have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate and be paid to the inmate at times as may be prescribed by rules. The funds so accumulated on behalf of inmates shall be held by the chief executive officer of each institution under a bond approved by the Attorney General.

(f) The warden or administrator shall deliver to the inmate at the time he or she leaves the institution, or as soon as practicable after departure, all personal property, moneys and earnings then credited to the inmate, or in case of the death of the inmate before authorized release from the institution, the warden or administrator shall deliver the
property to the inmate’s personal representative. In case a conservator is appointed for the inmate while he or she is domiciled at the institution, the warden or administrator shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate that are in the custody of the warden or administrator.

(g) If any money is credited to a former inmate after remittance of the sum of money as provided in subsection (f), the Commissioner shall notify the former inmate within thirty days of receipt of the money. The former inmate will be afforded the opportunity to collect the money if he or she pays the cost of the transaction. If the former inmate does not claim the money within thirty days of receiving the notice and the sum of money is less than $10, the Commissioner may place the money into the inmate benefit fund.

§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:

(1) Open-house visitation functions or other nonroutine inmate functions;

(2) Holiday functions which may include decorations and gifts for children of inmates;

(3) Cable television service;

(4) Rental of video cassettes;

(5) Payment of video license;

(6) Recreational supplies, equipment or area surfacing;

(7) Reimbursement of employee wages for overtime incurred during open-house visitations and holiday functions;
(8) Postsecondary education classes;

(9) Reimbursement of a pro rata share of inmate work compensation;

(10) Household equipment and supplies in day rooms or units as approved by chief executive officers of institutions, excluding supplies used in the daily maintenance and sanitation of the unit;

(11) Christmas or other holidays gift certificates for each inmate to be used at the exchange or commissary;

(12) Any expense associated with the operation of the fund;

(13) Expenditures necessary to properly operate an automated inmate family and victim information notification system;

(14) Any expense for improvement of the facility which will benefit the inmate population that is not otherwise funded;

(15) Any expense related to the installation, operation and maintenance of the inmate telephone system; and

(16) For restitution of any negative balance on any inmate’s trustee account for inmate medical copay, legal and ancillary related postage, and photocopy fees that are due the State of West Virginia, if the balance is uncollectible from an inmate after one calendar year from an inmate’s release on parole or discharge date.

(d) The institution shall compile a monthly report that specifically documents inmate benefit fund receipts and expenditures and a yearly report for the previous fiscal year by September 1 of each year and submit the reports to the commissioner.
AN ACT to amend and reenact §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, all relating to monitoring of inmate telephone calls and mail; procedures and restrictions; authorizing disclosure under certain circumstances; and providing for retention, maintenance and destruction of telephone recordings and mail.

Be it enacted by the Legislature of West Virginia:

That §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.
§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

1 (a) The Commissioner of Corrections or his or her designee is authorized to monitor, intercept, record and
disclose telephone calls to or from adult inmates of state correctional institutions in accordance with the following provisions:

(1) All adult inmates of state correctional institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded and disclosed;

(2) Only the commissioner, warden, administrator or their designee shall have access to recordings of inmates' telephone calls unless disclosed pursuant to subdivision (4) of this subsection;

(3) Notice shall be prominently placed on or immediately near every telephone that may be monitored;

(4) The contents of inmates' telephone calls may be disclosed to an appropriate law-enforcement agency pursuant to an order of a court or administrative tribunal when disclosure is necessary for the investigation, prevention or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings of telephone calls shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the Division of Corrections adopted pursuant to section one, article eight, chapter five-a of this code, et seq.; or

(6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not monitored shall be made
available for telephone calls to or from an attorney. These calls shall not be monitored, intercepted, recorded or disclosed in any matter.

(b) The commissioner shall propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

c) The provisions of this section shall apply only to those persons serving a sentence of incarceration in the custody of the Commissioner of Corrections.

§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

(a) The Commissioner of Corrections or his or her designee is authorized to monitor, open, review, copy and disclose mail sent to adult inmates of state correctional institutions in accordance with the following provisions:

(1) All adult inmates of state correctional institutions shall be notified in writing that their mail may be monitored, opened, reviewed, copied and disclosed;

(2) Only the commissioner and his or her designee shall have access to copies of inmates’ mail unless disclosed pursuant to subdivision (4) of this subsection;

(3) Notice that the mail may be monitored shall be prominently placed on or immediately near every mail receptacle or other designated area for the collection or delivery of mail;

(4) The contents of inmates’ mail may be disclosed to an appropriate law-enforcement agency pursuant to an order of a court or administrative tribunal when disclosure is
necessary for the investigation, prevention or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may be made in civil or administrative proceedings pursuant to an order of a court or administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All copies of mail shall be retained for at least three years and maintained and destroyed in accordance with the records retention policy of the Division of Corrections adopted pursuant to section one, article eight, chapter five-a of this code, et seq.; or

(6) The inmate whose mail has been copied and disclosed under this section shall be given a copy of all such mail when it is determined by the commissioner, warden or administrator not to jeopardize the safe and secure operation of the facility or to be detrimental to an ongoing investigation or administrative action.

(b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate’s attorney shall not be monitored, reviewed, copied or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, such mail may be checked for weapons, drugs and other contraband provided it is done in the presence of the inmate and there is a reasonable basis to believe that any weapon, drug or other contraband exists in the mail.

(c) All inmates’ outgoing mail must be clearly identified as being sent from an inmate at a state correctional institution
and must include on the face of the envelope the name and full address of the institution.

(d) The Commissioner of Corrections or his or her designee is authorized to open, monitor, review, copy and disclose an inmate's outgoing mail in accordance with the provisions of subsection (a) of this section.

(e) The commissioner shall propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

(f) The provisions of this section shall apply only to those persons serving a sentence of incarceration in the custody of the Commissioner of Corrections.

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CHAPTER 42

(Com. Sub. for S.B. 99 - By Senator White)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]
Be it enacted by the Legislature of West Virginia:

That §25-4-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.

The judge of any court with original criminal jurisdiction may suspend the imposition of sentence of any young adult, as defined in this section, convicted of or pleading guilty to a felony offense, other than an offense punishable by life imprisonment, including, but not limited to, felony violations of the provisions of chapter seventeen-c of this code, who has attained his or her eighteenth birthday but has not reached his or her twenty-third birthday at the time of the sentencing by the court and commit the young adult to the custody of the West Virginia Commissioner of Corrections to be assigned to a center. Young adult offenders who have previously been committed to a young adult offender center are not eligible for commitment to this program. The period of confinement in the center shall be for a period of not less than six months but not more than two years to successfully complete the program requirements set by the warden. The court shall order a presentence investigation to be conducted and provide the warden with a copy of the presentence investigation report, along with the commitment order.

If, in the opinion of the warden, the young adult offender is an unfit person to remain in the center, the offender shall be returned to the committing court to be dealt with further according to law. The offender is entitled to a hearing before the committing court to review the warden’s determination.
25 The standard for review is whether the warden, considering
26 the offender’s overall record at the center and the offender’s
27 compliance with the center’s rules, policies, procedures,
28 programs and services, abused his or her discretion in
determining that the offender is an unfit person to remain in
29 the center. At the hearing before the committing court, the
30 state need not offer independent proof of the offender’s
31 disciplinary infractions contained in the record of the center
32 when opportunity for an administrative hearing on those
33 infractions was previously made available at the institution.
34 If the court upholds the warden’s determination, the court
35 may sentence the offender for the crime for which the
36 offender was convicted. In his or her discretion, the judge
37 may allow the defendant credit on the sentence for time the
38 offender spent in the center.

40 A young adult offender shall be returned to the
41 jurisdiction of the court which originally committed the
42 offender when, in the opinion of the warden, the young adult
43 offender has satisfactorily completed the center training
44 program. The offender is then eligible for probation for the
45 offense the offender was convicted of or plead guilty to and
46 the judge of the court shall immediately place the offender on
47 probation. If the court finds there is reasonable cause to
48 believe that the offender has engaged in new criminal
49 conduct between his or her release from the center and the
50 sentencing hearing for the crime for which the offender was
51 ordered to the center, the judge may sentence the offender for
52 the crime for which the offender was first convicted, with
53 credit for the time spent at the center. In the event the
54 offender’s probation is subsequently revoked, the judge shall
55 impose the sentence the young adult offender would have
56 originally received had the offender not been committed to
57 the center and subsequently placed on probation. The court
58 shall, however, give the offender credit on his or her sentence
59 for the time spent in the center.
AN ACT to repeal §28-5B-1, §28-5B-2, §28-5B-3, §28-5B-4, §28-5B-5, §28-5B-6, §28-5B-7, §28-5B-8, §28-5B-9, §28-5B-10, §28-5B-11, §28-5B-12, §28-5B-13, §28-5B-14, §28-5B-15, §28-5B-16, §28-5B-17 and §28-5B-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §25-7-1, §25-7-2, §25-7-3, §25-7-4, §25-7-5, §25-7-6, §25-7-7, §25-7-8, §25-7-9, §25-7-10, §25-7-11, §25-7-12, §25-7-13, §25-7-14, §25-7-15, §25-7-16 and §25-7-17, all relating to enacting the Correctional Industries Act of 2009; authorizing the Commissioner of the Division of Corrections to enter into correctional industries contracts, develop a marketing plan, create catalogues and a website and determine prices; purchasing inmate-made articles and products by state agencies mandatory; providing exceptions; creating the Correctional Industries Account; prohibiting sale of inmate-made goods on the open market; providing penalties; authorizing the establishment of prison industry enhancement certification programs pursuant to Title 18 U. S. C. §1761(c); providing for agreements between private entities and the commissioner or the Director of the Division of Juvenile Services to establish the federal programs; providing for the contents of the agreements; and updating certain terms.

Be it enacted by the Legislature of West Virginia:
That §28-5B-1, §28-5B-2, §28-5B-3, §28-5B-4, §28-5B-5, §28-5B-6, §28-5B-7, §28-5B-8, §28-5B-9, §28-5B-10, §28-5B-11, §28-5B-12, §28-5B-13, §28-5B-14, §28-5B-15, §28-5B-16, §28-5B-17 and §28-5B-18 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §25-7-1, §25-7-2, §25-7-3, §25-7-4, §25-7-5, §25-7-6, §25-7-7, §25-7-8, §25-7-9, §25-7-10, §25-7-11, §25-7-12, §25-7-13, §25-7-14, §25-7-15, §25-7-16 and §25-7-17, all to read as follows:

ARTICLE 7. CORRECTIONAL INDUSTRIES ACT OF 2009.

§25-7-1. Legislative findings.

§25-7-2. Citation of article.

§25-7-3. Establishment of industries at correctional facilities; purposes and extent.

§25-7-4. Correctional industries service contracts.

§25-7-5. Purchase of inmate-made goods by state agencies.

§25-7-6. Exceptions to mandatory purchase requirement.

§25-7-7. Catalogues and a website of articles and products made and produced.

§25-7-8. Commissioner to determine prices.

§25-7-9. Annual statements by the commissioner.

§25-7-10. Indebtedness for capital outlay projects.

§25-7-11. Correctional industries account.

§25-7-12. Sale of inmate-made goods on open market prohibited; penalty; exceptions.


§25-7-14. Agreement between Commissioner and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; inmate participation on voluntary basis; and workers' compensation.

§25-7-15. Establishment of programs authorized by the federal Prison Industry Enhancement (PIE) Certification Program for employment of juvenile residents by private persons; lease of land and improvements.

§25-7-16. Agreement between director and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; resident participation on voluntary basis; workers' compensation and unemployment compensation.

§25-7-1. Legislative findings.

1 The Legislature finds that the means now provided for the use of inmate labor are inadequate to furnish a sufficient number of inmates with employment. It is the intent of this article:
(a) To provide more adequate, regular and suitable employment for the inmates and confined juvenile or youthful offenders of this state;

(b) To use the labor of inmates and confined juvenile or youthful offenders for self-maintenance and to reimburse this state for expenses incurred by reason of their crimes and confinement;

(c) To provide for the requisition and distribution of correctional industries articles and products directly through established state authorities, with no possibility of private profit except for those specific articles and products manufactured and sold pursuant to 18 U. S. C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program, and pursuant to sections thirteen, fourteen, fifteen and sixteen of this article; and

(d) To provide for correctional industries to be profitable in view of the fact that it is a self-sufficient authority.

§25-7-2. Citation of article.

This article may be cited as the Correctional Industries Act of 2009.

§25-7-3. Establishment of industries at correctional facilities; purposes and extent.

The Commissioner of the Division of Corrections or the commissioner's designee has exclusive authority to execute contracts for the sale of products manufactured or serviced at state correctional facilities, as necessary to carry out the provisions of this article. The commissioner or designee is authorized to purchase equipment, raw materials and supplies and to employ necessary supervisory personnel to establish and maintain, at state correctional facilities and institutions under the commissioner's control, industries which use the
services of inmates to manufacture and produce articles and products for use by any office, department, institution or agency supported, in whole or in part, by this state or its political subdivisions.

§25-7-4. Correctional industries service contracts.

(a) The commissioner may enter into contracts with private entities under which inmate or resident labor is provided through correctional industries for work involving the delivery of products or for service work. Service work means work which includes, but is not limited to, repairs, replacement of original manufactured items, packaging, sorting, recycling, labeling or similar work that is not original equipment manufacturing. The use of inmate or resident labor may not result in the displacement of civilian workers employed in the local region where the work is performed. The division may negotiate the wage for inmate or resident labor under correctional industries contracts and, except as provided in sections thirteen, fourteen, fifteen and sixteen of this article, the wage may be less than the prevailing wage for work of a similar nature in the private sector.

(b) The Division of Corrections, in cooperation with the Department of Commerce, shall develop and maintain a marketing plan encouraging private sector businesses to employ inmates through the correctional industries program.

§25-7-5. Purchase of inmate-made goods by state agencies.

(a) On and after the effective date of this article, all offices, departments, institutions and agencies of this state supported, in whole or in part, by state funds shall purchase all articles or products which they require from the commissioner, if those articles or products are produced or manufactured by correctional industries, as provided by this article. No state office, department, institution or agency may purchase an article or product which correctional
industries produces from any other source, unless specifically excepted from the provisions of this section pursuant to section six of this article.

(b) Purchases of correctional industries articles or products by state offices, departments, institutions and agencies shall be made on requisition by the office, department, institution or agency requiring the articles or products.

(c) Political subdivisions, not-for-profit corporations and charitable agencies chartered in West Virginia, units of the federal government and units of government of other states may purchase articles and products produced by correctional industries. Entities which contract with the state, its political subdivisions, its agencies or its public institutions may purchase from correctional industries articles and products used in the performance of their contracts.

§25-7-6. Exceptions to mandatory purchase requirement.

Exceptions from the mandatory purchase provisions of section five of this article may be granted when a correctional industries article or product does not meet the reasonable requirements of the requesting state office, department, institution or agency, or when the requisition cannot be fulfilled because of insufficient supply or other reason. No state office, department, institution or agency may evade the requirements of section five of this article, or of this section, making insubstantial variations from the characteristics of correctional industries products or articles.

§25-7-7. Catalogues and a website of articles and products made and produced.

The commissioner shall arrange for the creation and updating of catalogues and a website containing descriptions of the correctional industries articles and products.
manufactured or produced pursuant to the provisions of this article. The commissioner shall make copies of the catalogue and the website address available to entities eligible to acquire correctional industries articles and products.

§25-7-8. Commissioner to determine prices.

The commissioner or the commissioner's designee shall determine the prices of correctional industries articles and products. The prices shall be uniform for all and as near as is practicable to the fair market price.

§25-7-9. Annual statements by the commissioner.

At the close of each fiscal year, the commissioner shall prepare a financial report on the financial condition of the correctional industries operation, in accordance with generally accepted accounting principles. Within sixty days after the end of the fiscal year, the commissioner shall file the report with the Secretary of the Department of Military Affairs and Public Safety, the Secretary of the Department of Administration and the Office of the Legislative Auditor.

§25-7-10. Indebtedness for capital outlay projects.

To carry out the provisions of this article, the commissioner is authorized to enter into contracts to acquire and purchase equipment, tools, supplies and materials, with payment to be made over a period not exceeding five years.

§25-7-11. Correctional industries account.

(a) There is hereby created in the State Treasury a special revenue account designated the Correctional Industries Account. All funds collected from the sale or disposition of articles and products manufactured or produced by correctional industries in accordance with this article shall be deposited in this account.
CORRECTIONS

§25-7-12. Sale of inmate-made goods on open market prohibited; penalty; exceptions.

(a) Subject to the provisions of subsections (c) and (f) of this section and section five of this article, it is unlawful to sell or offer for sale on the open market any articles or products manufactured or produced, wholly or in part, by inmates of this state or any other state. This section does not apply to articles or products manufactured and sold pursuant to sections thirteen, fourteen, fifteen and sixteen of this article; pursuant to the requirements of 18 U. S. C. § 1761(c), the Prison Industry Enhancement (PIE) Certification Program; or products made with waste tires. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200 nor more than $5,000 or confined not less than three months nor more than one year, or both. Each sale or offer for sale shall constitute a separate offense under this subsection.
(b) Any use of waste tires shall comply with applicable laws and with the rules of the Division of Environmental Protection.

(c) Products made by inmates from waste tires and sold on the open market must be competitively priced with privately produced goods of the same nature and may not be sold at a loss.

(d) Profits earned from the sale of products made by inmates from waste tires shall be deposited in the Correctional Industries Account to reimburse funds expended collecting waste tires and producing waste tire products, and to cover the reasonable cost of periodic replacement of outdated, obsolete or inoperable machinery or equipment used in such collection or production. Any funds remaining shall be divided equally between the Correctional Industries Account and the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code.

(e) Notwithstanding the provisions of subsection (a) of this section, any article or product manufactured or produced, wholly or in part, by inmates of West Virginia correctional facilities which is designed and intended to be used solely by blind and persons with disabilities, including, but not limited to, braille books and reading materials, may be sold or distributed on the open market by the Division of Corrections or other state department or agency.

(f) Notwithstanding the provisions of subsection (a) of this section, arts and crafts produced by inmates may be sold to the general public by the Division of Corrections or by such other state agencies or departments as the commissioner designates. The arts and crafts may be sold only on consignment, so that the inmates whose arts and crafts products are sold receive payment for the products. Payments shall be deposited in accounts or funds and managed as provided in section three-a, article one of this chapter: Provided, That when the Division of Corrections or
other agency or department of state government provides
materials used in the production of an arts and crafts product,
the fair market value of such materials may be deducted from
the account of the individual inmate after the sale of the
product.

(g) For purposes of this section, "arts and crafts" means
articles produced individually by artistic or craft skill such as
painting, sculpture, pottery, jewelry or similar articles.

§25-7-13. Establishment of programs authorized by the federal
Prison Industry Enhancement (PIE) Certification
Program for employment of inmates by private
persons; lease of land and improvements.

(a) The Commissioner of the Division of Corrections
may establish programs for the employment of inmates by a
private person or entity for the manufacture of articles and
products as part of a program authorized pursuant to 18 U. S.
C. § 1761(c), the Prison Industry Enhancement (PIE)
Certification Program. In establishing these programs, the
commissioner may enter into agreements with private
persons or entities to construct or lease facilities at a state
adult correctional facility, or at another agreed location, for
manufacturing and processing goods or for any other
business, commercial or agricultural enterprise.

(b) In connection with an agreement made under
subsection (a) of this section, the commissioner may lease
land and improvements on the grounds of a state correctional
facility for use by the private party to the agreement. Any
such lease shall be for a term of not more than twenty years
and may contain options for renewal.

§25-7-14. Agreement between commissioner and private person
for manufacturing pursuant to Prison Industry
Enhancement (PIE) Certification Program; wages;
inmate participation on voluntary basis; and
workers’ compensation.
(a) The Commissioner of the Division of Corrections and a private person or entity may enter into an agreement to establish a program for inmates to manufacture articles and products pursuant to the federal Prison Industry Enhancement (PIE) Certification Program. The agreement shall include the following:

1. That a participating inmate be paid at a rate not less than that paid for similar work in the same locality's private sector, including applicable wage increases for overtime work;

2. That an inmate’s work or participation in a PIE certification program shall be only on a voluntary basis and only after the inmate has been informed of the conditions of participation;

3. That, in the discretion of the commissioner or the commissioner's designee, any inmate may be removed from or refused participation in the PIE certification program;

4. That the agreement will not result in the displacement of civilian workers; and

5. That the private person or entity shall provide for workers’ compensation insurance, or equivalent coverage, to inmates participating in the PIE certification program.

(b) The provisions of this section shall not apply to correctional industry service contracts under section four of this article or to operations authorized in section three of this article that are restricted from sale in the open market.

(c) A commercial or agricultural enterprise established under this chapter is a private enterprise subject to federal and state laws governing the operation of similar enterprises.
(d) The earnings of an inmate participating in a PIE certification program under this article shall be deposited in the Inmate Trust Account with the Division of Corrections. The earnings shall be paid to the inmate after withholding of state, federal and local taxes, and after other deductions provided for in this chapter, including expenses for room and board: Provided, That the commissioner shall adopt policies and procedures for the additional deduction from an inmate's earnings of not less than five percent nor more than twenty percent, to be paid into the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code. Total deductions shall not exceed eighty percent of the inmate's gross earnings. Earnings deposited by the commissioner, with accrued interest, shall be paid to the inmate no later than at the inmate's discharge or release on parole.

(e) Spousal support or child support shall be deducted from an inmate's earnings as directed by the inmate or by court order. If the inmate's dependents are receiving Temporary Assistance for Needy Families (TANF), the disbursements shall be made to the Bureau for Child Support Enforcement or any other state's public assistance agency.

§25-7-15. Establishment of programs authorized by the federal Prison Industry Enhancement (PIE) Certification Program for employment of juvenile residents by private persons; lease of land and improvements.

(a) The Director of the Division of Juvenile Services may establish programs for the employment of residents by a private person or entity for the manufacture of articles and products as part of a program authorized pursuant to 18 U. S. C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program. In establishing these programs, the director may enter into agreements with private persons or entities to construct or lease facilities at a state juvenile correctional facility, or at another agreed location, for
manufacturing and processing goods or for any other business, commercial or agricultural enterprise.

(b) In connection with any agreement made under subsection (a) of this section, the director may lease land and improvements on the grounds of a juvenile correctional facility for use by the private party to the agreement. Any such lease shall be for a term of not more than twenty years and may contain options for renewal.

§25-7-16. Agreement between director and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; resident participation on voluntary basis; workers' compensation and unemployment compensation.

(a) The Director of the Division of Juvenile Services and a private person or entity may enter into an agreement to establish a program for residents to manufacture articles and products pursuant to the federal Prison Industry Enhancement (PIE) Certification Program. The agreement shall include the following:

(1) That a participating resident be paid at a rate not less than that paid for similar work in the same locality's private sector, including applicable wage increases for overtime work;

(2) That a resident's work or participation in a PIE certification program shall be only on a voluntary basis and only after the resident has been informed of the conditions of participation;

(3) That, in the discretion of the director or the director's designee, any resident may be removed from or refused participation in the PIE certification program;
(4) That the agreement will not result in the displacement of civilian workers; and

(5) That the private person or entity shall provide for workers’ compensation insurance, or equivalent coverage, to residents participating in the PIE certification program.

(b) The provisions of this section shall not apply to correctional industry service contracts provided for in section four of this article or to operations authorized by section three of this article that are restricted from sale in the open market.

(c) A commercial or agricultural enterprise established under this chapter is a private enterprise subject to federal and state laws governing the operation of similar enterprises.

(d) The earnings of a resident participating in a PIE certification program under this article shall be deposited in the Resident Trust Account with the Division of Juvenile Services. The earnings shall be paid to the resident after withholding of state, federal and local taxes, and after other deductions provided for in this chapter. The expenses of room and board, as fixed by the director and the budget agency for facilities operated by the director or, if the resident is housed in a facility not operated by the director, the amount paid by the Division of Juvenile Services to the operator of the facility or other appropriate authority for room and board, and other incidentals as established by agreement between the Division of Juvenile Services and the appropriate authority, shall be deducted: Provided, That the director shall adopt policies and procedures for the additional deduction from a resident’s earnings of not less than five percent nor more than twenty percent, to be paid into the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code. Total deductions shall not exceed eighty percent of the resident’s gross earnings. Earnings deposited by the director, with accrued interest,
shall be paid to the resident no later than at the resident's
discharge or release on parole.

When special circumstances warrant, or for just cause,
the director may waive room and board charges by a facility
operated by the Division of Juvenile Services or, if the
resident is housed in a facility not operated by the Division
of Juvenile Services, authorize payment of room and board
charges from other available funds.

(e) Spousal support or child support shall be deducted
from a resident's earnings as directed by the resident or by
court order. If the resident's dependents are receiving
Temporary Assistance for Needy Families (TANF), the
disbursements shall be made to the Bureau for Child Support
Enforcement or any other state's public assistance agency.

CHAPTER 44

(Com. Sub. for H.B. 2419 - By Delegates Perry, Boggs,
Morgan, Ellem and Webster)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §31-20-5d of the Code of West
Virginia, 1931, as amended, relating to providing certain
inmates a reduction in sentence for successful completion of
education and rehabilitation programs.

Be it enacted by the Legislature of West Virginia:
That §31-20-5d 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.

§31-20-5d. Good time credit.

(a) Any person convicted of a criminal offense and sentenced to confinement in a regional jail is to be granted reduction of his or her sentence for good conduct in accordance with this section.

(b) The reduction of sentence or good time is to be deducted from the fixed term of determinate sentences. An inmate under two or more consecutive sentences is allowed good time as if the several sentences, when the maximum terms thereof are added together, were all one sentence.

(c) Every inmate sentenced to a regional jail for a term of confinement exceeding six months who, in the judgment of the administrator of the regional jail facility, faithfully complies with all rules of the regional jail during his or her term of confinement is entitled to a deduction of five days from each month of his or her sentence. No inmate may be granted any good time under the provisions of this section for time spent on bond or for time served on parole or in any other status in which he or she is not physically incarcerated.

(d) Each inmate sentenced to a term of confinement in a regional jail facility who participates in a general equivalency diploma program is to be granted three days of good time for the completion of each educational literacy level, as demonstrated by achieving a passing score on standardized tests required by the Department of Education, and ten days of good time for completion of the requirements for a general equivalency diploma or high school diploma.
(e) Each inmate sentenced to a term of confinement in a regional jail in excess of six months shall be granted one day of good time for successful completion of each of the following rehabilitation programs: Domestic violence, parenting, substance abuse, life skills, and anger management or any special rehabilitation or educational program designated by the executive director. A maximum of five days good time shall be granted for successful completion of five programs.

(f) The administrator of a regional jail facility may, with the approval of the Governor, allow extra good time for inmates who perform exceptional work or service.

(g) The Regional Jail and Correctional Facility Authority shall promulgate disciplinary rules for the regional jail facilities. The rules are to describe prohibited acts, procedures for charging individual inmates for violations of the rules and for determining the guilt or innocence of inmates charged with the violations, and sanctions that may be imposed for the violations. For each violation by an inmate, any part or all of the good time that has been granted to the inmate may be forfeited and revoked by the administrator of the regional jail facility. The administrator, when appropriate and with approval of the executive director may restore any good time forfeited for a violation of the rules promulgated or adopted pursuant to this subsection.

(h) Each inmate sentenced to a term of confinement in a regional jail in excess of six months shall, within seventy-two hours of being received into a regional jail, be given a copy of the disciplinary rules, a statement setting forth the term or length of his or her sentence or sentences, and the time of his or her minimum discharge.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-20-5f, relating to inmate reimbursement to the authority for medical services provided to persons held in regional jails; providing exceptions for reimbursement for medical services; and providing authority for rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31-20-5f, to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5f. Charges assessed against inmates for services provided by the authority.

(a) The executive director is authorized to assess inmates serving a sentence in any regional jail reasonable charges for health care and treatment services provided to them by the authority. The charges assessed against an inmate may be deducted directly from the inmate’s trustee account without
the inmate’s consent. The inmate shall be notified of the amount deducted and the charges to which it has been applied.

(b) As used in this section, a “reasonable charge” may not exceed the sum of $5 for any billable service. Inmates shall be notified of the fee schedule, billable services and exempt services. Services initiated by the inmate shall be assessed a fee, except that no charge may be assessed for:

(1) A specific health care service required under the law of this state;

(2) An emergency service following a traumatic injury other than a self-induced injury, or necessary to prevent death or severe or permanent disability;

(3) Diagnosis and treatment of communicable diseases;

(4) Treatment of diagnosed severe mental illness;

(5) Treatment of specific chronic conditions identified by the executive director;

(6) Staff-initiated care, including follow-up and referral visits;

(7) Preventative services that the executive director determines are to be provided or made available to all inmates, including services related to disease prevention and promotion of proper health habits; or

(8) Other services as may be exempted by the rule of the authority.

No inmate may be denied any necessary billable medical service because of the inability to pay the charge.
(c) Each inmate shall be afforded an opportunity at least quarterly to review all deposits into, withdrawals from and balance remaining in the inmate’s trustee account during the preceding three months.

(d) The executive director shall promulgate interpretive rules implementing this section pursuant to article three, chapter twenty-nine-a of this code prior to making any assessment under this section. The rules may establish the fee schedule and list of billable services and further define services to be exempted.

CHAPTER 46

(Com. Sub. for S.B. 259 - By Senators Kessler and Chafin)

[Passed April 6, 2009; in effect from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend and reenact §29-26-1 of the Code of West Virginia, 1931, as amended, relating to updating language within the West Virginia Courthouse Facilities Improvement Authority.

Be it enacted by the Legislature of West Virginia:

That §29-26-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 26. WEST VIRGINIA COURTHOUSE FACILITIES IMPROVEMENT AUTHORITY.
§29-26-1. West Virginia Courthouse Facilities Improvement Authority created; membership.

1 (a) The West Virginia Courthouse Facilities Improvement Authority is hereby created.

(b) The authority is to consist of twelve voting members, including:

(1) The president of the West Virginia Sheriffs’ Association or another member of the association designated to attend in lieu of the president;

(2) One sheriff to be appointed by the president of the West Virginia Sheriffs’ Association: Provided, That the sheriff who is appointed may not be from the same congressional district as the president;

(3) The president of the West Virginia Prosecuting Attorneys’ Association or another member of the association designated to attend in lieu of the president;

(4) One prosecuting attorney to be appointed by the president of the West Virginia Prosecuting Attorneys’ Association: Provided, That the prosecuting attorney who is appointed may not be from the same congressional district as the president;

(5) The president of the West Virginia’ County Clerks’ Association or another member of the association designated to attend in lieu of the president;

(6) The president of the West Virginia’ Association of Circuit Clerks or another member of the association designated to attend in lieu of the president;

(7) One county clerk to be appointed by the president of the West Virginia County Clerks’ Association: Provided,
That the county clerk who is appointed may not be from the same congressional district as the president;

(8) One circuit clerk to be appointed by the president of the West Virginia Association of Circuit Clerks: Provided, That the circuit clerk who is appointed may not be from the same congressional district as the president;

(9) The president of the West Virginia County Commissioners' Association or another member of the association designated to attend in lieu of the president;

(10) One county commissioner to be appointed by the president of the West Virginia County Commissioners' Association: Provided, That the county commissioner who is appointed may not be from the same congressional district as the president;

(11) The president of the West Virginia Assessors' Association or another member of the association designated to attend in lieu of the president; and

(12) One assessor to be appointed by the president of the West Virginia Assessors' Association: Provided, That the assessor who is appointed may not be from the same congressional district as the president.

(c) The authority is to consist of eight advisory members, including:

(1) The president of the West Virginia Judicial Association or another member of the association designated to attend in lieu of the president;

(2) One circuit judge to be appointed by the West Virginia Judicial Association: Provided, That the circuit judge who is appointed may not be from the same congressional district as the president;
(3) The president of the West Virginia Magistrates’ Association or another member of the association designated to attend in lieu of the president;

(4) One magistrate to be appointed by the West Virginia Magistrates’ Association: Provided, That the magistrate who is appointed may not be from the same congressional district as the president;

(5) The president of the West Virginia Family Judicial Association or another member of the association designated to attend in lieu of the president;

(6) One family court judge to be appointed by the West Virginia Family Judicial Association: Provided, That the family court judge who is appointed may not be from the same congressional district as the president;

(7) One member of the West Virginia Senate to be appointed by the President of the Senate; and

(8) One member of the West Virginia House of Delegates to be appointed by the Speaker of the House of Delegates.

(d) The advisory members of the authority are nonvoting, ex officio members.

(e) The appointments are to be made as soon as possible after the effective date of this article. The terms of appointments are for four-year terms.

(f) The authority shall annually elect one of its members as chair and shall appoint a secretary, who need not be a member of the authority and who shall keep records of its proceedings.

(g) The authority shall meet at least once every ninety days to review applications requesting funding assistance and
otherwise to conduct its business and may meet more frequently if necessary.

(h) Seven members of the authority constitute a quorum and the affirmative vote of at least a majority of those members present is necessary for any action taken by vote of the authority. No vacancy in the membership of the authority impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the authority.

(i) Members of the authority shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available to the authority for the purpose of reimbursement upon submission of an itemized statement.
That §3-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto two new sections, designated §7-1-1b and §7-1-15, all to read as follows:

Chapter
3. Elections.
7. County Commissions and Officers.

CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-4. Nomination of candidates in primary elections.

(a) At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, of each judicial circuit of West Virginia, of each county, and of each magisterial district in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

(b) In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committeemen and delegates to national conventions, is to be chosen, or where a judicial circuit has two or more circuit judges and one circuit judge is to be chosen for each numbered division within the circuit, the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen
who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such offices, except that:

(1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the state of West Virginia and the requirements of section one-b, article one, chapter seven;

(2) Members of county boards of education shall be elected at primary elections in accordance with the provisions of sections five and six of this article;

(3) Candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in section two, article two, chapter one of this code; and

(4) In judicial circuits having numbered divisions, each numbered division shall be tallied separately and the candidate in each division receiving a plurality of the votes cast shall be declared the party nominee for the office in that numbered division.

(c) In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the political party shall be determined by the executive committee of the party for the political division in which such persons are candidates.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.
§7-1-1b. Legislative findings; qualifications for county commissioners.

(a) The Legislature finds that:

1. There is confusion concerning when a candidate for county commission must be a resident of the magisterial district he or she wants to represent;

2. The supreme court has discussed the residency requirement in several cases and has conflicting interpretations;

3. It is imperative that this issue be permanently resolved at the time of filing to ensure the citizens have choice on the ballot;

4. It is essential the citizens know they are voting for a person who is qualified to be a candidate; and

5. With the expense of holding an election, tax payer moneys should not be wasted on officials who could never serve.

(b) A candidate for the office of county commissioner shall be a resident from the magisterial district for which he or she is seeking election:

1. By the last day to file a certificate of announcement pursuant to section seven, article five, chapter three of this code; or

2. At the time of his or her appointment by the county executive committee or the chairperson of the county executive committee.
§7-1-15. Challenge of candidate for county commission; residency.

(a) (1) Any person desiring to contest the qualifications of another person whose nomination in the primary election, nomination by petition, or nomination by appointment to fill a vacancy on the ballot, has been certified and filed pursuant to article five, chapter three of this code, as a candidate for the office of county commission at a general election, shall file a verified petition specifically setting forth the grounds of the challenge not later than thirty days after the date of the primary election.

(2) The court may permit a petition to be filed after the thirtieth day after the primary election upon a finding that the petitioner was unable to discover the grounds for challenging the qualifications of the candidate prior to the thirtieth after the primary election despite the exercise of reasonable diligence.

(3) The petition shall be filed with the circuit court of the county in which the candidate is seeking office.

(b) The circuit court shall at the earliest possible date set the matter for hearing, but in no event shall the hearing be held later than thirty days after the filing of the petition.

(c) The matter shall be tried by the circuit judge, without a jury. After hearing the evidence, the circuit judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his or her name placed upon the ballot in question. The circuit judge shall issue a written decision on each challenge by separately stating findings of facts, conclusions of law within ten days of the conclusion of the hearing.
(d) The burden of proof shall be upon the petitioner, who must show by a preponderance of the evidence of the record as a whole that the candidate is not qualified to be a candidate for county commission.

(e) Within five days after judgment is rendered by the circuit court, the petitioner or the candidate, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of $300. The appeal shall be immediately docketed in the Supreme Court and shall be decided at the earliest possible date, as a preference case over all others.

(f) The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate for county commission may be challenged prior to the time of his or her election. After any such person has been elected to public office, the election may be challenged as otherwise provided by law. After any person assumes an elective office, his or her qualifications to hold that office may be contested as otherwise provided by law.

CHAPTER 48

(Com. Sub. for S.B. 440 - By Senators Kessler, Unger, D. Facemire and Laird)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended, relating to giving county litter control officers the authority to issue citations for failure to prove proper disposal of trash and creating, contributing to or allowing an open dump.
Be it enacted by the Legislature of West Virginia:

That §7-1-3ff of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to regulate unsafe or unsanitary structures and refuse on private land; authority to establish an enforcement agency; county litter control officers; procedure for complaints; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

(a) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, except for buildings utilized for farm purposes on land actually being used for farming, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(b) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the removal and clean up of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which is determined to
be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(c) The county commission, in formally adopting ordinances, shall designate an enforcement agency which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or his or her designee, a fire chief from a county fire company, the county litter control officer, if the commission chooses to hire one, and two members at large selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio member of the enforcement agency and the county officer charged with enforcing the orders of the county commission under this section.

(d) In addition to the powers and duties imposed by this section, county litter control officers shall have authority to issue citations for open dumps, as prohibited by subsection (a), section ten, article fifteen, chapter twenty-two of this code, unlawful disposal of litter, as prohibited by section four, article fifteen-a, chapter twenty-two of this code, and failure to provide proof of proper disposal of solid waste, as prohibited by subsection (a), section ten, article four, chapter twenty-two-c of this code, after completing a training course offered by the West Virginia Department of Environmental Protection. Nothing in this subsection supercedes the authority or duty of the Department of Environmental Protection or other law-enforcement officers to preserve law and order and enforce the litter control program.

(e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards considered necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, accumulation of refuse or
debris, overgrown vegetation or toxic spillage or toxic seepage and shall provide for fair and equitable rules of procedure for instituting and conducting hearings in the matters before the county commission. Any entrance upon premises for the purpose of making examinations shall be made in a manner as to cause the least possible inconvenience to the persons in possession.

(f)(1) Complaints authorized by this section shall be brought before the county commission. Complaints shall be initiated by citation issued by the county litter control officer or petition of the county engineer (or other technically qualified county employee or consulting engineer) on behalf of and at the direction of the enforcement agency, but only after that agency has investigated and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned or demolished.

(2) The county commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia Rules of Civil Procedure.

(3) The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within ten days of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency.

(4) If the owner or owners of the property file a request for a hearing, the county commission shall issue an order
setting this matter down for hearing within twenty days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses.

(5) The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence.

(6) At the conclusion of the hearing the county commission shall make findings of fact, determinations and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not and whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private lands which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(7) The county commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on the owner or owners who fail to obey an order.
(8) Appeals from the county commission to the circuit court shall be in accordance with the provisions of article three, chapter fifty-eight of this code.

(g) Upon the failure of the owner or owners of the private land to perform the ordered duties and obligations as set forth in the order of the county commission, the county commission may advertise for and seek contractors to make the ordered repairs, alterations or improvements or the ordered demolition, removal or clean up. The county commission may enter into any contract with any contractor to accomplish the ordered repairs, alterations or improvements or the ordered demolition, removal or clean up.

(h) A civil proceeding may be brought in circuit court by the county commission against the owner or owners of the private land or other responsible party that the subject matter of the order of the county commission to subject the private land in question: (1) To a lien for the amount of the contractor's costs in making these ordered repairs, alterations or improvements or ordered demolition, removal or clean up, together with any daily civil monetary penalty imposed; (2) to order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make ordered repairs, alterations or improvements, or ordered demolition, removal or clean up; and (4) to order the payment of all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(i) County commissions have the power and authority to receive and accept grants, subsidies, donations and services in kind consistent with the objectives of this section.
AN ACT to amend and reenact §59-1-10 of the Code of West Virginia, 1931, as amended, relating to certain fees collected by clerks of the county commission; creating a new recording fee for the recording of certain trustee’s reports of sale; providing for the distribution of certain fees paid to the clerk of the county commission; and redirecting a portion of funds currently retained by the county clerks to county general revenue.

Be it enacted by the Legislature of West Virginia:

That §59-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

*§59-1-10. Fees to be charged by clerk of county commission.

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 1/2" x 14".

The clerk of the county commission shall charge and collect the following fees:

*CLERK’S NOTE: This section was also amended by H.B. 3082 (Chapter 104), which passed prior to this act.
(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, $15.

(2) Trustee's report of sale for any property for which
additional information and filing requirements are required
by section eight-a, article one, chapter thirty-eight of this
code, $40, provided that $20 of each recording fee received
pursuant to this subdivision shall be deposited into the
county's general revenue fund and $20 of each of the
aforesaid recording fees shall be paid by the county clerk to
the State Treasurer quarterly and deposited in the Banking
Commissioner's fund to cover its expenses in aggregating,
collecting and publishing the data.

(3) Financing, continuation, termination or other
statement or writing permitted to be filed under chapter
forty-six of this code, $10.

(4) Plat or map (with no deed of conveyance), $10.

(5) Service discharge record, no charge.

(6) Any document or writing other than those referenced
in subdivisions (1), (2), (3), (4) and (5) of this subsection,
$10.

(7) If any document or writing contains more than five
pages, for each additional page, $1.
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.

(8) Of the fees collected pursuant to subdivision (1), subsection (a) of this section, $10 shall be deposited in the county general fund in accordance with section twenty-eight of this article and $1 shall be deposited in the county general fund and dedicated to the operation of the county clerk’s office. Four dollars of the fees collected pursuant to subdivision (1), subsection (a) of this section and $5 of the fees collected pursuant to subdivision (6), subsection (a) of this section shall be paid by the county clerk into the State Treasury 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 in the State Treasury 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, $5.

(c) For issuance of marriage license and other duties pertaining to the marriage license (including preparation of the application, administrating the oath, registering and recording the license, mailing acknowledgment of minister’s
return to one of the licensees and notification to a licensee after sixty days of the nonreceipt of the minister’s return), $35.

(1) One dollar of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury as a state registration fee in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury for the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(3) Ten dollars of the marriage license fee received pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d) (1) For a copy of any writing or document, if it is not otherwise provided for, $1.50.

(2) If the copy of the writing or document contains more than two pages, for each additional page, $1.

(3) For annexing the seal of the commission or clerk to any paper, $1.

(4) For a certified copy of a birth certificate, death certificate or marriage license, $5.

(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.
AN ACT to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended, relating to the transfer of moneys for the courtesy patrol program out of the Tourism Promotion Fund.

Be it enacted by the Legislature of West Virginia:

That §5B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism Promotion Fund created; use of funds.

There is hereby continued in the State Treasury the special revenue fund known as the Tourism Promotion Fund created under prior enactment of section nine, article one of this chapter.

(a) The Legislature finds that a courtesy patrol program providing assistance to motorists on the state's highways is one of the most beneficial methods to introduce a tourist visiting the state of the state's hospitality and good will. For that reason, $4,700,000 of the moneys deposited in the fund each year shall be deposited in a special revenue account in the State Treasury to be known as the Courtesy Patrol Fund according to the following schedule: On July
31 of each year, $850,000, and on the last day of each month thereafter, $350,000. Expenditures from the fund shall be used solely to fund the courtesy patrol program providing assistance to motorists on the state's highways. Amounts collected in the fund which are found, from time to time, to exceed funds needed for the purposes set forth in this subdivision may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) If there are funds remaining after the monthly distribution required in subdivision (a) of this section, a minimum of five percent of the moneys deposited remaining in the fund each year shall be used solely for direct advertising for West Virginia travel and tourism: Provided, That no less than twenty percent of these funds be expended, with the approval of the Director of the Division of Natural Resources, to effectively promote and market the state's parks, state forests, state recreation areas and wildlife recreational resources. Direct advertising means advertising which is limited to television, radio, mailings, newspaper, magazines, the internet and outdoor billboards or any combination thereof.

(c) The balance of the moneys deposited in the fund shall be used for direct advertising within the state's travel regions as defined by the commission. The funds shall be made available to these districts beginning July 1, 1995, according to legislative rules authorized for promulgation by the Tourism Commission.

(d) All advertising expenditures over $25,000 from the Tourism Promotion Fund require prior approval by recorded vote of the commission. No member of the commission or of any committee created by the commission to evaluate applications for advertising or other grants may participate in the discussion of, or action upon, an application for or an award of any grant in which the member has a direct financial interest.
AN ACT to amend and reenact §51-1-11 of the Code of West Virginia, 1931, as amended, relating to the clerks office of the Supreme Court; revising appointment, bonding and compensation provisions of the clerk; and revising appointment and compensation provisions of clerks office staff.

Be it enacted by the Legislature of West Virginia:

That §51-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-11. Appointment and compensation of the Clerk and employees of the clerks’ office; compensation.

1 The justices of the supreme court of appeals may appoint a clerk. Notwithstanding any code provision to the contrary, no bond shall be required to be posted by the clerk. The justices of the supreme court of appeals may also appoint any other full-time and part-time professional and clerical assistants necessary to efficiently perform the functions and
duties of the office of the clerk. These employees shall serve at the will and pleasure of the justices of the supreme court of appeals. The salary of the clerk and persons employed within the office of the clerk shall be established by the justices of the supreme court of appeals. If any position becomes vacant while the supreme court of appeals is in vacation, the position may be filled by appointment, in writing, issued by the justices of the supreme court of appeals.

CHAPTER 52

(S.B. 338 - By Senators Oliverio, Prezioso, Williams, Sypolt, Edgell and Kessler)

[Passed April 9, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 11, 2009.]

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 the seventeenth judicial circuit.

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 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;

(12) The county of Fayette shall constitute the twelfth circuit and shall have two judges;
(13) The county of Kanawha shall constitute the thirteenth circuit and shall have seven judges;

(14) The counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit and shall have two judges;

(15) The county of Harrison shall constitute the fifteenth circuit and shall have three judges;

(16) The county of Marion shall constitute the sixteenth circuit and shall have two judges;

(17) The county of Monongalia shall constitute the seventeenth circuit and shall have two judges: Provided, That effective July 1, 2009, said circuit court shall have three judges.

(18) The county of Preston shall constitute the eighteenth circuit and shall have one judge;

(19) The counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have one judge;

(20) The county of Randolph shall constitute the twentieth circuit and shall have one judge;

(21) The counties of Grant, Mineral and Tucker shall constitute the twenty-first circuit and shall have two judges;

(22) The counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit and shall have two judges;

(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 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 December 31, 2008.

(d) The term of office of all circuit court judges shall be for eight years. The term of office for all circuit court judges elected during the general election conducted in the year
(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. 2737 - By Delegates Webster, Frazier, Longstreth and Sobonya)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §62-12-5 of the Code of West Virginia, 1931, as amended, relating to authorizing the Administrative Director of the Supreme Court of Appeals to hire multi-judicial-circuit probation officers.
Be it enacted by the Legislature of West Virginia:

That §62-12-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of said order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the monthly salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the probation officer or clerical assistants so appointed.

(c) The salary of probation officers and clerical assistants shall be paid monthly or semimonthly, as the Supreme Court of Appeals by rule may direct and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or her assistants shall be provided
by the state and the cost thereof shall be charged against
the judicial accounts of the state.

(d) No judge may appoint any probation officer, assistant
probation officer or clerical assistant who is related to him or
her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of
Appeals and in accordance with its rules, a judge of a circuit
court whose circuit comprises more than one county may
appoint a probation officer and a clerical assistant in each
county of the circuit or may appoint the same persons to
serve in these respective positions in two or more counties in
the circuit.

(f) Nothing contained in this section alters, modifies,
affects or supersedes the appointment or tenure of any
probation officer, medical assistant or psychiatric assistant
appointed by any court under any special act of the
Legislature heretofore enacted, and the salary or
compensation of those persons shall remain as specified in
the most recent amendment of any special act until changed
by the court, with approval of the Supreme Court of Appeals,
by order entered of record, and any such salary or
compensation shall be paid out of the state treasury.

(g) In order to carry out the probation responsibilities set
forth in section twenty-six, article twelve, chapter sixty-two
of this code, the Administrative Director of the Supreme
Court of Appeals, or his or her designee, in accordance with
the court’s procedures, is authorized to hire multi-judicial-
circuit probation officers, to be employed through the court’s
Division of Probation Services.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-12-28, relating to authorizing the Supreme Court of Appeals to establish up to five pretrial release programs throughout the state utilizing existing probation offices and day-report centers to reduce jail population while ensuring public safety.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §62-12-28, to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-28. AUTHORIZING SUPREME COURT TO DEVELOP PILOT PRETRIAL RELEASE PROGRAMS.

(a) The West Virginia Supreme Court of Appeals is hereby authorized to develop pilot pretrial release programs in up to five circuits with the aim of reducing regional jail populations of short-term detainees while ensuring the safety of law-abiding citizens.
6 (b) The programs authorized by subsection (a) of this section shall be available only to persons charged with misdemeanors and nonviolent felonies.

9 (c) Any program developed pursuant to this section shall require input from arresting officers and shall allow for telephone authorization by magistrates of a charged person’s participation.

13 (d) In developing the pilot programs in the state for examples of successful practices authorized by this section the Court is requested to review any existing programs.

16 (e) The provisions of this section shall be in effect for three years from the effective date of this section.

18 (f) The Supreme Court of Appeals is hereby requested to provide annual reports to the President of the Senate and the Speaker of the House of Delegates as to the efficacy of the programs.

CHAPTER 55

(Com. Sub. for H.B. 2566 - By Delegates Mahan, Brown, Eldridge, Ennis, Fragale, Longstreth, Ashley, Rowan and Schadler)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to crimes against certain protected persons; expanding applicability of increased criminal penalties for battery, malicious assault and unlawful assault against a government employee or contract worker;
expanding existing protections for health care workers to include contract workers; and changing fine structure for the penalty for battery on a government employee, contract worker, or health care 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 malicious assault on governmental representatives and health care providers providing services to the public; penalties.

(a) For purposes of this section:

(1) "Government representative" means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

(2) "Health care worker" means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician's office, clinic or outpatient treatment facility.

(b) 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 government representative or health care worker 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 state correctional facility for not less than three nor more than fifteen years.

(c) Unlawful assault. — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a government representative or health care worker 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 state correctional facility for not less than two nor more than five years.

(d) Battery. — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a government representative or health care worker 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 fined not more than $500 or confined in jail not less than one month nor more than twelve months or both fined and confined. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.
Assault. -- Any person who unlawfully attempts to commit a violent injury to the person of a government representative or health care worker 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.

CHAPTER 56

(Com. Sub. for H.B. 2788 - By Delegates Perry, Staggers, Williams, Ennis, Talbott, Perdue, Frazier, Fragale, Miley and Caputo)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §61-2-29 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §61-2-29a and §61-2-29b, all relating to protecting incapacitated adults; providing criminal penalties for the offenses of abuse or neglect of incapacitated adults; providing definitions; establishing and revising criminal penalties for the unlawful misappropriation or misuse of funds or assets of an incapacitated adult by a caregiver; and providing exceptions.

Be it enacted by the Legislature of West Virginia:
That §61-2-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §61-2-29a and §61-2-29b, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29. Abuse or neglect of incapacitated adult; definitions; penalties.


§61-2-29b. Unlawful expenditure or dissipation of funds of an incapacitated adult by a caregiver.

§61-2-29. Abuse or neglect of incapacitated adult; definitions; penalties.

(a) The following words, when used in this section and sections twenty-nine-a and twenty-nine-b of this article, have the meaning ascribed, unless the context clearly indicates otherwise:

(1) "Abuse" means the intentional infliction of bodily injury on an incapacitated adult;

(2) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition;

(3) "Caregiver" means any person who has assumed the legal responsibility or a contractual obligation for the care of an incapacitated adult, or has voluntarily assumed responsibility for the care of an incapacitated adult. The term includes a facility operated by any public or private agency, organization or institution which provides services to, and has assumed responsibility for the care of an incapacitated adult.

(4) "Incapacitated adult" means any person eighteen years of age or older who by reason of advanced age, physical, mental or other infirmity is unable to carry on the daily activities of life necessary to sustaining life and reasonable health;
22 (5) "Neglect" means the unreasonable failure by a
caregiver to provide the care necessary to assure the physical
safety or health of an incapacitated adult; and

25 (6) "Serious bodily injury" means bodily injury which
creates a substantial risk of death, which causes serious or
prolonged disfigurement, prolonged impairment of health or
prolonged loss or impairment of the function of any bodily
organ.

30 (b) A caregiver who neglects an incapacitated adult or
who knowingly permits another person to neglect an
incapacitated adult is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than $100 nor more
than $500 or confined in jail for not more than one year, or
both fined and confined.

36 (c) A caregiver who abuses an incapacitated adult or who
knowingly permits another person to abuse an incapacitated
adult is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than $100 nor more than $500
or confined in jail for not less than ninety days nor more than
one year, or both fined and confined.

42 (d) A caregiver of an incapacitated adult who
intentionally and maliciously abuses or neglects an
incapacitated adult and causes the incapacitated adult bodily
injury is guilty of a felony and, upon conviction thereof, shall
be fined not less than $100 nor more than $1,000 and
imprisoned in a state correctional facility not less than two
years nor more than ten years.

49 (e) A caregiver of an incapacitated adult who
intentionally and maliciously abuses or neglects an
incapacitated adult and causes the incapacitated adult serious
bodily injury is guilty of a felony and, upon conviction
thereof, shall be fined not less than $1,000 nor more than

(a) A caregiver who intentionally and maliciously neglects an incapacitated adult causing death is guilty of a felony and, upon conviction thereof, shall be fined not more than $5000 and be imprisoned in a state correctional facility for a definite term of not less than five nor more than fifteen years.

(b) A caregiver of an incapacitated adult who causes the death of an incapacitated adult by knowingly allowing any other person to intentionally or maliciously neglect the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be fined not more than $5000 and be imprisoned in a state correctional facility for a definite term of not less than five nor more than fifteen years.

(c) A caregiver of an incapacitated adult who intentionally and maliciously abases an incapacitated adult
16 which causes the death of the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of not less than five nor more than forty years.

20 (d) A caregiver of an incapacitated adult who causes the death of an incapacitated adult by knowingly allowing any other person to intentionally and maliciously abuse an incapacitated adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of not less than five nor more than forty years.

26 (f) The provisions of this section do not apply to any caregiver or health care provider who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse, to supply an incapacitated adult with necessary medical care when the medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the incapacitated adult is an adherent member.

§61-2-29b. Unlawful expenditure or dissipation of funds of an incapacitated adult by a caregiver.

1 (a) A caregiver of an incapacitated adult who intentionally misappropriates or misuses the funds or assets of an incapacitated adult in the amount of less than $1,000 in value for the caregiver's personal use, advantage or wrongful profit or to the advantage or wrongful profit of another, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail no more than one year, or both fined and confined.

9 (b) A caregiver of an incapacitated adult who intentionally misappropriates or misuses the funds or assets of an incapacitated adult in the amount of $1,000 or more in value for the caregiver's personal use, advantage or wrongful profit or to the advantage or wrongful profit of another, is
guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 and imprisoned in a state correctional facility not less than one nor more than ten years.

(c) A caregiver of an incapacitated adult, who by means of intentional intimidation, infliction of bodily injury or threats of the infliction of bodily injury to an incapacitated adult, willfully misappropriates or misuses for the caregiver's personal use, advantage or wrongful profit or to the advantage or wrongful profit of another is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 and imprisoned in a state correctional facility not less than three nor more than fifteen years.

CHAPTER 57

(S.B. 761 - By Senators Jenkins, Browning, Chafin, Foster, Kessler, Laird, Minard, Oliverio, Palumbo, Snyder, Stollings, Williams, Yost, Barnes, Caruth, Deem and Hall)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §61-3-12 and §61-3-29 of the Code of West Virginia, 1931, as amended, relating to crimes committed on or against commercial, railroad or public utility property; extending criminal penalties for prohibited entry upon commercial property enclosed by a fence or similar physical barrier or upon certain structures used for utility transmission or distribution; clarifying the offense of breaking and entering or entering without breaking onto public utility
property that is enclosed or fenced, with the intent to commit a felony or larceny; establishing the felony offense of knowingly and willfully damaging and destroying utility or railroad property, resulting in the creation of a substantial risk of serious bodily injury to another; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3-12 and §61-3-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, 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 or she 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 $100.

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 section and section
eleven of this article.

§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
destroyes 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 $2,000, or
confined in jail not more than one year, or both fined and
confined.

(b) Any person who knowingly and willfully: (1)
Damages or destroys any real or personal property owned by
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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) creates a substantial risk of serious bodily injury to another or results in the interruption of service to the public is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or confined in a state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(c) 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 $5,000 nor more than $50,000, or confined in a state correctional facility not less than one nor more than five years, or both fined and imprisoned.

(d) Nothing in this section may be construed to limit or restrict the ability of an entity referred to in subsection (a), (b) or (c) 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.
AN ACT to amend and reenact §61-3-28 of the Code of West Virginia, 1931, as amended, relating to offenses against railroad property, generally; adding language that includes railcars and locomotives in the category of railroad property that is illegal to interfere with, tamper with or obstruct, or to threaten to interfere with, to tamper with or obstruct; and establishing a minimum fine for violations.

Be it enacted by the Legislature of West Virginia:

That §61-3-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-28. Offenses against railroad property and persons on railroad property; definitions.

  (a) As used in this section:

    (1) “Bodily injury” means substantial physical pain, illness or any impairment of physical injury.

    (2) “Railroad” means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including:
(i) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

(ii) High-speed ground transportation systems that connect metropolitan areas but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

(3) "Railroad carrier" means a person providing railroad transportation; railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device. "Railroad property" does not include administrative buildings, administrative offices, or administrative office equipment;

(4) "Right-of-way" means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs;

(5) "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives and other rolling stock are kept when not in use or when awaiting repairs.

(b) Whoever willfully damages or attempts to damage railroad property or willfully endangers or attempts to endanger the safety of another, by:

(1) Taking, removing, altering, or otherwise vandalizing a railroad sign, placard or marker;
(2) Throwing or dropping an object capable of causing significant damage to railroad property at or on a locomotive, railroad car or train;

(3) Shooting a firearm or other dangerous weapon at a locomotive, railroad car or train;

(4) Removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, on a railroad owned, leased, or operated by any railroad carrier, and without consent of the railroad carrier involved;

(5) Interfering or tampering with, or obstructing in any way, or threatening to interfere with, tamper with or obstruct in any way any railcar or locomotive, switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier without consent of the railroad carrier involved; or

(6) Taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier in this state without consent of the railroad carrier is guilty of a felony.

If railroad property damage does not exceed $1,000 and no bodily injury occurs to another as a result of any of the aforesaid acts, upon conviction thereof, the person shall be fined not less than $500 nor more than $5,000, confined in a regional jail for not more than one year, or both. If bodily injury occurs to another not acting with or in connection with the perpetrator as a result of any of the aforesaid acts or if
railroad property damage exceeds $1,000, upon conviction thereof, the person shall be fined not less than $1,000 nor more than $10,000, committed to the custody of the Commission of Corrections for not less than one nor more than ten years, or both.

(d) The provisions of this section do not apply to any person employed by a railroad who is performing the duties assigned by the railroad or who is otherwise performing within the scope of his or her employment.

CHAPTER 59

(Com. Sub. for H.B. 2958 - By Delegate Hamilton)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §61-3B-3 of the Code of West Virginia, 1931, as amended, relating to increasing the fines for a trespassing conviction pursuant to certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §61-3B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3B. TRESPASS.

§61-3B-3. Trespass on property other than structure or conveyance.
(a) It is an unlawful trespass for any person to knowingly, and without being authorized, licensed or invited, to enter or remain on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation.

(b) First offense conviction. -- Upon a first trespassing conviction pursuant to subsection (a):

The person is guilty of a misdemeanor and shall be fined not less than $100 nor more than $500.

(c) Second offense conviction. -- Upon a second trespassing conviction pursuant to subsection (a):

The person is guilty of a misdemeanor and shall be fined not less than $500 nor more than $1,000.

(d) Third offense conviction. -- Upon a third and subsequent trespassing conviction pursuant to subsection (a):

The person is guilty of a misdemeanor and shall be fined not less than $1,000 nor more than $1,500.

(e) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 or imprisoned in the county jail for a period not to exceed six months, or both such fine and imprisonment.
30 (c) If the offender is armed with a firearm or other
dangerous weapon with the unlawful and felonious intent to
32 do bodily injury to a human being during his commission of
33 the offense of trespass on property other than a structure or
34 conveyance, such offender shall, notwithstanding section
35 one, article seven, chapter sixty-one of this code, be guilty of
36 a misdemeanor and, upon conviction thereof, shall be
37 confined in the county jail for a term not to exceed six
38 months, or fined not more than $100, or both such fine and
39 imprisonment.

40 (d) Notwithstanding and in addition to any other penalties
41 provided by law, any person who performs or causes damage
42 to property in the course of a willful trespass shall be liable
43 to the property owner in the amount of twice the amount of
44 such damage. However, this article shall not apply in a labor
45 dispute.

CHAPTER 60

(S.B. 521 - By Senators Laird, Foster and Green)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 13, 2009.]

AN ACT to amend and reenact §61-5-8 of the Code of West
Virginia, 1931, as amended, relating to adding
telecommunications devices to items which cannot be brought
into a jail or correctional facility.

Be it enacted by the Legislature of West Virginia:

That §61-5-8 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:
ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.

(a) Where any adult or juvenile is lawfully detained in custody or confinement in any jail, state correctional facility, juvenile facility or juvenile detention center, if any other person delivers anything into the place of custody or confinement of the adult or juvenile with the intent to aid or facilitate the adult's or juvenile's escape or attempted escape therefrom, or if the other person forcibly rescues or attempts to rescue an adult or a juvenile therefrom, the other person is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than ten years.

(b) Where any adult or juvenile is lawfully detained in custody or confinement in any jail, a state correctional facility or a juvenile facility or juvenile detention center, if any other person delivers any money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to the adult or juvenile without the express authority and permission of the supervising officer and with knowledge that the adult or juvenile is lawfully detained, the other person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 and confined in jail not less than three nor more than twelve months: Provided, That the provisions of this section do not prohibit an attorney or his or her employees from supplying any written or printed material to an adult or juvenile which pertains to that attorney's representation of the adult or juvenile.

(c)(1) If any person transports any alcoholic liquor, nonintoxicating beer, poison, implement of escape,
dangerous material, weapon, or any controlled substance as
defined by chapter sixty-a of this code onto the grounds of
any jail, state correctional facility, juvenile facility or juvenile
detention center within this state and is unauthorized by law
to do so, or is unauthorized by the persons supervising the
facility, the person is guilty of a felony and, upon conviction
thereof, shall be fined not less than $1,000 nor more than
$5,000 or confined in a state correctional facility not less than
two years nor more than ten years, or both, or, in the
discretion of the court, be confined in jail not more than one
year and fined not more than $500.

(2) If any person willfully and knowingly transports or
causes to be transported any telecommunications device into
or upon any portion of any jail, state correctional facility,
juvenile facility or juvenile detention center within this state
that is not generally open and accessible to members of the
public without prior approval from the warden/administrator
or designee and such person is unauthorized by law to do so,
or is unauthorized by the persons supervising the facility, the
person is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than $100 nor more than $500
or confined in jail not more than one year or both fined and
confined.

(d) If any person delivers any alcoholic liquor,
nonintoxicating beer, poison, implement of escape,
dangerous material, weapon or any controlled substance as
defined by chapter sixty-a of this code to an adult or juvenile
in custody or confinement in any jail, state correctional
facility, juvenile facility or juvenile detention center within
this state and is unauthorized by law to do so, or is
unauthorized by the persons supervising the facility, the
person is guilty of a felony and, upon conviction thereof,
shall be fined not less than $1,000 nor more than $5,000 or
confined in a state correctional facility not less than one year
nor more than five years, or both.
(e) Whoever purchases, accepts as a gift or secures by barter, trade or in any other manner any article or articles manufactured at or belonging to any jail, state correctional facility, juvenile facility or juvenile detention center from any adult or juvenile detained therein is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 and confined in jail not less than three nor more than twelve months: Provided, That the provisions of this subsection do not apply to articles specially manufactured in any facility under the authorization of the persons supervising the facility and which are offered for sale within or outside of the facility.

(f) Whoever persuades, induces or entices or attempts to persuade, induce or entice any person who is in custody or confined in any jail, state correctional facility, juvenile facility or juvenile detention center to escape therefrom or to engage or aid in any insubordination to the persons supervising the facility is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 and confined in jail not less than three nor more than twelve months.

(g) (1) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her possession any poison, implement of escape, dangerous material, weapon, telecommunications device or any controlled substance as defined by chapter sixty-a of this code is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or confined in a state correctional facility not less than one year nor more than five years, or both, or, in the discretion of the court, be confined in jail not more than one year and fined not more than $500.

(2) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her
possession any alcoholic liquor, nonintoxicating beer, money
or other thing of value, any written or printed matter, any
article of merchandise, food or clothing, any medicine,
utensil or instrument of any kind without the express
authority and permission of the supervising officer is guilty
of a misdemeanor and, upon conviction thereof, shall be
fined not less than $50 nor more than $500 and confined in
jail not more than twelve months.

(h) As used in this section:

(1) “Dangerous material” means any incendiary material
or device, highly flammable or caustic liquid, explosive,
bullet or other material readily capable of causing death or
serious bodily injury.

(2) “Delivers” means to transfer an item to an adult or
juvenile who is detained in custody or confinement in any
jail, correctional facility, juvenile facility or juvenile
detention center or a building appurtenant to those places.
The term includes bringing the item into a jail, correctional
facility, juvenile facility or juvenile detention center or a
building appurtenant to those places. The term includes
putting an item in a place where it may be obtained by an
inmate.

(3) “Inmate” means an adult or juvenile who is detained
in custody or confinement in any jail, correctional facility,
juvenile facility or juvenile detention center, regardless of
whether the individual is temporarily absent due to medical
treatment, transportation, court appearance or other reason
for a temporary absence.

(4) “Implement of escape” means a tool, implement,
device, equipment or other item which an inmate is not
authorized to possess capable of facilitating, aiding or
concealing an escape or attempted escape by an inmate.
(5) "Telecommunication device" means any type of instrument, device, machine or equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio communications or any part of an instrument, device, machine or equipment which is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications regardless of whether the part itself is able to transmit. The term includes, but is not limited to, cellular phones, digital phones and modem equipment devices.

(6) "Weapon" means an implement readily capable of lethal use and includes any firearm, knife, dagger, razor, other cutting or stabbing implement or club. The term includes any item which has been modified or adapted so that it can be used as a firearm, knife, dagger, razor, other cutting or stabbing implement or club. For purposes of this definition, the term "firearm" includes an unloaded firearm or the unassembled components of a firearm.

CHAPTER 61

(Com. Sub. for H.B. 2701 - By Delegates Shaver, Argento and Perry)

[Amended and again passed May 27, 2009, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-5-12b, relating to escape by any person from the custody of the Commissioner
of Juvenile Services; establishing criminal penalties; providing venue for the proceedings; and allowing for the transfer of jurisdiction back to the original committing court in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-5-12b, to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12b. Escape from custody of the Director of Juvenile Services.

1 (a) Any person who escapes from the custody of the director of Division of Juvenile Services, regardless of where he or she is confined or detained, shall be guilty of a misdemeanor, and upon conviction, shall be confined in jail, or in the case of a person under the age of eighteen, in a juvenile facility, for not more than one year.

(b) Venue for the prosecution of a violation of this section shall be in the county in which the escape occurs: Provided, That if the person is under the age of eighteen, upon agreement of all parties, the prosecution of the escape may be transferred to the circuit court from which the juvenile was originally committed.
AN ACT to amend and reenact §61-5-29 of the Code of West Virginia, 1931, as amended, relating generally to criminal enforcement for willful failure to pay child support.

Be it enacted by the Legislature of West Virginia:

That §61-5-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to pay support to a minor; penalties.

(1) A person who: (a) Repeatedly and willfully fails to pay his or her court-ordered support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor; and (b) is subject to court order to pay any amount for the support of a minor child and is delinquent in meeting the full obligation established by the order and has been delinquent for a period of at least six months' duration is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in jail for not more than one year, or both fined and confined.
A person who repeatedly and willfully fails to pay his or her court-ordered support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor by virtue of a court or administrative order and the failure results in twelve months without payment of support that remains unpaid is guilty of a felony and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or imprisoned for not less than one year nor more than three years, or both fined and imprisoned.

CHAPTER 63

(H.B. 2952 - By Delegates Webster, Barker, Brown, Ferro, Hunt, Longstreth, Miley, Perry, Shook, Staggers and Ellem)

[Passed April 8, 2009; in effect ninety days from passage.]  
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §61-6-24 of the Code of West Virginia, 1931, as amended, relating to clarifying that a terroristic threat is a felony regardless of intent to actually commit the threatened act.

Be it enacted by the Legislature of West Virginia:

That §61-6-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-24. Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; penalties.
(a) As used in this section:

(1) "Economic harm" means all direct, incidental and consequential pecuniary harm suffered by a victim as a result of criminal conduct. Economic harm includes, but is not limited to, the following:

(A) All wages, salaries or other compensation lost as a result of the criminal conduct;

(B) The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(C) The cost of all wages, salaries or other compensation paid to employees for time those employees spent in reacting to the results of the criminal conduct; or

(D) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct.

(2) "Hoax substance or device" means any substance or device that is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed, priced or delivered so as to cause a reasonable person to believe that the substance or device is of a nature which is capable of causing serious bodily injury or damage to property or the environment.

(3) "Terrorist act" means an act that is:

(A) Likely to result in serious bodily injury or damage to property or the environment; and

(B) Intended to:
(i) Intimidate or coerce the civilian population;

(ii) Influence the policy of a branch or level of government by intimidation or coercion;

(iii) Affect the conduct of a branch or level of government by intimidation or coercion; or

(iv) Retaliate against a branch or level of government for a policy or conduct of the government.

(b) Any person who knowingly and willfully threatens to commit a terrorist act, with or without the intent to commit the act, is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000 or confined in a state correctional facility for not less than one year nor more than three years, or both.

(c) Any person who knowingly and willfully conveys false information knowing the information to be false concerning an attempt or alleged attempt being made or to be made of a terrorist act is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000 or confined in a state correctional facility for not less than one year nor more than three years, or both.

(d) Any person who uses a hoax substance or device with the specific intent to commit a terrorist act is guilty of a felony and, upon conviction thereof, shall be fined not less than $10,000 nor more than $50,000 or confined in a state correctional facility for not less than one year nor more than five years, or both.

(e) The court shall order any person convicted of an offense under this section to pay the victim restitution in
an amount not to exceed the total amount of any economic harm suffered.

(f) The court shall order any person convicted of an offense under this section to reimburse the state or any subdivision of the state for any expenses incurred by the state or the subdivision incident to its response to a violation of this section.

(g) The conviction of any person under the provisions of this section does not preclude or otherwise limit any civil proceedings arising from the same act.

CHAPTER 64


[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §61-7-4 and §61-7-6a of the Code of West Virginia, 1931, as amended, all relating to concealed handgun licensing generally; clarifying scope of license; clarifying that the investigation necessary for licensure shall include a nationwide criminal background check; requiring reissue application to be ruled on within forty-five days; eliminating social security number from issued license; related to the honoring of concealed handgun licenses issued by another state; eliminating requirement that a person holding a concealed handgun license from a reciprocating state be a resident of that state and requiring that a potential reciprocating
Be it enacted by the Legislature of West Virginia:

That §61-7-4 and §61-7-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and shall pay to the sheriff, at the time of application, a fee of $75, of which $15 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Concealed weapons permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff, a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, social security number and a description of the applicant's physical features;

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing the residence;
(3) That the applicant is twenty-one years of age or older: Provided, That any individual who is less than twenty-one years of age and possesses a properly issued concealed weapons license as of the effective date of this article shall be licensed to maintain his or her concealed weapons license notwithstanding the provisions of this section requiring new applicants to be at least twenty-one years of age: Provided, however, That upon a showing of any applicant who is eighteen years of age or older that he or she is required to carry a concealed weapon as a condition for employment, and presents satisfactory proof to the sheriff thereof, then he or she shall be issued a license upon meeting all other conditions of this section. Upon discontinuance of employment that requires the concealed weapons license, if the individual issued the license is not yet twenty-one years of age, then the individual issued the license is no longer eligible and must return his or her license to the issuing sheriff;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof;

(5) That the applicant has not been convicted of a felony or of an act of violence involving the misuse of a deadly weapon;

(6) That the applicant has not been convicted of a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the
(7) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(8) That the applicant is physically and mentally competent to carry the weapon;

(9) That the applicant has not been adjudicated to be mentally incompetent;

(10) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon: Provided, That this requirement shall be waived in the case of a renewal applicant who has previously qualified;

(11) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) The sheriff shall conduct an investigation including a nationwide criminal background check, in order to verify that the information required in subdivisions (1), (2), (3), (5), (6), (8) and (9), subsection (a) of this section is true and correct.

(c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered
by the sheriff and shall take the form of an interest bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay for the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff’s office, as the sheriff may consider appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

1. Any official National Rifle Association handgun safety or training course;

2. Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors duly certified by the institution;

3. Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

4. Any handgun training or safety course or class conducted by any branch of the United States Military, Reserve or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught said course or class attesting to the successful completion of the
course or class by the applicant or a copy of any document
which shows successful completion of the course or class
shall constitute evidence of qualification under this section.

(e) All concealed weapons license applications must be
notarized by a notary public duly licensed under article four,
chapter twenty-nine of this code. Falsification of any portion
of the application constitutes false swearing and is punishable
under the provisions of section two, article five, chapter
sixty-one of this code.

(f) If the information in the application is found to be true
and correct, the sheriff shall issue a license. The sheriff shall
issue, reissue or deny the license within forty-five days after
the application is filed if all required background checks
authorized by this section are completed.

(g) Before any approved license shall be issued or
become effective, the applicant shall pay to the sheriff a fee
in the amount of $15 which the sheriff shall forward to the
Superintendent of the West Virginia State Police within thirty
days of receipt. The license shall be valid for five years
throughout the state, unless sooner revoked.

(h) All persons holding a current and valid concealed
weapons license as of December 16, 1995, shall continue to
hold a valid concealed weapons license until his or her
license expires or is revoked as provided in this article:
Provided, That all reapplication fees shall be waived for
applications received by January 1, 1997, for any person
holding a current and valid concealed weapons license as of
December 16, 1995, which contains use restrictions placed
upon the license as a condition of issuance by the issuing
circuit court. Any licenses reissued pursuant to this
subsection will be issued for the time period of the original
license.
(i) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section.

(j) The Superintendent of the West Virginia State Police shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(k) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case may the court be required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals.

(l) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of $5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West
182 Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

189 (n) All licensees must carry with them a state-issued photo identification card with the concealed weapons license whenever the licensee is carrying a concealed weapon. Any licensee who fails to have in his or her possession a state-issued photo identification card and a current concealed weapons license while carrying a concealed weapon is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 or more than $200 for each offense.

197 (o) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

205 (q) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section, and the application of the honorably retired officer shall be granted without proof or inquiry by the sheriff as to
those requirements set forth in subdivision (9), subsection (a) of this section, if the officer meets the remainder of the requirements of this section and has the approval of the appropriate chief law-enforcement officer.

(r) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon permit issued in accordance with the provisions of this section authorizes the holder of the permit to carry a concealed pistol or revolver on the lands or waters of this state.

§61-7-6a. Reciprocity; out-of-state concealed handgun permits.

(a) A holder of a valid out-of-state permit or license to carry a concealed handgun, as issued by another state with which the State of West Virginia has executed a reciprocity agreement, shall be recognized as valid in this state, if the following conditions are met:

(1) The permit or license holder is 21 years or older;

(2) The permit or license is in his or her immediate possession;

(3) The permit or license holder is not a resident of the State of West Virginia; and,

(4) The State of West Virginia has executed a valid and effective reciprocity agreement with the issuing state pertaining to the carrying and verification of concealed handgun licenses and permits issued in the respective states.

(b) A holder of a valid permit or license from another state who is authorized to carry a concealed handgun in this state pursuant to provisions of this section is subject to the same laws and restrictions with respect to carrying a
concealed handgun as a resident of West Virginia who is so permitted, and must carry the concealed handgun in compliance with the laws of this state.

(c) A license or permit from another state is not valid in this state if the holder is or becomes prohibited by law from possessing a firearm.

(d) The West Virginia Attorney General shall seek to enter into and may execute reciprocity agreements on behalf of the State of West Virginia with states which meet the following standards and requirements:

(1) The standards applied by the other state before issuing a concealed handgun license or permit must be similar to or greater than the standards imposed by this article;

(2) This state’s law-enforcement officers have continuous access to data bases on the criminal information network, twenty-four hours per day, seven days per week, to verify the continued validity of any license or permit to carry a concealed handgun that has been granted by the issuing state;

(3) The other state agrees to grant the right to carry a concealed handgun to residents of West Virginia who have valid concealed handgun permits issued pursuant to this article in their possession while carrying concealed weapons in that state; and

(4) The states agree to apprise one another of changes in permitting standards and requirements, to provide for a prompt reexamination of whether any adopted change in licensing or permitting standards negates the states’ ability to continue with the reciprocity agreement.

(e) The West Virginia State Police shall maintain a registry of states with which the State of West Virginia has entered into reciprocity agreements on the criminal
information network and make the registry available to law-enforcement officers for investigative purposes.

(f) Every twelve months after the effective date of this section, the West Virginia Attorney General shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) Whether a West Virginia resident may carry a concealed handgun in their state based upon having a valid West Virginia concealed handgun permit; and (ii) whether a West Virginia resident may carry a concealed handgun in that state based upon having a valid West Virginia concealed handgun permit, pursuant to the laws of that state or by the execution of a valid reciprocity agreement between the states.

(g) The West Virginia State Police shall make available to the public a list of states which have entered into reciprocity agreements with the State of West Virginia.

CHAPTER 65

(Com. Sub. for S.B. 339 - By Senator Foster)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 13, 2009.]

AN ACT to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to exemptions for certain spousal relationships from county hiring and employment prohibition under limited circumstances; creating an exemption for certain spouses who were employed by the county prior to their engagement or marriage to a county official to county hiring prohibition; creating an exemption for certain licensed professional medical personnel to county hiring prohibition; limitations; and removing antiquated language.
Be it enacted by the Legislature of West Virginia:

That §61-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.

(a) It is unlawful for any member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: Provided, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his
or her office and the certificate or certificates of any teacher, principal, supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked: Provided, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $2,500 and, in the court's discretion, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child: (1) Is not a party to the contract; (2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract; (3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract; (4) Does not participate in the deliberations or awarding of the contract; and
(5) Does not approve or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or board of education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission of this state.

(h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of this code for an exemption from subsection (a) of this section.

(i) The provisions of this section do not apply to publications in newspapers required by law to be made.

(j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f), (g) or (h) of this section.
The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider at government-owned hospitals or other government agencies who provide health care services: Provided, That the member of a county commission whose spouse is employed or to be employed may not:

1. Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;

2. Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed; or

3. Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.

The provisions of subsection (a) of this section do not make unlawful the employment of a spouse of any elected county official by that county official: Provided, That the elected county official may not:

1. Directly supervise the spouse employee; or

2. Set the salary of the spouse employee: Provided, That the provisions of this subsection shall only apply to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.
CHAPTER 66

(H.B. 2920 - By Delegate Ellem)

[Amended and again passed May 27, 2009, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to repeal §61-11-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-11-6 of said code, all relating to crimes and their punishment; eliminating the felony offense of second or subsequent petit larceny; providing elements of and increasing the penalty for accessory after the fact for certain crimes against the person; and excluding certain persons from being considered an accessory after the fact.

Be it enacted by the Legislature of West Virginia:

That §61-11-20 of the Code of West Virginia, 1931, as amended, be repealed; and that §61-11-6 of said code be amended and reenacted to read as follows:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-6. Punishment of principals in the second degree and accessories before and after the fact.

(a) In the case of every felony, every principal in the second degree and every accessory before the fact shall be
punishable as if he or she were the principal in the first
degree; and every accessory after the fact shall be confined
in jail not more than one year and fined not exceeding $500.
But no person in the relation of husband and wife, parent or
grandparent, child or grandchild, brother or sister, by
consanguinity or affinity, or servant to the offender, who,
after the commission of a felony, shall aid or assist a
principal felon, or accessory before the fact, to avoid or
escape from prosecution or punishment shall be deemed an
accessory after the fact.

(b) Notwithstanding the provisions of subsection (a) of
this section, any person who knowingly harbors, conceals,
maintains or assists the principal felon after the commission
of the underlying offense violating the felony provisions of
sections one, four, or nine of article two of this chapter, or
gives such offender aid knowing that he or she has
committed such felony, with the intent that the offender
avoid or escape detention, arrest, trial or punishment, shall be
considered an accessory after the fact and, upon conviction,
be guilty of a felony and confined in a state correctional
facility for a period not to exceed five years, or a period of
not more than one half of the maximum penalty for the
underlying felony offense, whichever is the lesser maximum
term of confinement. But no person who is a person in the
relation of husband and wife, parent, grandparent, child,
grandchild, brother or sister, whether by consanguinity or
affinity, or servant to the offender shall be considered an
accessory after the fact.
AN ACT to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating to removing the notice and publication requirements for expungement petitions.

Be it enacted by the Legislature of West Virginia:

That §61-11-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26. Expungement of certain criminal convictions; procedures; effect.

1 (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; and

(12) Any supporting documents, sworn statements, affidavits or other information supporting the petition to expunge.

(d) 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.

(e) Upon receipt of a petition for expungement, 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, 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.

(f) 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
108 convictions are not excluded from expungement by
109 subsection (i) of this section; (2) that the requisite time period
110 has passed since the conviction or convictions or end of the
111 completion of any sentence of incarceration or probation; (3)
112 petitioner has no criminal charges pending against him or
113 her; (4) the expungement is consistent with the public
114 welfare; (5) petitioner has, by his or her behavior since the
115 conviction or convictions, evidenced that he or she has been
116 rehabilitated and is law-abiding; and (6) any other matter
117 deemed appropriate or necessary by the court to make a
118 determination regarding the petition for expungement.

119 (g) Within sixty days of the filing of a petition for
120 expungement the circuit court shall:

121 (1) Summarily grant the petition;

122 (2) Set the matter for hearing; or

123 (3) Summarily deny the petition if the court determines
124 that the petition is insufficient or, based upon supporting
125 documentation and sworn statements filed in opposition to
126 the petition, the court determines that the petitioner, as a
127 matter of law, is not entitled to expungement.

128 (h) If the court sets the matter for hearing, all interested
129 parties who have filed a notice of opposition shall be notified.
130 At the hearing, the court may inquire into the background of
131 the petitioner and shall have access to any reports or records
132 relating to the petitioner that are on file with any
133 law-enforcement authority, the institution of confinement, if
134 any, and parole authority or other agency which was in any
135 way involved with the petitioner’s arrest, conviction,
136 sentence and post-conviction supervision, including any
137 record of arrest or conviction in any other state or federal
138 court. The court may hear testimony of witnesses and any
139 other matter the court deems proper and relevant to its
140 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.

(i) 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;
invoking 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;
invoking 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.

(j) 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.

(k) 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
176 have to disclose the fact of the record or any matter relating
177 thereto on an application for employment, credit or other type
178 of application.

179 (l) Inspection of the sealed records in the court’s
180 possession may thereafter be permitted by the court only
181 upon a motion by the person who is the subject of the records
182 or upon a petition filed by a prosecuting attorney that
183 inspection and possible use of the records in question are
184 necessary to the investigation or prosecution of a crime in
185 this state or another jurisdiction. If the court finds that the
186 interests of justice will be served by granting a petition to
187 inspect the sealed record, it may be granted.

CHAPTER 68

(Com. Sub. for S.B. 451 - By Senators Kessler, Snyder,
D. Facemire and White)

[Passed April 11, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §14-2A-3 and §14-2A-14 of the
Code of West Virginia, 1931, as amended, all relating generally
to compensation awards to victims of crimes; expanding the
definition of “criminally injurious conduct”; increasing
allowable victim relocation costs; allowing payment for
reasonable travel expenses for the transportation of a victim to
or from a medical facility; increasing the amount that may be
paid to a victim and to all other claimants sustaining economic
loss because of injury to that victim; and removing the
 provision that prohibits the voluntary intoxication of a victim
from being a defense against the estate of a deceased 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.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.


As used in this article, the term:

(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim, except the term "victim" does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(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;

(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;

(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;

(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 $1,000; and

(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

(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 $25,000.

(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 criminally injurious conduct committed outside of the United States against a resident of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, reckless driving or when the person leaves the scene of the accident.

(d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of determining whether an individual received over half of his or her support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself or herself supplied. The term "support" includes, but is not limited to, food, shelter,
clothing, medical and dental care and education. The term "dependent" includes a child of the victim born after his or her death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term "economic loss" includes a lost scholarship as defined in this section.

(f) (1) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, mental health counseling, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

(2) Allowable expense includes a total charge not in excess of $7,000 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 $5,000, for cleanup of real property damaged by a methamphetamine laboratory or a charge, not to exceed $1,000, for any other crime scene cleanup;
(B) Victim relocation costs, not to exceed $2,000;

(C) Reasonable travel expenses, not to exceed $1,000, 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 the removal constitutes a crime under the laws of this state. Reasonable travel expenses to another state for that purpose may not exceed $2,000 and reasonable travel expenses for that purpose to another county may not exceed $3,000; and

(E) Reasonable travel expenses for the transportation of a victim to and from a medical facility.

(g) “Work loss” means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. “Work loss” also includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim.

(h) “Replacement services loss” means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.
(I) "Dependent's economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(j) "Dependent's replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension. "Victim" includes 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.
(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 recoupment 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 recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment 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 $35,000 in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed $50,000 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 $100,000, for special needs attributable to the injury.

(h) If an award of compensation of $5,000 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 69

(Com. Sub. for S.B. 370 - By Senator Kessler)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §62-11C-4 and §62-11C-7 of the Code of West Virginia, 1931, as amended, all relating to community corrections fees generally; clarifying that circuit clerks, magistrate clerks, municipal court clerks or his or her designee are all authorized to collect certain fees imposed pursuant to this article; and permitting only a community criminal justice board to have the authority to collect supervision or participation fees ordered by circuit courts, magistrate courts, municipal courts or the community criminal justice board.

Be it enacted by the Legislature of West Virginia:
That §62-11C-4 and §62-11C-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-4. Special revenue account.

§62-11C-7. Supervision or participation fee.

§62-11C-4. Special revenue account.

(a) There is hereby created in the State Treasury a special revenue account to be known as the West Virginia Community Corrections Fund. Expenditures from the fund are for the purposes set forth in subsection (e) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. The West Virginia Community Corrections Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) In addition to the fee required in section nine, article twelve of this chapter, a fee not to exceed $35 per month, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on probation. This fee is to be based upon the person's ability to pay. The magistrate or circuit judge shall conduct a hearing prior to imposition of probation and make a determination on the record that the offender is able to pay the fee without undue hardship. The magistrate clerk, deputy magistrate clerk, magistrate assistant, circuit clerk or deputy circuit clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the magistrate clerk or circuit clerk shall forward the
amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(c) In addition to the fee required in section five, article eleven-b of this chapter, a fee of $2.50 per day is to be collected from those persons on home incarceration. The circuit judge, magistrate or municipal court judge shall consider the person's ability to pay in determining the imposition of the fee. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate clerk or municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(d) In addition to the usual court costs in any criminal case taxed against any defendant convicted in a municipal, magistrate or circuit court, excluding municipal parking ordinances, a $10 fee shall be added. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate court clerk and the municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(e) The moneys of the West Virginia Community Corrections Fund are to be disbursed by the Governor's Committee on Crime, Delinquency and Correction, upon recommendation by the community corrections subcommittee, for the funding of community corrections programs and to pay expenses of the Governor's committee
in administering the provisions of this article, which expenses may not in any fiscal year exceed ten percent of the funds deposited to the special revenue account during that fiscal year.

(f) Any disbursements from the West Virginia Community Corrections Fund allocated for community corrections programs by the Governor's committee may be made contingent upon local appropriations or gifts in money or in kind for the support of the programs. Any county commission of any county or the governing body of a municipality may appropriate and expend money for establishing and maintaining community corrections programs.

§62-11C-7. Supervision or participation fee.

(a) A circuit judge, magistrate, municipal court judge or community criminal justice board may require the payment of a supervision or participation fee from any person required to be supervised by or participate in a community corrections program. The circuit judge, magistrate, municipal court judge or community criminal justice board shall consider the person's ability to pay in determining the imposition and amount of the fee.

(b) All fees ordered by the circuit court, magistrate court, municipal court or community criminal justice board pursuant to this section are to be paid to the community criminal justice board, who shall remit the fees monthly to the treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article.
AN ACT to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating to making corrections to internal code references and other terminology related to extended supervision for certain sex offenders.

Be it enacted by the Legislature of West Virginia:

That §62-12-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b, eight-c or eight-d of said chapter shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised
9 release of up to fifty years: Provided, That the period of
10 supervised release imposed by the court pursuant to this
11 section for a defendant convicted after the effective date of
12 this section as amended and reenacted during the first
13 extraordinary session of the Legislature, 2006, of a violation
14 of section three or seven, article eight-b, chapter sixty-one of
15 this code and sentenced pursuant to section nine-a of said
16 article, shall be no less than ten years: Provided, however,
17 That a defendant designated after the effective date of this
18 section as amended and reenacted during the first
19 extraordinary session of the Legislature, 2006, as a sexually
20 violent predator pursuant to the provisions of section two-a,
21 article twelve, chapter fifteen of this code shall be subject, in
22 addition to any other penalty or condition imposed by the
23 court, to supervised release for life: Provided further, That,
24 pursuant to the provisions of subsection (g) of this section, a
25 court may modify, terminate or revoke any term of
26 supervised release imposed pursuant to subsection (a) of this
27 section.

28 (b) Any person required to be on supervised release for
29 a minimum term of ten years or for life pursuant to the
30 provisos of subsection (a) of this section also shall be further
31 prohibited from:

32 (1) Establishing a residence or accepting employment
33 within one thousand feet of a school or child care facility or
34 within one thousand feet of the residence of a victim or
35 victims of any sexually violent offenses for which the person
36 was convicted;

37 (2) Establishing a residence or any other living
38 accommodation in a household in which a child under sixteen
39 resides if the person has been convicted of a sexually violent
40 offense against a child, unless the person is one of the
41 following:

42 (i) The child's parent;
(ii) The child's grandparent; or

(iii) The child's stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person's parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: Provided, That nothing in this subsection shall preclude a court from imposing residency or employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.

(c) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(d) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by the probation office of the sentencing court or by the community corrections program established in said circuit unless jurisdiction is transferred elsewhere by order of the sentencing court.

(e) A defendant sentenced to a period of supervised release shall be subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of section nine of this article: Provided, That any defendant sentenced to a period of supervised release pursuant to this section shall be required to participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court deems the offender treatment programs or counseling to no longer be appropriate or necessary and makes express findings in support thereof.
Within ninety days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) The sentencing court may, based upon defendant's ability to pay, impose a supervision fee to offset the cost of supervision. Said fee shall not exceed $50 per month. Said fee may be modified periodically based upon the defendant's ability to pay.

(g) Modification of conditions or revocation. -- The court may:

(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;
(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release;

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(h) Written statement of conditions. -- The court shall direct that the probation officer provide the defendant with a written statement at the defendant's sentencing hearing that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(i) Supervised release following revocation. -- When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of supervised release authorized under subsection (a) of this section, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.
(j) Delayed revocation. -- The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (i) of this section, a further term of supervised release extends beyond the expiration of the term of supervised release for any period necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

CHAPTER 71


[Passed April 9, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §17-2D-2, §17-2D-3 and §17-2D-5 of the Code of West Virginia, 1931, as amended, all relating to the continuation of the Design-Build Program.

Be it enacted by the Legislature of West Virginia:

That §17-2D-2, §17-2D-3 and §17-2D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT PROGRAM.

(a) Notwithstanding any provision of this code to the contrary, the Commissioner of the West Virginia Division of Highways may continue with the pilot program to expedite the construction of no more than ten special projects, in addition to the three projects authorized by prior enactment of this section, by combining the design and construction elements of a highway or bridge project into a single contract.

(b) A design-build project may not be let to contract after June 30, 2011. The Division of Highways may expend no more than $50 million in each of the three years remaining in the pilot program, for an aggregate total of $150 million.

(c) A design-build project may be let to contract only in accordance with the Commissioner’s established policies and procedures concerning design-build projects.

(d) After June 30, 2011, no projects may be let under the provisions of this article unless the West Virginia Legislature either approves additional projects or makes the program permanent.

(e) Projects receiving special funding above the regular federal core funding, including any Competitive Surface Transportation Grants received as a result of the American Recovery and Reinvestment Act of 2009, may utilize the pilot program, but shall not be included in the total number of projects or expenditure limits provided by subsections (a) and (b) of this section.

§17-2D-3. Invitation for bids.
(a) The division shall prepare an invitation for bids for prequalified design-builders, which must provide at a minimum:

1. The procedures to be followed for submitting bids and the procedures for making awards;

2. The proposed general terms and conditions for the design-build contract;

3. The description of the drawings, specifications or other information to be submitted with the bid, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

4. A proposed time schedule commencement and completion of the design-build contract;

5. Budget limits for the design-build contract, if any;

6. Requirements or restrictions for the subletting of specific portions of the design-build contract, if any; and

7. Requirements for performance bonds, payment bonds, insurance, professional liability insurance and workers' compensation coverage.

(b) The division shall make available to the qualified design-builders, a list of prequalified consultants, approved subcontractors, suppliers and sureties, as applicable, additional information including, but not limited to, surveys, soils reports, drawings or information regarding existing structures, environmental studies, photographs or references to public records, or other pertinent information.

(c) The division shall set forth its needs with sufficient clarity to assure that there is a comprehensive understanding of the project's scope and requirement.
§17-2D-5. Report to the Legislature.

1 On or before December 1, 2011, the commissioner shall prepare and submit to the Joint Standing Committee on Government Organization a report evaluating the experience of the Division of Highways with each project, including whether the division realized any cost or time savings, the number and cost of change orders, the quality of work performed, the number of bids received and other issues the commissioner considers appropriate.

CHAPTER 72

(Com. Sub. for H.B. 2694 - By Delegates Boggs, Webster, Iaquinta, Ferro, Wooton, Schoen, Tabb, Fleischauer, Schadler, Hamilton and Hutchins)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §48-1-233.3 and §48-1-233.4; to amend said code by adding thereto a new section, designated §48-9-404; to amend and reenact §48-11-106 of said code; and to amend said code by adding thereto a new section, designated §48-11-108, all relating to modifying custodial rights and child support for a parent who has been deployed for military service; providing definitions; modifying the terms of a parenting plan; requiring that any order is only a temporary order; providing for temporary modification of child support during the military service; requiring an expedited process for modification of a child
support order; reinstating the child support obligation in place prior to the parent’s military service upon release from service; and requiring that a further modification of child support be based solely on the income and earning capacity the parent has after the military service.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §48-1-233.3 and §48-1-233.4; that said code be amended by adding thereto a new section, designated §48-9-404; that §48-11-106 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §48-11-108, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART 2--DEFINITIONS.

§48-1-233.3. Military parent defined.

“Military parent” means a natural parent or adoptive parent of a child under the age of eighteen whose parental rights have not been terminated by a court of competent jurisdiction.

§48-1-233.4. Military service or service defined.

(a) In the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or a Reserve
component of these services, "military service or service" means a deployment for combat operations, a contingency operation, or a natural disaster based on orders that do not permit a family member to accompany the member on the deployment.

(b) In the case of a parent who is a member of the National Guard, "military service or service" means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty consecutive days pursuant to 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds.

(c) "Military service or service" includes a period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave or other lawful cause.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-404. Modification of a parenting plan due to military service.

(a) If a military parent is required to be separated from a child due to military service, a court shall not enter a final order modifying the terms of an existing parenting plan until ninety days after the military parent is released from military service. A military parent's absence or relocation because of military service must not be the sole factor supporting a change in circumstance or grounds sufficient to support a permanent modification of an existing parenting plan.
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9 (b) A parenting plan establishing the terms of custody or visitation in place at the time a military parent is called to military service may be temporarily modified to make reasonable accommodation for the parties because of the military parent's service.

14 (c) A temporary parenting plan pursuant to this section shall provide that the military parent has at least substantial custodial responsibility of the child during a period of leave granted to the military parent during their military service, unless the court determines that it is not in the best interest of the child. If a temporary parenting plan is not issued pursuant to this section, the nonmilitary custodial parent shall make the child or children reasonably available to the military parent when the military parent has leave to ensure that the military parent has reasonable custodial responsibility and is able to exercise custodial responsibility of the child or children.

25 (d) If there is no existing parenting plan or order establishing the terms of custody or visitation and it appears that military service is imminent, upon motion by either parent, the court shall expedite a temporary hearing to establish a temporary parenting plan to ensure the military parent has access to the child, to establish support, and provide other appropriate relief.

ARTICLE 11. SUPPORT OF CHILDREN.


(a) An expedited process for modification of a child support order may be utilized if:

1 (1) Either parent experiences a substantial change of circumstances resulting in a decrease in income due to loss of employment or other involuntary cause;
(2) An increase in income due to promotion, change in employment or reemployment;

(3) Other such change in employment status; or

(4) If a military parent is called to military service.

(b) The party seeking the recalculation of support and modification of the support order shall file a description of the decrease or increase in income and an explanation of the cause of the decrease or increase on a standardized form to be provided by the secretary-clerk or other employee of the family court. The standardized form shall be verified by the filing party. Any available documentary evidence shall be filed with the standardized form. Based upon the filing and information available in the case record, the amount of support shall be tentatively recalculated.

(c) The secretary-clerk shall serve a notice of the filing, a copy of the standardized form and the support calculations upon the other party by certified mail, return receipt requested, with delivery restricted to the addressee, in accordance with rule 4(d)(1)(D) of the West Virginia rules of civil procedure. The secretary-clerk shall also mail a copy, by first-class mail, to the local office of the bureau for child support enforcement for the county in which the family court is located in the same manner as original process under rule 4(d) of the rules of civil procedure.

(d) The notice shall fix a date fourteen days from the date of mailing and inform the party that unless the recalculation is contested and a hearing request is made on or before the date fixed, the proposed modification will be made effective. If the filing is contested, the proposed modification shall be set for hearing; otherwise, the court shall enter an order for a judgment by default. Either party may move to set aside a judgment by default, pursuant to the provisions of rule 55 or rule 60(b) of the rules of civil procedure.
(e) If an obligor uses the provisions of this section to expeditiously reduce his or her child support obligation, the order that effected the reduction shall also require the obligor to notify the obligee of reemployment, new employment or other such change in employment status that results in an increase in income. If an obligee uses the provisions of this section to expeditiously increase his or her child support obligation, the order that effected the increase shall also require the obligee to notify the obligor of reemployment, new employment or other such change in employment status that results in an increase in income of the obligee.

(f) The Supreme Court of Appeals shall develop the standardized form required by this section.

§48-11-108. Modification of support based on military service.

(a) If a military parent is called to military service, either parent may file a notice of activation of military service and a request for an expedited modification of a support order pursuant to section one hundred six of this article. In the petition, the parent must cite the basis for modifying the support order and the military parent's change in financial circumstances supporting the petition.

(b) The court shall temporarily modify the amount of child support for the duration of the military parent's military service pursuant to the provisions of section fifteen of this article if there is a substantial change in circumstances based upon changes in income and earning capacity of the military parent during military service. An increase or decrease in income or earning capacity of a military parent due to military service may only be used to calculate support during the period of military service and must not be considered a permanent increase or decrease in income or earning capacity. The effective date for a temporary modification must be the date the military parent begins military service.
Upon return from military service, the military parent's child support obligation prior to a temporary modification is automatically reinstated, effective on the date the military parent is released from service. Within ninety days of the military parent's release from service, either parent may make a request for a modification of child support to correspond to a change in the military parent's nonservice related income or earning capacity. A modification of child support must be based solely upon the income or earning capacity the military parent has following his or her period of military service.

CHAPTER 73

(Com. Sub. for S.B. 405 - By Senators Kessler, Unger, Minard and White)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §48-10-401 and §48-10-402 of the Code of West Virginia, 1931, as amended, all relating to circuit and family court jurisdiction over petitions for grandparent visitation; and establishing exclusive family court jurisdiction over such petitions or motions except when the child or children with whom visitation is sought are the subject or subjects of a pending abuse or neglect petition in the circuit court.

Be it enacted by the Legislature of West Virginia:
That §48-10-401 and §48-10-402 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. GRANDPARENT VISITATION.

§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.

§48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.

(a) The provisions of this section apply to any pending actions for divorce, custody, legal separation, annulment or establishment of paternity.

(b) After the commencement of the action, a grandparent seeking visitation with his or her grandchild may, by motion, apply to the family court for an order granting visitation. A grandparent moving for an order of visitation will not be afforded party status, but may be called as a witness by the court, and will be subject to cross-examination by the parties.

(c) Motions or petitions for grandparent visitation shall be filed and heard in the family court except when an abuse or neglect proceeding involving the child or children is pending before the circuit court, in which case the motion or petition shall be filed and heard in the circuit court.

§48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

(a) The provisions of this section apply when no proceeding for divorce, custody, legal separation, annulment or establishment of paternity is pending.
(b) A grandparent may petition the family court for an order granting visitation with his or her grandchild, regardless of whether the parents of the child are married. If the grandparent filed a motion for visitation in a previous proceeding for divorce, custody, legal separation, annulment or establishment of paternity, and a decree or final order has issued in that earlier action, the grandparent may petition for visitation if the circumstances have materially changed since the entry of the earlier order or decree.

(c) When a petition under this section is filed, the matter shall be styled “In re grandparent visitation of [petitioner's(s') name(s)]”.

(d) Motions or petitions for grandparent visitation shall be filed and heard in the family court except when an abuse or neglect proceeding involving the child or children is pending before the circuit court, in which case the motion or petition shall be filed and heard in the circuit court.

CHAPTER 74

(Com. Sub. for H.B. 2739 - By Delegates Webster, Frazier, Fleischauer, Miley and Longstreth)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

all relating to revising and expanding the procedures and methods for service, enforcement, and registration of domestic violence protective orders; requiring circuit court clerks to forward copies of protective orders to magistrates or magistrate court clerks; requiring magistrates or magistrate court clerks to forward copies of protective orders to state and federal agencies; requiring law enforcement to attempt service of protective orders within seventy-two hours of receipt of order; authorizing certain persons to file a criminal complaint for violation of a protective order; providing a criminal penalty for violation of a protective order; authorizing the seizure of weapons possessed in violation of a protective order; authorizing nonjudicial enforcement and service of state protective orders; and providing civil and criminal immunity to government officials for acts or omissions arising out of enforcement of a protective order, or the detention or arrest of an alleged violator of a protective order, if the official acted in a good faith effort to comply with the statutes related to the prevention and treatment of domestic violence.

Be it enacted by the Legislature of West Virginia:

That §48-27-505, §48-27-701, §48-27-902, §48-27-903 and §48-27-1002 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 §48-27-1003 and §48-27-1004, all to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.
§48-27-902. Violation of protective orders; criminal complaints.
§48-27-1002. Arrest in domestic violence matters; conditions.
§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

(a) Except as otherwise provided in subsection (d), section four hundred one of this article, a protective order, entered by the family court pursuant to this article, is effective for either ninety days or one hundred eighty days, in the discretion of the court. If the court enters an order for a period of ninety days, upon receipt of a written request from the petitioner prior to the expiration of the ninety-day period, the family court shall extend its order for an additional ninety-day period.

(b) To be effective, a written request to extend an order from ninety days to one hundred eighty days must be submitted to the court prior to the expiration of the original ninety-day period. A notice of the extension shall be sent by the clerk of the court to the respondent by first-class mail, addressed to the last known address of the respondent as indicated by the court file. The extension of time is effective upon mailing of the notice.

(c) Certified copies of any order entered or extension notice made under the provisions of this section shall be served upon the respondent by first class mail, addressed to the last known address of the respondent as indicated by the court file, and delivered to the petitioner and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the West Virginia State Police within twenty-four hours of the entry of the order. The protective order shall be in full force and effect in every county of this state.

(d) The family court may modify the terms of a protective order upon motion of either party.
(e) The clerk of the circuit court shall cause a copy of any protective order entered by the family court pursuant to the provisions of this article or pursuant to the provisions of chapter forty-eight of this code to be forwarded to the magistrate or magistrate court clerk and the magistrate or magistrate court clerk shall forward a copy of the protective order to the appropriate state and federal agencies for registration of domestic violence offenders as required by state and federal law.


Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article. Law enforcement shall attempt to serve all protective orders without delay: Provided, That service of process shall be attempted within seventy-two hours of law enforcement’s receipt of the order. If service is not made, law enforcement shall continue to attempt service on the respondent until proper service is made.


(a) Any person authorized to file a petition pursuant to section three hundred five of this article, and any person authorized to file a petition for civil contempt pursuant to section nine hundred one of this article may file a criminal complaint:

(1) Against a respondent who knowingly and willfully violates a provision of an emergency or final protective order entered pursuant to:
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9 (A) Subsection (a) or (b) of section five hundred two of
10 this article;

11 (B) If the court has ordered such relief; subsection (2),
12 (7) or (9) of section five hundred three of this article;

13 (C) Subsection (b) or (c) of section five hundred nine,
14 article five of this chapter; or

15 (D) Subsection (b) or (c) of section six hundred eight,
16 article five of this chapter.

17 (2) Against a person who violates a condition of bail,
18 probation or parole which has the express intent or effect of
19 protecting the personal safety of a particular person or
20 persons;

21 (3) Against a respondent who knowingly and willfully
22 violates the terms of a protection order from another
23 jurisdiction that is required to be enforced pursuant to section
24 three, article twenty-eight of this chapter; or

25 (4) Against a person who, in violation of subdivision (3),
26 subsection (a), section seven, article twenty-eight of this
27 chapter, knowingly and willfully violates the terms of a
28 condition of bail, probation or parole imposed in another
29 state which has the express intent or effect of protecting the
30 personal safety of a particular person or persons.

31 (b) If the court finds probable cause upon the complaint,
32 the court shall issue a warrant for the arrest of the person
33 charged.

§48-27-903. Misdemeanor offenses for violation of protective
order, repeat offenses, penalties.

1 (a) Any person who knowingly and willfully violates:
2 (1) A provision of an emergency or final protective order entered pursuant to: (A) subsection (a) or (b) of section five hundred two of this article; (B) if the court has ordered such relief; subsection (2), (7) or (9) of section five hundred three of this article; (C) subsection (b) or (c) of section five hundred nine, article five of this chapter; or (D) subsection (b) or (c) of section six hundred eight, article five of this chapter; or

10 (2) A condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons; is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $250 nor more than $2,000.

(b) Any person who is convicted of a second or subsequent offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than $500 nor more than $3,000, or both.

§48-27-1002. Arrest in domestic violence matters; conditions.

(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:
(1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:

(2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

(1) Condition of the alleged victim. -- One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

(2) Condition of the accused. -- Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

(3) Condition of the scene. -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) Other conditions. -- Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent...
(c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant article five, section five hundred nine, the arresting officer, subject to the requirements of the Constitutions of this State and of the United States:

(1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence;

(2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and

(3) May seize all weapons that are possessed in violation of a valid protective order.

(a) A law-enforcement officer of this state, upon determining that there is probable cause to believe that a valid protective order exists and that the order has been violated, shall enforce the order pursuant to any authority to arrest under the code. Presentation of a protective order that identifies both the protected individual and the respondent and that appears, on its face, to be authentic and currently in effect constitutes probable cause to believe that a valid protective order exists. For the purposes of this section, the protective order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protective order is not required for enforcement.

(b) If a protective order is not presented, a law-enforcement officer of this state may consider other credible information in determining whether there is probable cause to believe that a valid protective order exists.

(c) If a law-enforcement officer of this state determines that an otherwise valid protective order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.


This state or a local governmental agency, or a law-enforcement officer, prosecuting attorney, clerk of court or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the enforcement of a protective order or the detention or arrest of an alleged violator of a protective order if the act or omission was done in good faith in an effort to comply with this article.
AN ACT to amend and reenact §48-27-802 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-28-5 of said code; and to amend and reenact §51-1-21 of said code, all relating generally to registering domestic violence protective orders with the West Virginia Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

That §48-27-802 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-28-5 of said code be amended and reenacted; and that §51-1-21 of said code be amended and reenacted, all to read as follows:

Chapter
48. Domestic Relations.
51. Courts and Their Officers.

CHAPTER 48. DOMESTIC RELATIONS.

Article

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

(a) The West Virginia State Police shall maintain a registry in which it shall enter certified copies of protective orders entered by courts from every county in this state pursuant to the provisions of this article and of protection orders issued by a jurisdiction outside of this state pursuant to its law: Provided, That the provisions of this subsection are not effective until a central automated state law-enforcement information system is developed.

(b) Effective January 2, 2010, a court which enters a protective order pursuant to this article shall immediately register such order in the domestic violence database established pursuant to the provisions of section twenty-one, article one, chapter fifty-one of this code. A protected individual who obtains a protection order from a jurisdiction outside of this State pursuant to its law or his or her representative as provided in section five, article twenty-eight of this chapter may register that order with the West Virginia Supreme Court of Appeals for entry in the domestic violence database established pursuant to the provisions of section twenty-one, article one, chapter fifty-one of this code.

(c) Failure to register an order as provided in this section shall not affect its enforceability in any county or jurisdiction.

ARTICLE 28. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT.

§48-28-5. Registration of order.

(a) Any individual may register a foreign protection order in this state by:
Presenting a certified copy of the order to the West Virginia Supreme Court of Appeals for registration in accordance with the provisions of section eight hundred two, article twenty-seven of this chapter.

(b) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(c) Upon receipt of a foreign protection order for registration, the West Virginia Supreme Court of Appeals shall:

(1) Register the order in accordance with the provisions of this section and of section eight hundred two, article twenty-seven of this chapter;

(2) Furnish to the individual registering the order a copy of the proof of registration of the order.

(d) A registered foreign protection order that is shown to be inaccurate or not currently in effect must be corrected or removed from the registry.

(e) A foreign protection order registered under this article may be entered in any existing state or federal registry of protection orders in accordance with applicable law.

(f) A fee may not be charged for the registration of a foreign protection order.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. 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 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, upon request, protection orders issued by a jurisdiction outside of this state pursuant to its law.

(b) Only a protected individual who obtains a protection order from a jurisdiction other than this state pursuant to its law or his or her representative as provided in section five, article twenty-eight of this chapter may register that order with the West Virginia Supreme Court of Appeals.

(c) Failure to register an order as provided in this section shall not affect its enforceability in any county or jurisdiction.

CHAPTER 76

(Com. Sub. for S.B. 244 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating to public employees' reemployment after retirement; and providing for restrictions for holders of elected public office.
Be it enacted by the Legislature of West Virginia:

That §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

1 (a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual’s ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state, but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.
(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires twelve months per year service and/or requires at least one thousand forty hours of service per year in that position; (2) "temporary full-time employment or temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) "former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least ten years' contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed one hundred seventy-five days per calendar year.

(c) In the event a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary full-time or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of $15,000: Provided, That a retirant may be employed by the Legislature on a per diem basis without suspension of the retirement annuity if the retirant's annual compensation from the Legislature does not exceed $20,000.
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(d) In the event a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding such public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as such office holder or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous twelve-month period has passed since his or her retirement from the position: Provided, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least sixty days after the employee has retired: Provided, however, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: Provided further, That in no event may reemployment by the Legislature of a per diem employee exceed one hundred seventy-five days per calendar year.

(e) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed
member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided*, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(f) Notwithstanding the provisions of section twenty-seven-b of this article, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of seventy and one-half years: *Provided*, That the member is eligible to retire under the provisions of section twenty or twenty-one of this article: *Provided, however*, That the member elects to stop actively contributing to the system while receiving such in-service distributions.

(g) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the 2006 regular session.
AN ACT to amend and reenact §8-11-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-3-6 of said code, all relating to driver education courses; allowing proof of a completed defensive driving course to rescind pending license suspension; and expanding the time which judgment can be withheld by a municipal judge while a licensee completes a driver education course.

Be it enacted by the Legislature of West Virginia:

That §8-11-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-3-6 of said code be amended and reenacted, all to read as follows:

Chapter
17B. Motor Vehicle Driver’s Licenses.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-5. Prejudgment alternative disposition of certain traffic offenses.
(a) Municipal courts are hereby authorized to establish a prejudgment alternative disposition procedure for traffic offenses over which the court has jurisdiction.

(b) Under a prejudgment disposition procedure authorized by subsection (a) of this section, if a person is found guilty of a traffic offense, the municipal court may, with the person's consent, withhold for a reasonable time not to exceed one hundred eighty days the entry of a judgment of conviction so that the person may attend a driver safety education course designated by the municipal court. If the person attends said course, the municipal court, if satisfied with the person's participation in the course, shall, without entering a judgment of conviction, dismiss the proceeding against the person.

(c) It shall be a condition of any prejudgment alternative disposition authorized by the provisions of this section that the person pay any fine assessed by the court and pay all fees and costs required to be paid by any provision of this code where a person is convicted of a criminal traffic offense. No municipal court shall utilize any prejudgment alternative disposition procedure unless it collects such fees and costs as are required by any provision of this code and transmits the moneys collected as required by law. No municipal court shall utilize any prejudgment alternative disposition procedure unless it conforms with the requirements of this section.

(d) The procedure authorized by the provisions of this section shall not be available to any person who:

(1) Holds a commercial driver's license issued by this state in accordance with chapter seventeen-e of this code, or who holds a commercial driver's license issued by any other state or jurisdiction;
(2) Is arrested while operating a commercial motor vehicle as defined in chapter seventeen-e of this code; or

(3) Is arrested for driving under the influence of alcohol or drugs or any other offense for which a mandatory period of confinement in jail is required.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

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 of this code 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 or her request shall afford him or her 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 or her 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 providing for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a) of this section.
(e) Notwithstanding the provisions of legislative rule 91 CSR 5, the division may, upon completion of an approved defensive driving course, deduct three points from a licensee’s point accumulation provided the licensee has not reached fourteen points. If a licensee has been notified of a pending thirty-day driver’s license suspension based on the accumulation of twelve or thirteen points, the licensee may submit proof of completion of an approved defensive driving course to deduct three points and rescind the pending license suspension: Provided, That the licensee submits proof of prior completion of the course and payment of the reinstatement fee in accordance with section nine, article three of this chapter to the division prior to the effective date of the suspension.

CHAPTER 78

(Com. Sub. for S.B. 398 - By Senator Foster)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to imposing certain restrictions on a graduated driver’s license to increase public safety; and imposing criminal penalties for violations of this section.

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; and that §60A-4-406 of said code be amended and reenacted, all to read as follows:
ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver’s license.

(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.

(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
(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 $5, 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 ten 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 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 shall be prohibited from using 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 person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined $25; for a second offense be fined $50; and for a third or subsequent offense be fined $75.
(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 fifty hours of behind-the-wheel driving experience, including a minimum of ten hours of nighttime driving, 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 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 $5.
(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 ten p.m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of ten 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) For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than twenty years old, unless these passengers are family members of the
licensee; for the second six months after issuance of a level
two intermediate driver's license, the licensee may not
operate a motor vehicle carrying more than one passenger
less than twenty years old, unless these passengers are family
members of the licensee;

(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 shall be prohibited
from using 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
person violating the provisions of this paragraph is guilty of
a misdemeanor and, upon conviction thereof, shall for the
first offense be fined $25; for a second offense be fined $50;
and for a third or subsequent offense be fined $75.

(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

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 may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under paragraph (I) of this subdivision; 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.

(c) 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 $2.50 for each year the license is valid. An additional fee of $.50 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 $2.50 for each year the license is valid. An additional fee of $.50 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 $25; for a second offense be fined $50; and for a third or subsequent offense be fined $75.
CHAPTER 79

(Com. Sub. for H.B. 2684 - By Delegates Moore, Webster, Brown, Overington and Schadler)

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]


Be it enacted by the Legislature of West Virginia:


Chapter
61. Crimes and Their Punishment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

1 (a) A prosecuting attorney of any county of this state or a person acting as a special prosecutor may enter into a pretrial diversion agreement with a person under investigation or charged with an offense against the state of West Virginia, when he or she considers it to be in the interests of justice. The agreement is to be in writing and is to be executed in the presence of the person's attorney, unless the person has executed a waiver of counsel.

(b) Any agreement entered into pursuant to the provisions of subsection (a) of this section may not exceed twenty-four months in duration. The duration of the agreement must be specified in the agreement. The terms of any agreement entered into pursuant to the provisions of this section may include conditions similar to those set forth in section nine, article twelve, chapter sixty-two of this code relating to conditions of probation. The agreement may require supervision by a probation officer of the circuit court, with the consent of the court. An agreement entered into pursuant to this section must include a provision that the applicable statute of limitations be tolled for the period of the agreement.
(c) A person who has entered into an agreement for pretrial diversion with a prosecuting attorney and who has successfully complied with the terms of the agreement is not subject to prosecution for the offense or offenses described in the agreement or for the underlying conduct or transaction constituting the offense or offenses described in the agreement, unless the agreement includes a provision that upon compliance the person agrees to plead guilty or nolo contendere to a specific related offense, with or without a specific sentencing recommendation by the prosecuting attorney.

(d) No person charged with a violation of the provisions of section two, article five, chapter seventeen-c of this code may participate in a pretrial diversion program. No person charged with a violation of the provisions of section twenty-eight, article two of this chapter may participate in a pretrial diversion program unless the program is part of a community corrections program approved pursuant to the provisions of article eleven-c, chapter sixty-two of this code. No person indicted for a felony crime of violence against the person where the alleged victim is a family or household member as defined in section two hundred three, article twenty-seven, chapter forty-eight of this code or indicted for a violation of the provisions of sections three, four or seven, article eight-b of this chapter is eligible to participate in a pretrial diversion program. No defendant charged with a violation of the provisions of section twenty-eight, article two of this chapter or subsections (b) or (c), section nine, article two of this chapter where the alleged victim is a family or household member is eligible for pretrial diversion programs if he or she has a prior conviction for the offense charged or if he or she has previously been granted a period of pretrial diversion pursuant to this section for the offense charged. Notwithstanding any provision of this code to the contrary, defendants charged with violations of the provisions of section twenty-eight, article two, chapter sixty-one of this
code or the provisions of subsection (b) or (c), section nine, article two of said chapter where the alleged victim is a family or household member as defined by the provisions of section two hundred three, article twenty-seven, chapter forty-eight of this code are ineligible for participation in a pretrial diversion program before the July 1, 2002, and before the community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction established pursuant to the provisions of section two, article eleven-c, chapter sixty-two of this code, in consultation with the working group of the subcommittee, has approved guidelines for a safe and effective program for diverting defendants charged with domestic violence.

(e) The provisions of section twenty-five of this article are inapplicable to defendants participating in pretrial diversion programs who are charged with a violation of the provisions of section twenty-eight, article two, chapter sixty-one of this code. The community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction established pursuant to the provisions of section two, article eleven-c, chapter sixty-two of this code shall, upon approving any program of pretrial diversion for persons charged with violations of the provisions of section twenty-eight, article two, chapter sixty-one of this code, establish and maintain a central registry of the participants in the programs which may be accessed by judicial officers and court personnel.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.


This article shall be known and may be cited as the "West Virginia Drug Offender Accountability and Treatment Act".


For the purposes of this article:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this article and would benefit from its provisions. The assessment shall be conducted in accordance with the standards, procedures, and diagnostic criteria designed to provide effective and cost-beneficial use of available resources.

(2) "Continuum of care" means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Controlled substance" means a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession.

(4) "Drug" means a controlled substance, an illegal drug, or other harmful substance.
"Drug court" means a judicial intervention process that incorporates the Ten Key Components and may include pre-adjudication or post-adjudication participation.

"Drug court team" may consist of the following members who are assigned to the drug court:

(A) The drug court judge, which may include a magistrate, mental hygiene commissioner, or other hearing officer;

(B) The prosecutor;

(C) The public defender or member of the criminal defense bar;

(D) A representative from the day report center or community corrections program, if operating in the jurisdiction;

(E) A law-enforcement officer;

(F) The drug court coordinator;

(G) A representative from a circuit court probation office or the division of parole supervision or both;

(H) One or more substance abuse treatment providers; and

(I) Any other persons selected by the drug court team.

"Drug offender" means an adult person charged with a drug-related offense or an offense in which substance abuse is determined from the evidence to have been a factor in the commission of the offense.
"Dual Diagnosis" means a substance abuse and co-occurring mental health disorder.

"Local advisory committee" may consist of the following members or their designees:

(A) Drug court circuit judge, who shall serve as chair;

(B) Drug court magistrate(s);

(C) Prosecutor;

(D) Public defender;

(E) Drug court coordinator;

(F) Criminal defense bar;

(G) Circuit clerk;

(H) Day report center director;

(I) Circuit court probation officer, parole officer or both;

(J) Law enforcement;

(K) One or more substance abuse treatment providers;

(L) Corrections representative; and

(M) Such other person or persons the chair deems appropriate.

"Illegal drug" means a drug whose manufacture, sale, use or possession is forbidden by law.

"Memorandum of Understanding" means a written document setting forth an agreed upon procedure.
(12) "Offender" means an adult charged with a criminal offense punishable by incarceration.

(13) "Other harmful substance" means a misused substance otherwise legal to possess, including alcohol.

(14) "Pre-adjudication" means a court order requiring a drug offender to participate in drug court before charges are filed or before conviction.

(15) "Post-adjudication" means a court order requiring a drug offender to participate in drug court after having entered a plea of guilty or nolo contendere or having been found guilty.

(16) "Recidivism" means any subsequent arrest for a serious offense (carrying a sentence of at least one year) resulting in the filing of a charge.

(17) "Relapse" means a return to substance use after a period of abstinence.

(18) "Split sentencing" means a sentence which includes a period of incarceration followed by a period of supervision.

(19) "Staffing" means the meeting before a drug offender's appearance in drug court in which the drug court team discusses a coordinated response to the drug offender's behavior.

(20) "Substance" means drug.

(21) "Substance abuse" means the illegal or improper consumption of a drug.

(22) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy
93 directed toward ending substance abuse and preventing a
94 return to substance usage.

95 (23) "Ten Key Components" means the following
96 benchmarks intended to describe the very best practices,
97 designs, and operations of drug courts. These benchmarks
98 are meant to serve as a practical, yet flexible framework for
99 developing effective drug courts in vastly different
100 jurisdictions and to provide a structure for conducting
101 research and evaluation for program accountability:

102 (A) Drug courts integrate alcohol and other drug
103 treatment services with justice system case processing;

104 (B) Using a nonadversarial approach, prosecution and
105 defense counsel promote public safety while protecting
106 participants' due process rights;

107 (C) Eligible participants are identified early and promptly
108 placed in the drug court program;

109 (D) Drug courts provide access to a continuum of
110 alcohol, drug, and other related treatment and rehabilitation
111 services;

112 (E) Abstinence is monitored by frequent alcohol and
113 other drug testing;

114 (F) A coordinated strategy governs drug court responses
115 to participants' compliance;

116 (G) Ongoing judicial interaction with each drug court
117 participant is essential;

118 (H) Monitoring and evaluation measure the achievement
119 of program goals and gauge effectiveness;
(I) Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations; and

(J) Forging partnerships among drug courts, public agencies and community-based organizations generates local support and enhances drug court effectiveness.


The Legislature recognizes that a critical need exists in this state for the criminal justice system to reduce the incidence of substance abuse and the crimes resulting from it. For the criminal justice system to maintain credibility, all drug offenders must be held accountable for their actions. A growing body of research demonstrates the impact of substance abuse on public safety, personal health and health care costs, the spread of communicable disease, educational performance and attainment, workforce reliability and productivity, family safety and financial stability. Requiring that accountability and rehabilitating treatment, in addition to or in place of, conventional and expensive incarceration, will promote public safety, the welfare of the individuals involved, reduce the burden upon the public treasury and benefit the common welfare of this state. The goals of this article shall include:

(1) Enhancing community safety and quality of life for citizens;

(2) Reducing recidivism;

(3) Reducing substance abuse;

(4) Increasing the personal, familial, and societal accountability of drug offenders;
(5) Restoring drug offenders to productive, law-abiding, and taxpaying citizens;

(6) Promoting effective interaction and use of resources among criminal justice and community agencies;

(7) Reducing the costs of incarceration; and

(8) Improving the efficiency of the criminal justice system by enacting an effective methodology.


(a) Each judicial circuit or two or more adjoining judicial circuits may establish a drug court or regional drug court program under which drug offenders will be processed to address appropriately, the identified substance abuse problem as a condition of pretrial release, probation, incarceration, parole or other release from a correctional facility.

(b) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial circuit or circuits where the drug court program is located.

(c) A drug court program may be pre-adjudication or post-adjudication for an adult offender.

(d) Participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement.

(e) A drug court may grant reasonable incentives under the written agreement if it finds that the drug offender:

(1) Is performing satisfactorily in drug court;
(2) Is benefitting from education, treatment and rehabilitation;

(3) Has not engaged in criminal conduct; or

(4) Has not violated the terms and conditions of the agreement.

(f) A drug court may impose reasonable sanctions on the drug offender, including incarceration for the underlying offense or expulsion from the program, pursuant to the written agreement, if it finds that the drug offender:

(1) Is not performing satisfactorily in drug court;

(2) Is not benefitting from education, treatment or rehabilitation;

(3) Has engaged in conduct rendering him or her unsuitable for the program;

(4) Has otherwise violated the terms and conditions of the agreement; or

(5) Is for any reason unable to participate.

(g) Upon successful completion of drug court, a drug offender's case shall be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug court. This may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration.

(h) Drug court shall include the Ten Key Components and the drug court team shall act to ensure compliance with them.
47 (i) Nothing contained in this article shall confer a right or an expectation of a right to participate in a drug court nor does it obligate a drug court to accept every drug offender.

50 (j) Neither the establishment of a drug court nor anything herein shall be construed as limiting the discretion of the jurisdiction's prosecutor to act on any criminal case which he or she deems advisable to prosecute.

54 (k) Each drug court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals which has administrative authority over the courts. The Supreme Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in all drug courts in this state.


1 (a) Each local jurisdiction that intends to establish a drug court, or continue the operation of an existing drug court, shall establish a local drug court team.

4 (b) The drug court team shall, when practicable, conduct a staffing prior to each drug court session to discuss and provide updated information regarding drug offenders. After determining their progress or lack thereof, the drug court team shall recommend the appropriate incentive or sanction to be applied. If the drug court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staffing.


1 (a) A drug offender shall not be eligible for the drug court program if:
(1) The underlying offense involves a felony crime of violence, unless there is a specific treatment program available designed to address violent offenders;

(2) The underlying offense involves an offense that requires registration as a sex offender pursuant to the article twelve, chapter fifteen of this code;

(3) The drug offender has a prior felony conviction in this state or another state for a felony crime of violence; or

(4) The drug offender has a prior conviction in this state or another state for a crime that requires registration as a sex offender pursuant to article twelve, chapter fifteen of this code.

(b) Eligible offenses may be further restricted by the rules of a specific drug court program.

(c) Nothing in this section shall require a drug court judge to consider or accept every offender with a treatable condition or addiction, regardless of the fact that the controlling offense is eligible for consideration in the program.


(a) As part of any diagnostic assessments, the individual assessment should make specific recommendations to the drug court team regarding the type of treatment program and duration necessary so that a drug offender's individualized needs can be addressed. These assessments and resulting recommendations should be based upon objective medical diagnostic criteria. Treatment recommendations accepted by the court, pursuant to the provisions of this article, shall be deemed to be reasonable and necessary.
(b) A drug court making a referral for substance abuse treatment shall refer the drug offender to a program that is licensed, certified, or approved by the court.

(c) The court shall determine which treatment programs are authorized to provide the recommended treatment to drug offenders. The relationship between the treatment program and the court should be governed by a Memorandum of Understanding, which should include the timely reporting of the drug offender's progress or lack thereof to the drug court.

(d) It is essential to provide offenders with adequate support services and aftercare.

(e) Recognizing that drug offenders are frequently dually diagnosed, appropriate services should be made available, where practicable.

(f) Recognizing that the longer a drug offender stays in treatment, the better the outcome, the length of stay in treatment should be determined by the drug court team based on individual needs and accepted practices: Provided, That drug court participation shall not be less than one year duration.


(a) The drug court team shall ensure fair, accurate, and reliable drug testing procedures, following collection procedures approved by the Supreme Court of Appeals.

(b) The drug offender shall be ordered to submit to frequent, random, and observed drug testing to monitor abstinence.

(c) Anyone in receipt of drug test results shall maintain the information in compliance with the requirements of federal and state confidentially laws.

(a) The Supreme Court of Appeals will be responsible for court funding, administration, and continuance or discontinuance of drug courts, mental health courts, or other problem-solving courts. The administrative director, or his or her designee, will oversee the planning, implementation, and development of these courts as the administrative arm of the Supreme Court of Appeals.

(b) The administering drug court judge in each drug court’s jurisdiction shall appoint a local advisory committee. The advisory committee shall ensure quality, efficiency, and fairness in planning, implementing, and operating drug courts that serve the jurisdiction, and the provision of a full continuum of care for drug offenders.

(c) The local advisory committee shall annually report to the Supreme Court of Appeal’s administrative director, or designee, by the thirty-first day of December of each year. The report shall include:

1. A description of all drug courts operating within the jurisdiction;
2. Participating judges and magistrates if applicable;
3. Community involvement;
4. Education and training;
5. Use of existing resources;
6. Collaborative efforts; and
7. An evaluation of the critical data elements required by subsection (a), section ten of this article.

(a) Drug courts shall collect and maintain the following information and any other information required by the Supreme Court of Appeals or its administrative office:

(1) Prior criminal history;

(2) Prior substance abuse treatment history, including information on the drug offender's success or failure in those programs;

(3) Employment, education, and income histories;

(4) Gender, race, ethnicity, marital and family status, and any child custody and support obligations;

(5) The number of babies, both addicted and healthy, born to female drug offenders during participation in drug court;

(6) Instances of relapse occurring during participation in drug court;

(7) Instances of recidivism occurring during and after participation in drug court. Recidivism shall be measured at intervals of six months, one year, two years, and five years after successful graduation from drug court;

(8) The number of offenders screened for eligibility, the number of eligible drug offenders who were and were not admitted and their case dispositions;

(9) The drug of choice and the estimated daily financial cost to the drug offender at the time of entry into the program; and

(10) The costs of operation and sources of funding.
(b) A drug offender may be required as a condition of pretrial diversion, probation, or parole to provide the information described in this section. The collection and maintenance of information under this section shall be collected in a standardized format according to applicable guidelines set forth by the Supreme Court of Appeals.

(c) To protect drug offenders' privacy in accordance with federal and state confidentiality laws, treatment records must be kept in a secure environment, separated from the court records to which the public has access.


(a) Each drug court with the guidance of the Supreme Court of Appeals may establish a schedule for the payment of reasonable fees and costs necessary to conduct the program;

(b) Nothing in this article shall prohibit local advisory committees or drug court teams from obtaining supplemental funds or exploring grants to support drug courts.

(c) Nothing in this article shall be construed to supplant funds currently utilized for drug courts.


(a) Any individual who, in good faith, provides services pursuant to this article shall not be liable in any civil action. The grant of immunity provided in this subsection shall extend to all employees and administrative personnel.

(b) Any qualified person who obtains, in a medically accepted manner, a specimen of breath, blood, urine, or other bodily substance pursuant to any provision of this article shall not be liable in any civil action.

1 The provisions of this article shall be construed to effectuate its remedial purposes.

CHAPTER 80

(Com. Sub. for H.B. 3208 - By Delegates Fragale, Williams, Duke, Shott and Smith)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §18-2E-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-4-1 and §18-4-4 of said code; and to amend and reenact §18-5-1a of said code, all relating to reporting hours of certain training received by county board members on county report card; clarifying eligibility for county board of education generally; providing for appointment and term of interim county superintendents to fill vacancies; providing for appointment and terms of acting county superintendents under certain circumstances; requiring certification to state superintendent of certain appointments, reappointments and appointment terminations; modifying deadline for setting annual compensation of county superintendents; establishing county board member training standards review committee; providing for member appointments, duties and certain expenses under certain circumstances; clarifying eligibility requirements for candidates, members and members-elect of county boards of education; prohibiting certain political activities and clarifying which political activities are permissible; removing certain duty
of state board of education regarding members of county boards of education; making technical clarifications of current law; authorizing candidates for county boards of education to hold public office until taking the oath of office as members of county boards; adding definition of neglect of duty; making other technical changes; and clarifying terms.

Be it enacted by the Legislature of West Virginia:

That §18-2E-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-4-1 and §18-4-4 of said code be amended and reenacted; and that §18-5-1a of said code be amended and reenacted, all to read as follows:

Article
2E. High Quality Educational Programs.
4. County Superintendent of Schools.
5. County Board of Education.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

1. For the purpose of providing information to the parents of public school children and the general public on the quality of education in the public schools which is uniform and comparable between schools within and among the various school districts, the state board shall prepare forms for school, school district and statewide school report cards and shall promulgate rules concerning the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material a county board wishes to include shall be contained in a separate appendix available to the general public upon request.
(b) The school report cards shall include information as prescribed by lawfully promulgated rule by the state board to give the parents of students at the school and the general public an indication of the quality of education at the school and other programs supportive of community needs, including, but not limited to, the following:

1. Indicators of student performance at the school in comparison with the county, state, regional and national student performance, as applicable, including student performance by grade level in the various subjects measured pursuant to a uniform statewide assessment program adopted by the state board; school attendance rates; the percent of students not promoted to next grade; and the graduation rate;

2. Indicators of school performance in comparison with the aggregate of all other schools in the county and the state, as applicable, including average class size; percent of enrollments in courses in high school mathematics, science, English and social science; amount of time per day devoted to mathematics, science, English and social science at middle, junior high and high school grade levels; percentage distribution of students by career cluster as indicated on the individualized student transition plan; pupil-teacher ratio; number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted; the number of split-grade classrooms; pupil-administrator ratio; operating expenditure per pupil; county expenditure by fund in graphic display; and the average degree classification and years of experience of the administrators and teachers at the school;

3. The names of the members of the local school improvement council, created pursuant to section two, article five-a of this chapter; and

4. The name or names of the business partner or partners of the school.
In addition, every county board annually shall determine the number of administrators, classroom teachers and service personnel employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplements that would be available per state authorized employee if all expenditures for the excess employees were converted to annual salaries for state authorized administrators, classroom teachers and service personnel within their county. The information shall be published annually in each school report card of each such county.

(c) The school district report card shall include the data for each school for each separately listed applicable indicator and the aggregate of the data for all schools, as applicable, in the county for each indicator. The statewide school report card shall include the data for each county for each separately listed indicator and the aggregate for all counties for each indicator.

(d) The report cards shall be prepared using actual local school, county, state, regional and national data indicating the present performance of the school and also shall include the state norms and the upcoming year's targets for the school and the county board.

The state board shall provide technical assistance to each county board in preparing the school and school district report cards.

Each county board shall prepare report cards in accordance with the guidelines set forth in this section. The school district report cards shall be presented at a regular school board meeting subject to applicable notice requirements and shall be made available to a newspaper of general circulation serving the district. The school report cards shall be mailed directly to the parent or parents of each
in that school. In addition, each county board shall submit the completed report cards to the state board which shall make copies available to any person requesting them.

The report cards shall be completed and disseminated prior to January 1, 1989, and in each year thereafter, and 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 footnoted.

(e) In addition to the requirements of subsection (c) of this section, the school district report card shall list the following information:

(1) The names of the members of the county board, the dates upon which their terms expire and whether they have attended an orientation program for new members approved by the state board and conducted by the West Virginia School Board Association or other approved organizations;

(2) The number of hours of training that meets state board standards that county board members have received during the school term reported; and

(3) The names of the county school superintendent and every assistant and associate superintendent and any training programs related to their area of school administration which they have attended.

The information also shall be reported by district in the statewide school report card.

(f) The state board shall develop and implement a separate report card for nontraditional public schools pursuant to the appropriate provisions of this section to the extent practicable.
ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-1. Election and term; interim superintendent.

(a) The county superintendent shall be appointed by the board upon a majority vote of the members thereof to serve for a term of not less than one, nor more than four years. At the expiration of the term or terms for which he or she shall have been appointed, each county superintendent shall be eligible for reappointment for additional terms of not less than one, nor more than four years.

(1) At the expiration of his or her term or terms of service the county superintendent may transfer to any teaching position in the county for which he or she is qualified and has seniority, unless dismissed for statutory reasons.

(2) The appointment of the county superintendent shall be made between January 1 and June 1 for a term beginning on July 1 following the appointment.

(b) In the event of a vacancy in the superintendent’s position that results in an incomplete term, the board may appoint an interim county superintendent:

(1) To serve until the following July 1 if the vacancy occurs before March 1.

(2) To serve until July 1 of the next following year if the vacancy occurs on or after March 1, unless a superintendent is appointed sooner.

(c) If the superintendent becomes incapacitated due to accident or illness to an extent that may lead to prolonged absence, the county board, by unanimous vote, may enter an
order declaring that an incapacity exists in which case the county board shall appoint an acting superintendent to serve until a majority of the members of the board determine that the incapacity no longer exists. An acting superintendent may not serve in that capacity for more than one year, nor later than the expiration date of the superintendent’s term, whichever occurs sooner, unless he or she is reappointed by the county board.

(d) Immediately following the appointment of a county superintendent or an interim county superintendent, the president of the county board shall certify the appointment to the state superintendent. Immediately following the appointment of an acting county superintendent or a vote by a majority of the members of the county board that an incapacity no longer exists, the president of the county board shall certify the appointment, reappointment, or appointment termination of the acting superintendent to the state superintendent.

(e) During his or her term of appointment, the county superintendent shall be a state resident and shall reside in the county which he or she serves or in a contiguous county. The county superintendent in office on the effective date of this section shall continue in office until the expiration of his or her term.

§18-4-4. Compensation.

On or before June 1 of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent for the period of appointment for the term beginning on the following July 1. The board shall pay the salary from the general current expense fund of the district.
§18-5-1a. Eligibility of members; training requirements.

(a) A person who is a candidate for membership on a county board or who is a member or member-elect of a county board:

(1) Shall be a citizen and resident in the county in which he or she serves or seeks to serve on the county board;

(2) May not be employed by the county board on which he or she serves or seeks to serve, including employment as a teacher or service person;

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board subject to the following:

(i) A candidate for a county board, who is not currently serving on a county board, may hold another public office while a candidate if he or she resigns from the other public office prior to taking the oath of office as a county board member.

(ii) The term “public office” as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

(I) The person does not receive compensation; and

(II) The primary scope of the board is not related to public schools.

(B) Become a candidate for, or serve as, an elected member of any political party executive committee;
(C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national political party convention;

(D) Solicit or receive political contributions to support the election of, or to retire the campaign debt of, any candidate for partisan office;

(4) May engage in any or all of the following political activities:

(A) Make campaign contributions to partisan or bipartisan candidates;

(B) Attend political fund raisers for partisan or bipartisan candidates;

(C) Serve as an unpaid volunteer on a partisan campaign;

(D) Politically endorse any candidate in a partisan or bipartisan election; or

(E) Attend a county, state or national political party convention.

(b) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.

(1) Within thirty days of receipt of the request, the Ethics Commission shall issue a written advisory opinion in response to the request and also shall publish the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.
(2) A county board member who relies in good faith upon an advisory opinion issued by the West Virginia Ethics Commission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding that office or offices is entitled to reimbursement by the county board for reasonable attorney’s fees and court costs incurred by the member in defending against these proceedings, regardless of the outcome of the proceedings.

(3) A vote cast by the member at a meeting of the county board may not be invalidated due to a subsequent finding that holding the particular office or public office is a bar to membership on the county board.

(4) Good faith reliance on a written advisory opinion of the West Virginia Ethics Commission that a particular office or public office is not a bar to membership on a county board is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the county board, becoming a member-elect of the county board or seeking election to the county board.

(c) To be eligible for election or appointment as a member of a county board on or after May 5, 1992, a person shall possess at least a high school diploma or a general educational development (GED) diploma. This provision does not apply to members or members-elect who have taken office prior to May 5, 1992, and who serve continuously from that date forward.

(d) A person elected to a county board after July 1, 1990, may not assume the duties of county board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance
87 effectiveness which shall be given between the date of
88 election and the beginning of the member's term of office
89 under the following conditions:

90 (1) A portion or portions of subsequent training such as
91 that offered in orientation may be provided to members after
92 they have commenced their term of office;

93 (2) Attendance at the session of orientation given
94 between the date of election and the beginning of the
95 member's term of office permits the member-elect to assume
96 the duties of county board member, as specified in this
97 section;

98 (3) Members appointed to the county board shall attend
99 and complete the next such course offered following their
100 appointment; and

101 (4) The provisions of this subsection relating to
102 orientation do not apply to members who have taken office
103 prior to July 1, 1988, and who serve continuously from that
104 date forward.

105 (e) Annually, each member of a county board shall
106 receive seven clock hours of training in areas relating to
107 boardsmanship, governance effectiveness, and school
108 performance issues including, but not limited to, pertinent
109 state and federal statutes such as the "Process for Improving
110 Education" set forth in section five, article two-e of this
111 chapter and the "No Child Left Behind Act" and their
112 respective administrative rules.

113 (1) The orientation and training shall be approved by the
114 state board and conducted by the West Virginia School Board
115 Association or other organization or organizations approved
116 by the state board:
(A) The state board may exclude time spent in training on school performance issues from the requisite seven hours herein required; and

(B) If the state board elects to exclude time spent in training on school performance issues from the requisite seven hours, the state board shall limit the training to a feasible and practicable amount of time.

(2) Failure to attend and complete the approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause as determined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.

(g) In the final year of any four-year term of office, a member shall satisfy the annual training requirement before January 1. Failure to comply with the training requirements of this section without good cause as defined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.

(h) The state board shall appoint a committee named the “county board member training standards review committee” whose members shall meet at least annually. Subject to state board approval, the committee shall determine which particular trainings and training organizations shall be approved and whether county board members have satisfied the annual training requirement. Members of the committee serve without compensation, but may be reimbursed by their agencies or employers for all reasonable and necessary expenses actually incurred in the performance of their duties under this subsection.
AN ACT to amend and reenact §18-9-6 of the Code of West Virginia, 1931, as amended, relating to allowing depositories and banks to meet the security requirement necessary to be a depository for boards of education by providing a letter of credit from a federal home loan bank.

Be it enacted by the Legislature of West Virginia:

That §18-9-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

1 The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on June 30 of the year in which the board
8 of education appoints a treasurer other than the sheriff, and
9 shall be completed no later than August 1 of that year. The
10 transfer shall be adjudged complete and final upon the
11 approval of the sheriff's official settlement for the fiscal year
12 ending on June 30 of the year in which the board of
13 education appoints a treasurer other than the sheriff, and any
14 minor adjustment made necessary by the actually known
15 figures shall also be made at that time. All balances in all
16 county school funds at the end of each month after June 30
17 of the year in which the board of education appoints a
18 treasurer other than the sheriff shall be transferred by the
19 sheriff to the county board of education not later than the
20 tenth day of the following month.

On or before the first Monday in May each county board
21 of education shall upon recommendation of the county
22 superintendent appoint a treasurer for the board. The
23 treasurer is the fiscal officer of the board, or an employee
24 commonly designated as the person in charge of the financial
25 affairs of the county board, or the county sheriff: Provided,
26 That once a board of education has appointed a treasurer
27 other than the sheriff, the sheriff may not be named treasurer
28 of the board in a subsequent year. Upon appointment this
29 person shall be titled and referred to as treasurer of the board
30 of education. For the faithful performance of this duty, the
31 treasurer shall execute a bond, to be approved by the board
32 of education, in the penalty to be fixed by the board of
33 education, not to exceed the amount of school funds which it
34 is estimated the treasurer will handle within any period of
35 two months. The premium on the bond shall be paid by the
36 board of education.

The board of education may open a bank account, or
38 accounts, as required to adequately and properly transact the
39 business of the district in a depository, or banks, within the
40 county. The depositories, or banks, shall provide bond to
41 cover the maximum amount to be deposited at any one time.
However, the county board of education may, in lieu of such bond, accept as security for money deposited letters of credit from a federal home loan bank, securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities: Provided, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the county board of education; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county board of education; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county board of education with respect to such certificates of deposit issued for the county’s account; and (5) at the same time that the county board of education’s funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county board of education through the selected depository. One hundred ten percent of the face or par value of the securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted, or the county board of education may accept the securities as partial security to the extent of their face value for the money so deposited and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so required, the acceptance of securities as partial security and the extent thereof shall be set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by
trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All such securities shall be delivered to or deposited for the account of the county board of education, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county board of education by order of record, but the collateral security shall be released only by order of record of the county board of education when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. In the event actual possession of the hypothecated securities is delivered to the county board of education, it shall make ample provision for the safekeeping thereof, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county board of education may permit the deposit under proper receipt of such securities with one or more banking institutions within the State of West Virginia and may contract with any such institution for safekeeping and exchange of any such hypothecated securities, and may prescribe the rules for handling and protecting the same.

On and after July 1, 1973, all levies and any other school moneys received by the sheriff and paid to the treasurer of the county board of education shall be deposited in these accounts, and all proper payments from such funds shall be made by the designated depository or bank upon order or draft presented for payment and signed by the duly authorized signatories of the board of education: Provided, That in determining the depository for board of education funds a board member who has a pecuniary interest in a bank within the county shall not participate in the determination of the depository for such funds.

If it is considered that sufficient funds are on hand in any account at any one time which may be more than are normally required for the payment of incurred expenses, the
funds in the amount so considered available may be invested
by the treasurer of the county board with the West Virginia
Municipal Bond Commission, or in guaranteed certificates of
deposit issued by the depository or bank, or other guaranteed
investments such as treasury bills, treasury notes or
certificates of deposit issued by either the United States
government or a banking institution in which federal or state
guarantees are applicable. Interest earned in such investments
is to be credited to the fund from which the moneys were
originally available.

CHAPTER 82

(Com. Sub. for H.B. 2530 - By Delegates Perry and M. Poling)

[Passed April 10, 2009; in effect July 1, 2009.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §18-9A-2, §18-9A-3a and §18-9A-9
of the Code of West Virginia, 1931, as amended, all relating to
further defining professional student support personnel;
clarifying definition of net enrollment; modifying method for
computing increase in net enrollment for certain counties;
providing for computation of certain personnel allowances for
certain fiscal years based on number of personnel that would be
eligible based on net enrollment; and including professional
student support personnel in the public school support formula
allowance calculations for current expense and faculty senates.

Be it enacted by the Legislature of West Virginia:
That §18-9A-2, §18-9A-3a and §18-9A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-3a. Total state basic foundation program for fiscal years 2009 through 2013, only.
§18-9A-9. Foundation allowance for other current expense and substitute employees.


For the purpose of this article:

(a) "State board" means the West Virginia Board of Education.

(b) "County board" or "board" means a county board of education.

(c) "Professional salaries" means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

(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.

(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.
(f) "Professional student support personnel" means a "teacher" as defined in section one, article one of this chapter who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor’s degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) "Service personnel salaries" means the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

(h) "Service personnel" means all personnel as provided in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: Provided, That the computation for any service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one-half an employment day.

(i) "Net enrollment" means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county. Net enrollment further shall include:

(1) Adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:

(A) Net enrollment includes no more than one thousand of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the
adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency; and

(B) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular 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 the purposes of determining the county’s basic foundation program, only, 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 the difference between one thousand four hundred and the county’s actual net enrollment;

(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 2008-2009 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 July 1, 2008, “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 July 1, 2010, the definitions set forth in this subsection are subject to the provisions of section two-a of this article.

(c) “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 year 2009 through 2013 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 2009, 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 2008. 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 2008. The total basic foundation program for the county is the greater of the two computations.

(2) For the fiscal year 2010, 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 2008. 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 2008. The total basic foundation program for the county is the greater of the two computations.

(3) For the fiscal year 2011, 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 2008. 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 2008. The total basic foundation program for the county is the greater of the two computations.

(4) For the fiscal year 2012, 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 2008. 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
(5) For the fiscal year 2013 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 2008. For the fiscal year 2013 only, the total basic foundation program for the county is the greater of the two computations.

(b) When computing the basic foundation program for fiscal years 2010 through 2013 only, the allowance for professional educators and the allowance for service personnel computed for each school district in accordance with the provisions of this article that became effective on July 1, 2008, shall be based on the number of personnel that would be eligible based on the net enrollment of the county notwithstanding the number employed for the second month of the prior school term and notwithstanding the pro rata reduction for failure to establish and maintain the minimum professional instructional personnel ratios set forth in section four of this article.

§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, professional student support personnel and service personnel as determined in sections four, five and eight 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 allocation for professional educators and professional student support personnel as determined in sections four and eight of this article. Distribution to the counties shall be made proportional to the number of professional educators and professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

(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, $200 multiplied by the number of professional instructional personnel and professional student support 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 $200 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 September 1, 1994, 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.
AN ACT to amend and reenact §18A-4-8b and §18A-4-17 of the Code of West Virginia, 1931, as amended, all relating to seniority rights for school service personnel; revising criteria for consideration of applicants; providing for assignment based on seniority in certain circumstances in certain classifications; specifying certain rights, privileges and benefits of certain professional and service personnel providing middle college services in public community and technical colleges; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8b and §18A-4-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8b. Seniority rights for school service personnel.

§18A-4-8b. A county board shall make decisions affecting promotions and the filling of any service personnel positions
of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy, as defined in section eight of this article. If requested by the employee, the county board shall show valid cause why a service person with the most seniority is not promoted or employed in the position for which he or she applies. Qualified applicants shall be considered in the following order:

(1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;

(2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;

(3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;

(4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;

(5) Substitute service personnel who hold a classification title within the classification category of the vacancy;
(6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

(7) New service personnel.

(c) The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which are considered a single classification of employment:

(A) The cafeteria manager class title is included in the same classification category as cooks;

(B) The executive secretary class title is included in the same classification category as secretaries;

(C) Paraprofessional, autism mentor and braille or sign language specialist class titles are included in the same classification category as aides; and
(D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.

(3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

(4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

(e) For purposes of determining seniority under this section a service person's seniority begins on the date that he or she enters into the assigned duties.

(f) *Extra-duty assignments.* --

(1) For the purpose of this section, "extra-duty assignment" means an irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments are made in the following manner:

(A) A service person with the greatest length of service time in a particular category of employment is given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all employees have had an opportunity to perform similar assignments. The cycle then is repeated.

(B) An alternative procedure for making extra-duty assignments within a particular classification category of
employment may be used if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment.

(g) County boards shall post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.

(1) Posting locations include any website maintained by or available for the use of the county board.

(2) Notice of a job vacancy shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. Job postings for vacancies made pursuant to this section shall be written to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

(3) After the five-day minimum posting period, all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of existing or newly created positions.

(4) The county board shall notify any person who has applied for a job posted pursuant to this section of the status of his or her application as soon as possible after the county board makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.
(i) The seniority of a service person is determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, a service person who has been employed in one or more classifications retains the seniority accrued in each previous classification.

(j) If a county board is required to reduce the number of service personnel within a particular job classification, the following conditions apply:

(1) The employee with the least amount of seniority within that classification or grades of classification is properly released and employed in a different grade of that classification if there is a job vacancy;

(2) If there is no job vacancy for employment within that classification or grades of classification, the service person is employed in any other job classification which he or she previously held with the county board if there is a vacancy and retains any seniority accrued in the job classification or grade of classification.

(k) After a reduction in force or transfer is approved, but prior to August 1, a county board in its sole and exclusive judgment may determine that the reason for any particular reduction in force or transfer no longer exists.

(1) If the board makes this determination, it shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) The affected employee shall notify the county board of his or her intent to return to the former position of
employment within five days of being notified or lose the
right to be restored to the former position.

(3) The county board may not rescind the reduction in
force of an employee until all service personnel with more
seniority in the classification category on the preferred recall
list have been offered the opportunity for recall to regular
employment as provided in this section.

(4) If there are insufficient vacant positions to permit
reemployment of all more senior employees on the preferred
recall list within the classification category of the service
person who was subject to reduction in force, the position of
the released service person shall be posted and filled in
accordance with this section.

(l) If two or more service persons accumulate identical
seniority, the priority is determined by a random selection
system established by the employees and approved by the
county board.

(m) All service personnel whose seniority with the
county board is insufficient to allow their retention by the
county board during a reduction in work force are placed
upon a preferred recall list and shall be recalled to
employment by the county board on the basis of seniority.

(n) A service person placed upon the preferred recall list
shall be recalled to any position openings by the county
board within the classification(s) where he or she had
previously been employed, to any lateral position for which
the service person is qualified or to a lateral area for which a
service person has certification and/or licensure.

(o) A service person on the preferred recall list does not
forfeit the right to recall by the county board if compelling
(p) The county board shall notify all service personnel on
the preferred recall list of all position openings that exist
from time to time. The notice shall be sent by certified mail
to the last known address of the service person. Each service
person shall notify the county board of any change of
address.

(q) No position openings may be filled by the county
board, whether temporary or permanent, until all service
personnel on the preferred recall list have been properly
notified of existing vacancies and have been given an
opportunity to accept reemployment.

(r) A service person released from employment for lack
of need as provided in sections six and eight-a, article two of
this chapter is accorded preferred recall status on July 1 of
the succeeding school year if he or she has not been
reemployed as a regular employee.

(s) A county board failing to comply with the provisions
of this article may be compelled to do so by mandamus and
is liable to any party prevailing against the board for court
costs and the prevailing party's reasonable attorney fee, as
determined and established by the court.

(1) A service person denied promotion or employment in
violation of this section shall be awarded the job, pay and any
applicable benefits retroactively to the date of the violation
and shall be paid entirely from local funds.

(2) The county board is liable to any party prevailing
against the board for any court reporter costs including
copies of transcripts.
§18A-4-17. Health and other facility employee salaries.

(a) The minimum salary scale for professional personnel and service personnel employed by the State Department of Education to provide education and support services to residents of State Department of Health and Human Resources facilities, corrections facilities providing services to juvenile and youthful offenders, in the West Virginia schools for the deaf and the blind and in public community and technical colleges providing middle college services is the same as set forth in sections two, three and eight-a of this article. Additionally, those personnel shall receive the equivalent of salary supplements paid to professional and service personnel employed by the county board in the county wherein each facility is located, as set forth in sections five-a and five-b of this article. Professional personnel and service personnel in these facilities who earn advanced classification of training after the effective date of this section shall be paid the advanced salary from the date the classification of training is earned. The professional personnel shall be certified, licensed or trained, and shall meet other eligibility classifications as may be required by the provisions of this chapter and by state board regulations for comparable instructional personnel who are employed by county boards. The professional personnel shall be paid at the equivalent rate of pay of teachers as set forth in section two of this article, but outside the public support plan, plus the equivalent of the salary supplement paid to teachers employed by the county board in the county in which each facility is located, as set forth in section five-a of this article.

(b) Professional personnel employed by the department to provide education services to residents in State Department of Health and Human Resources facilities, corrections facilities providing services to juvenile and youthful offenders, in the West Virginia schools for the deaf and the blind or in public community and technical colleges
providing middle college services are afforded all the rights, privileges and benefits established for the professional personnel under this article, subject to the following:

(1) The benefits apply only within the facility at which the professional personnel are employed;

(2) The benefits exclude salaries unless explicitly provided for under this or other sections of this article; and

(3) Seniority for the professional personnel is determined on the basis of the length of time the employee has been professionally employed at the facility, regardless of which state agency was the actual employer.

(c) Professional personnel and service personnel employed by the department of education to provide education and support services to residents in State Department of Health and Human Resources facilities, corrections facilities providing services to juvenile and youthful offenders, the West Virginia schools for the deaf and the blind and in public community and technical colleges providing middle college services are state employees.

(d) Additional seniority provisions.

(1) Notwithstanding any other provision of this section to the contrary, professional and service personnel employed in an educational facility operated by the West Virginia Department of Education accrue seniority at that facility on the basis of the length of time the employee has been employed at the facility. Professional and service personnel whose employment at the facility was preceded immediately by employment with the county board previously providing education services at the facility or whose employment contract was with the county board previously providing education services at the facility:
(A) Retains any seniority accrued during employment by the county board;

(B) Accrues seniority as a regular employee with the county board during employment at the facility;

(C) Attains continuing contract status in accordance with section two, article two, chapter eighteen-a of this code with both the county and the facility if the sum of the years employed by the county and the facility equals the statutory number required for continuing contract status; and

(D) Retains and continues to accrue county and facility seniority in the event of reemployment by the county as a result of direct transfer from the facility or recall from the preferred list.

(2) Reductions in work force in the facility or employment by the facility or county board are made in accordance with the provisions of sections seven-a and eight-b of this chapter. Only years of employment within the facility are considered for purposes of reduction in force within the facility.

(3) The seniority conferred in this section applies retroactively to all affected professional and service personnel, but the rights incidental to the seniority commence on the effective date of this section.

(4) Amendments made to this section during the 2009 regular session of the Legislature do not abrogate any rights, privileges or benefits bestowed under previous enactments of this section.
AN ACT to repeal §18C-7-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18B-1D-9; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18C-1-1, §18C-1-4 and §18C-1-5 of said code; to amend and reenact §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code; and to amend and reenact §29-22-18a of said code, all relating to higher education in West Virginia generally; requiring training and development opportunities for members of the Higher Education Policy Commission, the Council for Community and Technical College Education and the institutional governing boards; revising criteria for membership of certain institutional governing board and designating the manner in which the membership is determined; requiring the Governor to consider certain factors and seek a certain balance when appointing members; reconstituting the Higher Education Student Financial Aid Advisory Board; providing for member appointments; setting forth member qualifications and terms of office; setting forth duties of the advisory board; modifying conditions upon which students who attended high school outside the state may be eligible for certain financial aid; dissolving the PROMISE Scholarship Board and transferring
its powers and duties to the Higher Education Policy Commission and under the administration of the Vice Chancellor for Administration; requiring the Vice Chancellor for Administration to submit an annual report; defining terms; authorizing investment of certain funds with the West Virginia Investment Management Board; increasing the aggregate and excess lottery amounts the Legislature intends to allocate to PROMISE scholarship program for certain fiscal years; setting a minimum amount for the PROMISE scholarship annual award and authorizing the Higher Education Policy Commission to provide annual awards greater than the minimum under certain circumstances if funds are available; increasing flexibility for adjusting requirements to receive a PROMISE scholarship; providing conditions under which PROMISE scholarship annual awards are continued to certain students under certain circumstances; establishing citizenship and legal immigrant conditions of eligibility for a PROMISE scholarship; clarifying that a PROMISE scholarship may supplement certain tuition and fee waivers; and authorizing the Higher Education Policy Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That §18C-7-8 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §18B-1D-9; that §18B-2A-1 of said code be amended and reenacted; that §18C-1-1, §18C-1-4 and §18C-1-5 of said code be amended and reenacted; that §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code be amended and reenacted; and that §29-22-18a of said code be amended and reenacted, all to read as follows:

Chapter
18B. Higher Education.
18C. Student Loans; Scholarships and State Aid.
29. Miscellaneous Boards and Officers.

CHAPTER 18B. HIGHER EDUCATION.
ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-9. Commission, council and institutional governing board training and development; training and development requirements, applicability and exceptions.

(a) The commission and council, either jointly or separately, shall coordinate periodic training and development opportunities for members of the commission, council and institutional governing boards as provided in this section.

(b) Within six months of beginning service on the commission, council or a governing board, each new member shall complete at least three hours of training and development. The training and development shall address the following topics:

(1) State goals, objectives and priorities for higher education;

(2) The accountability system for higher education set forth in this article;

(3) The general powers and duties of members; and

(4) Ethical considerations arising from board membership.

(c) With the exception of the ex officio members of the commission and the council and the student member of a governing board, each member shall complete at least six hours of training and development related to his or her duties.
within two years of beginning service and within every two years of service thereafter.

(d) By July 31 each year, the chair of the commission, council and each governing board shall certify to the commission or council, as appropriate, the number of hours of training and development that each member received during the preceding fiscal year.

(e) If the certification indicates that a board member has not completed the training and development required by this section, the commission or council, as appropriate, shall send a notice to the Governor and the Secretary of State or to the institutional appointing entity that the board member is disqualified from continued service notwithstanding the provisions of sections five and six, article six, chapter six of this code. The commission or council, as appropriate, shall request the Governor or appointing entity to appoint a replacement for that board member.

(f) By September 30 each year, the commission and council shall report to the Legislative Oversight Commission on Education Accountability on the training and development that members of the commission and the council and the governing boards under their respective jurisdictions have received during the preceding fiscal year and shall include this information in the institutional and statewide report cards provided in section eight of this article.

(g) As used in this section, “member” means all members of the commission, council and the governing boards unless a specific exception is provided in this section.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.
§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) Findings. --

The Legislature finds that the State of West Virginia is served best when the membership of each governing board includes the following:

1. The academic expertise and institutional experience of faculty members and a student of the institution governed by the board;
2. The technical or professional expertise and institutional experience of a classified employee of the institution governed by the board;
3. An awareness and understanding of the issues facing the institution governed by the board; and
4. The diverse perspectives that arise from a membership that is balanced in terms of gender and varied in terms of race and ethnic heritage.

(b) Boards of governors established. --

A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, The Community and Technical College at West Virginia University Institute of Technology, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Marshall Community and Technical College, Marshall University, New River Community and Technical College, Pierpont Community and Technical College, Shepherd University, Southern West
(c) **Board Membership.** --

(1) 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.

(2) The board of governors for Marshall University consists of sixteen persons. The board of governors for West Virginia University consists of seventeen persons. The boards of governors of the other state institutions of higher education consist of twelve persons.

(3) Each board of governors includes the following members:

(A) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;

(B) 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; and

(C) A member from the institutional classified employees duly elected by the classified employees of the respective institution;

(4) For the 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;
57 (5) For the 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:

61 (A) The chairperson of the board of visitors of West Virginia University Institute of Technology;

63 (B) A full-time faculty member representing the extension service at the institution or a full-time faculty member representing the health sciences, selected by the faculty senate.

67 (6) For each 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.

71 (A) 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.

79 (B) Of the nine members appointed by the Governor, at least five 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 seven shall be residents of the state.

86 (7) In making lay appointments, the Governor shall consider the institutional mission and membership characteristics including the following:
(A) The need for individual skills, knowledge and experience relevant to governing the institution;

(B) The need for awareness and understanding of institutional problems and priorities, including those related to research, teaching and outreach;

(C) The value of gender, racial and ethnic diversity; and

(D) The value of achieving balance in gender and diversity in the racial and ethnic characteristics of the lay membership of each board.

(d) Board member terms. --

(1) The student member serves for a term of one year. Each term begins on the first day of July.

(2) 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.

(3) 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.

(4) 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.

(5) 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
117 elections are held and all appointments are made no later than
118 June 30 preceding the commencement of the term. Each
119 board of governors shall elect one of its appointed lay
120 members to be chairperson in June of each year. A member
121 may not serve as chairperson for more than four consecutive
122 years.

123 (6) The appointed members of the boards of governors
124 serve staggered terms of up to four years except that four of
125 the initial appointments to the governing boards of
126 community and technical colleges that became independent
127 July 1, 2008, are for terms of two years and five of the initial
128 appointments are for terms of four years.

129 (e) Board member eligibility, expenses. --

130 (1) A person is ineligible for appointment to membership
131 on a board of governors of a state institution of higher
132 education under the following conditions:

133 (A) For a baccalaureate institution or university, a person
134 is ineligible for appointment who is an officer, employee or
135 member of any other board of governors; an employee of any
136 institution of higher education; an officer or member of any
137 political party executive committee; the holder of any other
138 public office or public employment under the government of
139 this state or any of its political subdivisions; an employee of
140 any affiliated research corporation created pursuant to article
141 twelve of this chapter; an employee of any affiliated
142 foundation organized and operated in support of one or more
143 state institutions of higher education; or a member of the
144 council or commission. This subsection does not prevent the
145 representative from the faculty, classified employees,
146 students or the superintendent of a county board of education
147 from being members of the governing boards.
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 or students from being members of the governing boards.

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.

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.

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.
The president of the institution shall make available resources of the institution for conducting the business of its board of governors. 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.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-1. Legislative findings; purpose; administration generally; reporting.
§18C-1-4. Eligibility of commuting students and children of military personnel for state funded student financial aid, grants and scholarships.
§18C-1-5. Higher Education Student Financial Aid Advisory Board.

§18C-1-1. Legislative findings; purpose; administration generally; reporting.

(a) The Legislature makes the following findings:

(1) Although enrollments in institutions of higher education in this state and throughout the nation continue to increase at a rapid pace, West Virginia has not developed sufficiently the state’s human talent and resources because many able, but needy, students are not able to finance a higher education program;

(2) The state can achieve its full economic and social potential only when the following elements are in place:

(A) Every individual has the opportunity to contribute to the full extent of his or her capability; and

(B) The state assists in removing financial barriers to the individual’s education goals that remain after he or she has used all resources and work opportunities available;
(b) The ultimate state goal in providing student financial aid is to create a culture that values education, to improve the quality of the workforce and to enhance the quality of life for the citizens of West Virginia.

(c) The Vice Chancellor for Administration has a ministerial duty to administer, oversee and monitor all state and federal student financial aid programs administered at the state level in accordance with established rules under the direction of the commission and council and in consultation with the Higher Education Student Financial Aid Advisory Board.

(d) These programs include, but are not limited to, the following programs:

1. The Guaranteed Student Loan Program, which may be administered by a private nonprofit agency;
2. The Medical Student Loan Program;
3. The Underwood-Smith Teacher Scholarship Program;
4. The Engineering, Science and Technology Scholarship Program;
5. The West Virginia Higher Education Grant Program;
6. The Higher Education Adult Part-Time Student Grant Program;
7. The West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program;
8. The Higher Education Student Assistance Loan Program established pursuant to article twenty-two-d, chapter eighteen of this code;
(9) The West Virginia College Prepaid Tuition and Savings Program established pursuant to article thirty, chapter eighteen of this code, which is administered by the State Treasurer;

(10) The state aid programs for students of optometry pursuant to article three of this chapter;

(11) The state aid programs for students of veterinary medicine pursuant to section six-a, article eleven, chapter eighteen of this code;

(12) Any reciprocal program and contract program for student aid established pursuant to sections three and four, article four, chapter eighteen-b of this code;

(13) Any other state-level student aid programs in this code; and

(14) Any federal grant or contract student assistance or support programs administered at the state level.

(e) Notwithstanding any provision of this chapter to the contrary, the Vice Chancellor for Administration shall prepare a single, comprehensive report regarding the implementation of the financial aid programs identified in subsection (d) of this section which are administered under his or her supervision. The report shall be provided to the commission and the council and shall be presented to the Legislative Oversight Commission on Education Accountability no later than November 30, 2009, and annually thereafter. The report shall address all financial aid issues for which reports are required in this code, as well as any findings and recommendations.
§18C-1-4. Eligibility of commuting students and children of military personnel for state funded student financial aid, grants and scholarships.

(a) Notwithstanding any other provision of this code or rule to the contrary, a student who attended a public or private high school outside the state is eligible for state funded student financial aid, grants and scholarships if:

(1) The student meets all other eligibility requirements for the aid, grant or scholarship; and

(2) The student resided in West Virginia while attending high school in another state, and:

(A) The student resided with his or her parent or legal guardian who:

(i) Was a resident of this state; and

(ii) Had been a resident of this state for at least two years immediately preceding the student’s attendance at the school;

(B) The student commuted during the school term on a daily basis from this state to the school;

(C) The student is a dependent of the parent or legal guardian upon which eligibility is based;

(D) The student has not established domicile outside the state; and

(E) At the discretion of the State Superintendent of Schools, as defined in section one, article one, chapter eighteen of this code:

(i) The school is fully accredited in that state to the degree acceptable to the State Superintendent of Schools; and
(ii) The school's curriculum requirements for graduation are equivalent to the curriculum requirements for graduation in this state, or sufficiently similar to those requirements, as determined by the State Superintendent of Schools; or

(3) The student resided and attended high school in another state or a United States territory, United States possession or foreign country and:

(A) The student resided with his or her parent or legal guardian; and

(B) The student's parent or legal guardian:

(i) Served in the United States armed forces while the student attended high school in such state, territory, possession or country;

(ii) Was stationed for military purposes in such state, territory, possession or country; and

(iii) Maintained legal residence in West Virginia while stationed in such state, territory, possession or country.

(b) This section does not alter, amend or extend any application deadlines or other requirements established by law or policy.

§18C-1-5. Higher Education Student Financial Aid Advisory Board.

(a) The Higher Education Student Financial Aid Advisory Board is established.

(b) The purpose of the board is to provide financial aid expertise and policy guidance to the commission, the council and the Vice Chancellor for Administration on all matters
related to federal, state and private student financial aid
resources and programs.

(c) It is the intent of the Legislature that the advisory
board:

(1) Recommend methods to balance the needs of state
students from all levels of financial need and academic
ability;

(2) Recommend methods for achieving a comprehensive
system of student financial aid to maximize the return on the
state's investment in student financial aid programs by
increasing the skills, qualifications and education
achievement of the citizens receiving the benefits;

(3) Recommend methods to coordinate state-funded
student financial aid programs so that the state achieves the
appropriate blend of programs to expand the range of
economic opportunities available to state citizens;

(4) Recommend ways to improve state-level
administration of financial aid programs for the benefit of
students and institutions;

(5) Recommend ways to improve financial aid outreach
activities;

(6) Make recommendations, consistent with the nature of
the PROMISE scholarship program as a merit-based student
financial aid program;

(7) Study feasibility of including for-profit institutions as
eligible institutions for PROMISE scholarship awards and
requirements, if any, for inclusion; and

(8) Recommend rules that align with the goals, objectives
and priorities set forth in section one-a, article one, chapter
eighteen-b of this code and article one-d of said chapter and
with other state and system public policy goals, objectives
and priorities.

(d) *Advisory board membership.* --

(1) The advisory board shall consist of seven members
selected as follows:

(A) Three members appointed by the commission;

(B) Two members appointed by the council;

(C) One member appointed by the West Virginia
Independent Colleges and Universities; and

(D) One member appointed by the West Virginia School
Counselor Association.

(2) Members appointed by the commission and the
council shall possess a broad knowledge of state and federal
higher education student financial aid programs and have
experience in administering these programs, preferably at the
campus or system level.

(3) The initial appointments of members shall be made as
follows:

(A) The commission shall appoint one member to a one-
year term, one member to a two-year term and one member
to a three-year term;

(B) The council shall appoint one member to a one-year
term and one member to a three-year term;

(C) The West Virginia Independent Colleges and
Universities shall appoint one member to a one-year term; and
(D) The West Virginia School Counselor Association shall appoint one member to a two-year term.

(4) After the initial terms are completed, appointments shall be made as follows:

(A) Members shall be appointed for three-year terms; and

(B) Members are eligible to succeed themselves for one additional consecutive term.

(5) The term of each member begins on July 1 of the year in which the appointment is made and ends on June 30 of the year in which the appointment expires.

(e) The first meeting of the advisory board shall be called by the Vice Chancellor for Administration, at which time the members shall elect a chairperson for an initial term ending on July 31, 2010. The chairperson may succeed himself or herself for an additional one-year term as chairperson. Thereafter, the term of the chairperson is for one year beginning on August 1 of the year in which elected and ending on July 31 of the following year. A member may not serve more than two consecutive terms as chairperson.

(f) In the event of a vacancy, a successor shall be appointed by the entity which appointed the vacating member for the unexpired term of the vacating member. A person appointed to fill a vacancy is eligible for reappointment for one additional consecutive term unless the time remaining in the unexpired term is less than six months in which case the person filling the vacancy is eligible for reappointment for two additional terms.

(g) Members of the advisory board serve without compensation, but are entitled to reimbursement by the commission for expenses, including travel expenses, which
are actually incurred by the member in the official conduct of
the business of the advisory board.

ARTICLE 7.  WEST VIRGINIA PROVIDING REAL
OPPORTUNITIES FOR MAXIMIZING
IN-STATE STUDENT EXCELLENCE
SCHOLARSHIP PROGRAM.

§18C-7-3. Definitions.
§18C-7-4. Dissolution of the PROMISE Scholarship Board; transfer of funds.
§18C-7-5. Powers and duties of the West Virginia Higher Education Policy Commission
regarding the PROMISE Scholarship.
§18C-7-6. Promise scholarship program requirements; legislative rule.
§18C-7-7. West Virginia PROMISE Scholarship Fund continued.

§18C-7-3. Definitions.

(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) “Eligible institution” means:

(A) A state institution of higher education as defined in
section two, article one, chapter eighteen-b of this code;

(B) Alderson-Broaddus College, Appalachian Bible
College, Bethany College, Davis and Elkins College,
Mountain State University, Ohio Valley University, the
University of Charleston, West Virginia Wesleyan College
and Wheeling Jesuit University, all in West Virginia. Any
institution listed in this subdivision ceases to be an eligible
institution if it meets either of the following conditions:

(i) It loses regional accreditation; or
(ii) It changes its status as a private, not-for-profit institution;

(C) Any other public or private regionally accredited institution in this state approved by the commission.

(2) "Tuition" means the quarter, semester or term charges imposed by an eligible state institution of higher education and, additionally, all mandatory fees required as a condition of enrollment by all students. For the purposes of this article, the following conditions apply:

(A) West Virginia University, Potomac State College and West Virginia University Institute of Technology are considered separate institutions for purposes of determining tuition rates; and

(B) The tuition amount paid by undergraduate health sciences students at West Virginia University is considered to be the same as the amount of tuition paid by all other West Virginia University undergraduate students.

(3) "Enrolled" means either currently enrolled or in the process of enrolling in an eligible institution.

§18C-7-4. Dissolution of the PROMISE Scholarship Board; transfer of funds.

(a) The West Virginia PROMISE Scholarship Board is hereby dissolved.

(b) All funds administered by the former PROMISE Scholarship Board shall be administered by the Higher Education Policy Commission.

§18C-7-5. Powers and duties of the West Virginia Higher Education Policy Commission regarding the PROMISE Scholarship.
Powers of commission. -- In addition to the powers granted by any other provision of this code, the commission has the powers necessary or convenient to carry out the purposes and provisions of this article including, but not limited to, the following express powers:

1. To promulgate legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article;

2. To invest any of the funds of the West Virginia PROMISE Scholarship Fund established in section seven of this article with the West Virginia Investment Management Board in accordance with the provisions of article six, chapter twelve of this code. Any investments made pursuant to this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in conducting an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

3. To execute contracts and other necessary instruments;

4. To impose reasonable requirements for residency for students applying for the PROMISE scholarship. Except as provided in section four, article one of this chapter, a student shall have met the following requirements to be eligible:

   A. Completed at least one half of the credits required for high school graduation in a public or private high school in this state; or

   B. Received instruction in the home or other approved place pursuant to subsection (c), section one, article eight,
chapter eighteen of this code for the two years immediately preceding application;

(C) This subsection does not establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;

(5) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the scholarship program. Any services provided or secured to implement or administer the provisions of this section remain under the direction and authority of the Vice Chancellor for Administration;

(6) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aid from any source and to participate in any federal, state or local governmental programs in carrying out the purposes of this article;

(7) To define the terms and conditions under which scholarships are awarded with the minimum requirements being set forth in section six of this article; and

(8) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.

(b) Duties of commission. -- In addition to any duty required by any other provision of this code, the commission has the following responsibilities:

(1) To operate the program in a fiscally responsible manner and within the limits of available funds;

(2) To operate the program as a merit-based program;
(3) To adjust academic eligibility requirements should projections indicate that available funds will not be sufficient to cover future costs; and

(4) To maintain contact with graduates who have received PROMISE scholarships and to provide a written statement of intent to recipients who are selected to receive a PROMISE scholarship notifying them that acceptance of the scholarship entails a responsibility to supply the following:

(A) Information requested by the commission to determine the number and percentage of recipients who shall:

(i) Continue to live in West Virginia after graduation;

(ii) Obtain employment in West Virginia after graduation; and

(iii) Enroll in post-graduate education programs;

(B) For PROMISE scholars who enroll in post-graduate education programs, the name of the state in which each post-graduate institution is located; and

(C) Any other relevant information the commission reasonably requests to implement the provisions of this subdivision;

(5) To analyze and use the data collected pursuant to subdivision (4) of this subsection to:

(A) Report the findings annually to the Legislative Oversight Commission on Education Accountability; and

(B) Make annual recommendations to the Legislative Oversight Commission on Education Accountability
88 regarding any actions the commission considers necessary or
89 expedient to encourage PROMISE recipients to live and work
90 in the state after graduation.

§18C-7-6. Promise scholarship program requirements; legislative rule.

1 (a) A PROMISE scholarship annual award shall meet the
2 following conditions:

3 (1) For a student enrolled in a state institution of higher
4 education, the annual award is equal to the lesser of the cost
5 of tuition or $4,750, except that a student who was awarded
6 and used a PROMISE scholarship annual award prior to
7 January 1, 2010, shall continue to receive the annual award
8 calculated under the same terms and conditions that applied
9 on the day before the effective date of this article;

10 (2) For a student enrolled in an eligible institution other
11 than a state institution of higher education, the annual award
12 is equal to, but may not exceed, the lesser of the cost of
13 tuition or $4,750, except that a student who was awarded and
14 used a PROMISE scholarship annual award prior to January
15 1, 2010, shall continue to receive the annual award calculated
16 under the same terms and conditions that applied on the day
17 before the effective date of this article;

18 (3) The annual award may exceed $4,750, if the
19 commission determines that adequate funds are available, but
20 in any case, may not be greater than the actual cost of tuition;

21 (4) The annual award shall be used by an eligible
22 institution to supplement, but may not supplant, a tuition and
23 fee waiver for which the individual is eligible pursuant to
24 section five, six-a, seven or seven-b, article ten, chapter
25 eighteen-b of this code.
(b) The total cost of all scholarships awarded by the commission in any year may not exceed the amount of funds available to the commission during that fiscal year.

(c) In order to be eligible to receive a PROMISE scholarship award an individual shall:

(1) Submit a scholarship award application to the commission:

(A) Within two years of graduating from high school or within two years of acquiring a general equivalency degree if provided instruction in the home or other approved place pursuant to subsection (c), section one, article eight, chapter eighteen of this code; or

(B) Within seven years of initially entering military service, and within one year of discharge from military service, if the individual has entered the United States armed services within two years after graduating from high school;

(2) Apply for and submit a Free Application for Federal Student Aid;

(3) Maintain a grade point average of at least 3.0 on a 4.0 grading scale in the required core and elective course work necessary to prepare students for success in post-secondary education at the associate and baccalaureate degree levels as determined by the commission, if the individual has completed not more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit and comparable courses while the student is enrolled in high school;

(4) Maintain appropriate academic progress toward the completion of a degree at the undergraduate education level
as determined by the commission if the individual has
completed more than one semester or term at an institution of
higher education, excluding credits earned in advanced
placement, international baccalaureate, dual credit and
comparable courses while the student is enrolled in high
school;

(5) Be a United States citizen or legal immigrant to the
United States;

(6) Meet additional objective standards the commission
considers necessary to promote academic excellence and to
maintain the financial stability of the fund; and

(7) Enroll in an eligible institution. A student enrolled at
an eligible institution who receives a PROMISE scholarship
award may retain and renew the scholarship to complete his
or her undergraduate education at that institution or any other
eligible institution under the following circumstances:

(A) The institution at which the student is enrolled loses
its status as an eligible institution pursuant to the provisions
of subdivision (1), subsection (b), section three of this article;
and

(B) The student meets all other renewal requirements of
this code and of commission rules.

(d) It is the intent of the Legislature that the commission
shall strongly encourage prospective candidates for the
PROMISE scholarship to perform at least twenty hours of
unpaid community service while in high school to help
prepare them for success in post-secondary education. The
community service may include, but is not limited to,
participation with nonprofit, governmental or community-
based organizations designed with any or all of the following
purposes:
87 (1) Improving the quality of life for community residents;

88 (2) Meeting the needs of community residents; or

89 (3) Fostering civic responsibility.

90 (e) The commission shall promulgate a legislative rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

93 (1) The rule shall include at least the following provisions:

95 (A) The amount of a PROMISE scholarship award in combination with aid from all other sources may not exceed the cost of education at the institution the recipient is attending. This provision does not apply to members of the West Virginia National Guard, recipients of an Underwood-Smith teacher scholarship and recipients of a West Virginia engineering, science and technology scholarship;

99 (B) Additional objective standards the commission considers necessary:

104 (i) To promote academic excellence;

105 (ii) To maintain the financial stability of the fund; and

106 (iii) To operate the program within the limits of available funds.

108 (C) Provisions for making the highest and best use of the PROMISE Scholarship Program in conjunction with the West Virginia College Prepaid Tuition and Savings Program Act set forth in article thirty, chapter eighteen of this code;

112 (D) A provision defining the relationship of PROMISE scholarship awards to all other sources of student financial
aid to ensure maximum coordination. The provision shall include the following:

(i) Methods to maximize student eligibility for federal student financial aid;

(ii) A requirement that PROMISE scholarship awards not supplant tuition and fee waivers; and

(iii) Clarification of the relationship between the PROMISE Scholarship Program, tuition savings plans and other state-funded student financial aid programs;

(E) A method for awarding scholarships within the limits of available appropriations, including circumstances when program funds are not sufficient to provide awards to all eligible applicants. The commission may not use any of the following methods:

(i) Providing for an annual PROMISE scholarship award that is less than the amounts provided for in this section; or

(ii) Eliminating any current recipient from eligibility; and

(F) A method for applicants to appeal determinations of eligibility and renewal.

(2) The rule may provide for or require the following at the commission’s discretion:

(A) Requiring repayment of the amount of the scholarship, in whole or in part, if a scholarship recipient chooses to work outside the state after graduation. The rule may not require a recipient to repay a scholarship, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the PROMISE scholarship award;
(B) Targeting a portion of the scholarship funds to be used for applicants enrolled in an engineering, science, technology or other designated program;

(C) Determining what other sources of funding for higher education are to be deducted from the PROMISE scholarship award; and

(D) Providing additional criteria as determined by the commission.

(3) The Legislature finds that an emergency exists and, therefore, the commission shall file a rule to implement the provisions of this section as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code. The rule is subject to the prior approval of the Legislative Oversight Commission on Education Accountability.

(4) Any rule promulgated by the commission pursuant to previous enactments of this article in effect on the effective date of the amendment and reenactment of this article in the year 2009 remains in effect until amended, modified, repealed or replaced by the commission.

§18C-7-7. West Virginia PROMISE Scholarship Fund continued.

(a) The special revenue fund in the State Treasury designated and known as the PROMISE Scholarship Fund is continued. The fund consists of moneys from the following sources:

(1) All appropriations to the fund from the West Virginia Lottery, video lottery and taxes on amusement devices;

(2) All appropriations by the Legislature for the PROMISE Scholarship Fund;
(3) Any gifts, grants or contributions received for the PROMISE Scholarship Program; and

(4) All interest or other income earned from investment of the fund.

(b) The allocations to the fund are subject to appropriation by the Legislature. Nothing in this article requires any specific level of funding by the Legislature nor guarantees nor entitles any individual to any benefit or grant of funds.

(c) For the fiscal year beginning July 1, 2006, it is the intent of the Legislature that the aggregate of the amount of moneys transferred to the fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code, and any other amounts of public moneys that may be transferred to the fund by appropriation of the Legislature, shall equal, but may not exceed, $40 million. For each fiscal year thereafter until and including the fiscal year ending June 30, 2009, it is the intent of the Legislature that this aggregate be an amount two percent greater than the aggregate established by this subsection for the prior fiscal year. For the fiscal year beginning July 1, 2009, it is the intent of the Legislature that the aggregate of the amount of moneys transferred to the fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code and any other amounts of public moneys that may be transferred to the fund by appropriation of the Legislature shall equal $45 million. For the fiscal year beginning July 1, 2010, it is the intent of the Legislature that the aggregate of the amount of moneys transferred to the fund shall equal $48 million. For the fiscal year beginning July 1, 2011, and every fiscal year thereafter, it is the intent of the Legislature that the aggregate of the amount of moneys transferred to the fund shall equal $47,500,000.

(d) The commission may expend the moneys in the fund to implement the provisions of this article.
ARTICLE 22. STATE LOTTERY ACT.


(a) The State Lottery Fund in the State Treasury which is designated and known as the State Excess Lottery Revenue Fund is continued. 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 State Auditor and the State Treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) $65 million 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) $10 million 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) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million 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) $40 million 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) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. For the fiscal year beginning July 1, 2003, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $17 million 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) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million 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) $40 million 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) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $7 million into the State Park Improvement Fund for Park Improvements.

(c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the fiscal year ending June 30, 2009, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $27 million 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) $19 million into the Economic Development Project Fund
created in subsection (e) of this section for the issuance of
revenue bonds and to be spent in accordance with the
provisions of said subsection; (4) $19 million 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
July 1, 2008, and subsequent fiscal years, no moneys shall be
deposited in the School Building Debt Service Fund pursuant
to this subsection and instead $19 million shall be deposited
into the Excess Lottery School Building Debt Service Fund;
(5) $40 million 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) $10 million into the Higher Education
Improvement Fund for Higher Education; and (7) $5 million
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 (e) 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) For the fiscal year beginning July 1, 2009, and
subsequent fiscal years, the commission shall deposit: (1) $65
million into the General Purpose Account to be expended
pursuant to appropriation of the Legislature; (2) $29 million 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) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the Excess Lottery School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code; (5) $40 million 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) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million 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 (e) 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 (e) 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.

(e) 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 July 1,
2002, 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) The special revenue fund named the Economic
Development Project Fund into which shall be is deposited
the amounts to be deposited in the fund as specified in
subsections (b), (c) and (d) of this section is continued. 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 of the bonds. 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 that are 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 projects 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 the 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 the contract, the determination shall be conclusive
for all purposes and shall be considered 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 July 1,
2002, shall be considered refiled with the committee. Within
ten days from the effective date of this section as amended in
the year 2003, 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) A grant may not 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;

(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 in the State Treasury known as the Economic Development Project Bridge Loan Fund 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.

(f) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c), (d) and (i) 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 the 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.

(g) Each fiscal year, the commission shall, after meeting the requirements of subsections (b), (c), (d) and (i) 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 $225 million in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation by the Legislature.

(h) When bonds are issued for projects under subsection (d) (e) 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 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 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.

(i) Prior to the distributions provided in subsection (d) 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.

(j) (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.

(k) 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 or her progress back to the Joint Committee on Government and Finance on an annual basis until a comprehensive program has been fully implemented.

CHAPTER 85

(H.B. 3340 - By Delegates M. Poling and Paxton)

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-1D-10, relating to entry into a data state compact among the Higher
Education Policy Commission, Council for Community and Technical College Education and State Board of Education; authorizing disclosures of information among the parties; requiring that personal privacy laws be obeyed and security measures and procedures be developed; and setting forth requirements for data sharing arrangements with research organizations.

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-1D-10, to read as follows:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-10. State data sharing compact; legislative intent; findings; definitions.

(a) The intent of the Legislature in enacting this section is to direct the commission, council and State Board of Education to enter into a state compact, consistent with the provisions of section six of this article, on or before July 1, 2009, to develop and maintain a longitudinal education data system and to share educational information.

(b) The Legislature makes the following findings:

(1) Sound data collection, reporting and analysis are critical to building an education system capable of ensuring that all West Virginia students are adequately prepared for college and the global workforce. Elementary schools, middle schools, secondary schools and higher education institutions can improve instructional and educational decision-making using data that are collected and made available to them.
16 (2) State education policymaking benefits from partnerships between state education agencies and entities with expertise in education research. It is beneficial for West Virginia to establish systems and processes that permit qualified researchers to assist with state evaluation and research functions in a manner that is consistent with privacy protection laws.

23 (3) West Virginia is committed to establishing and maintaining a longitudinal student unit record data system that educators and policymakers can use to analyze and assess student progress beginning with early learning programs and continuing through post-secondary education and into employment. The commission, council and State Board of Education have designed, built and deployed some of the fundamental components of a longitudinal data system and have engaged in extensive efforts to link and use available education data effectively. Now, it is necessary to integrate and manage the various education data components in a cooperative manner to establish a data-driven, decision-making environment for this state's education system.

37 (4) Students will achieve improved learning outcomes because of the longitudinal data system established through the state compact mandated by this section.

40 (6) State use and management of education data shall be in accordance with all legal requirements protecting student privacy and shall protect personal information from intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.

45 (c) Definitions:

46 (1) "Longitudinal data system" means a student unit record data system that links student records beginning with
early learning programs and continuing through post-secondary education, entry into the workforce and beyond. The system may consist of separate student unit record systems integrated through agreement and data transfer mechanisms.

(2) "Privacy protection laws" means the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g) and any other state or federal laws relating to the confidentiality and protection of personally identifiable information.

(3) "Research organization" means a governmental entity, institution of higher education, public policy organization or other person or entity conducting educational research that meets the following conditions:

(i) Qualified to perform educational research and protect the privacy of student data;

(ii) Seeks to perform research for a non-commercial purpose authorized by privacy protection laws; and

(iii) Agrees to perform the research pursuant to a written agreement meeting the requirements of privacy protection laws and best research practices.

(d) The state data-sharing compact entered into by the commission, council and State Board of Education shall contain the following:

(1) A plan to establish and maintain a longitudinal data system that links early learning, elementary, middle and secondary school student unit records with higher education institution student unit records;

(2) A plan to establish a data warehouse that integrates data from multiple student unit record systems and supports all of the uses and functions of the longitudinal data system;
(3) A list of areas for collaborative research and a preliminary plan for conducting that research;

(4) A system for entering into data sharing arrangements with each other and with research organizations consistent with subsection (f) of this section; and

(5) A provision that allows another party to the compact to review any draft report or study generated using that party’s data at least ten days before the report or study is released publicly. During that ten-day period, each party shall be given the opportunity to submit comments regarding the accuracy, conclusions and recommendations of the report or study.

(e) To facilitate implementation of the requirements of this section:

(1) The commission, council and State Board of Education are authorized to disclose data to the longitudinal data system and to each other consistent with the purposes of this section;

(2) With the assistance of the State Board of Education, the commission, council and state institutions of higher education shall collect the State Board of Education’s unique identifier for all students who have attended public schools in West Virginia to facilitate better matching of student unit record data.

(3) The commission, council and State Board of Education shall collect, use, maintain, disclose and share data in accordance with personal privacy laws and shall develop security measures and procedures that protect personal information from intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.
(f) A data sharing arrangement entered into with a research organization pursuant to this section shall meet the following criteria:

1. Permitted by and undertaken in accordance with privacy protection laws;

2. Receives prior approval from the State Superintendent of Schools or designee, the Chancellor for Higher Education or designee, and the Chancellor for Community and Technical College Education or designee, as appropriate, if data from that entity are being utilized in the research;

3. Prohibits the personal identification of any person by individuals other than authorized representatives of the research organization who have legitimate interests in the information;

4. Ensures the destruction or return of the data when no longer needed for the authorized purposes under the data sharing arrangement;

5. Performed pursuant to a written agreement with the research organization that does the following:
   a. Specifies the purpose, scope and duration of the data sharing arrangement;
   b. Requires the recipient of the data to use personally identifiable information from education records only to meet the purpose or purposes of the data sharing arrangement stated in the written agreement;
   c. Describes specific data access, use and security restrictions that the recipient will undertake; and
   d. Contains such other terms and provisions as the commission, council and State Board of Education, as appropriate, consider necessary or appropriate.
(g) As a condition of participating in state-level financial aid programs provided for in chapter eighteen-c of this code, the commission may require non-public institutions of higher education to provide data for the longitudinal data system and data warehouse.

CHAPTER 86

(Com. Sub. for H.B. 2335 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §18B-10-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18B-10-7c, all relating to higher education tuition and fee waivers; tuition and fee waivers for certain military personnel; the federal “Yellow Ribbon G.I. Education Enhancement Program”; requiring state institutions of higher education to participate in the program; requiring state institutions of higher education to enter into agreements with the United States Secretary of Veterans Affairs to provide matching contributions toward the cost of tuition and mandatory fees not otherwise covered under the Post-9/11 Veterans Educational Assistance Act of 2008; and clarifying residency requirement for certain tuition and fee waivers.

Be it enacted by the Legislature of West Virginia:
That §18B-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §18B-10-7c, all to read as follows:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§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-10-7c. Tuition and fee waivers for certain veterans receiving federal educational assistance benefits.

§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 who is a resident of this state and is 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 each considers necessary to implement this section; and

(3) Regarding requirements for attendance, which may not exceed the requirements for other students.

(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.
§18B-10-7c. Tuition and fee waivers for certain veterans receiving federal educational assistance benefits.

(a) The Legislature finds that:

1. The United States Congress, in enacting the Post-9/11 Veterans Educational Assistance Act of 2008, 38 U.S.C. §3301, et seq., has established a program within the United States Department of Veterans Affairs known as the "Yellow Ribbon G.I. Education Enhancement Program";

2. Under the Act, certain individuals who served or are serving on active duty in the United States Armed Forces after September 11, 2001, are eligible to receive educational assistance benefits equal to the cost of undergraduate resident tuition and mandatory fees charged by a state institution of higher education; and

3. The Program provides additional educational assistance benefits above the cost of undergraduate resident tuition and mandatory fees to veterans receiving benefits under the Act.

(b) The purpose of this section is to require state institutions of higher education to participate in the Program and encourage private institutions of higher education located in the state to participate.

(c) As soon as practicable after the effective date of this section, the governing board of each state institution of higher education shall enter into an agreement with the United States Secretary of Veterans Affairs to participate in the Program. For every eligible veteran who is enrolled or will be enrolled as an undergraduate student, the agreement shall provide for a waiver of the cost of tuition and
mandatory fees not otherwise covered under 38 U.S.C. §3313(c)(1)(A) at a percentage equal to the maximum contribution available for match by the United States Department of Veterans Affairs. The agreement also may provide for a waiver of the cost of tuition and mandatory fees not otherwise covered under 38 U.S.C. §3313(c)(1)(A) at a percentage equal to the maximum contribution available for match by the United States Department of Veterans Affairs for every eligible veteran who is or will be enrolled in a graduate or professional program.

(d) For the purposes of the limitation on the amount of fee waivers permitted at state institutions of higher education set forth in sections five and six of this article, any waiver granted by a state institution of higher education in connection with the Program is not counted toward the amount of undergraduate, graduate or professional fee waivers permitted at that institution.

(e) The Legislature encourages every private institution of higher education located in the state to participate in the Program.

(f) For the purposes of this section:


(2) "The Program" means the Yellow Ribbon G.I. Education Enhancement Program, 38 U.S.C. §3317; and

(3) "Eligible veteran" means any individual who is eligible to participate in the Program.
AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing rules for higher education; authorizing rules for the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education; and authorizing rules regarding Guidelines for Governing Boards in Employing and Evaluating Presidents, Employing and Evaluating Presidents, the Medical Student Loan Program, the West Virginia Higher Education Grant Program, the Research Trust Fund Program, Accountability System, Performance Indicators, and Finance.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18-17-3. Authorizing rule of the Council for Community and Technical College Education.

(a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule) is authorized.

(b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (West Virginia Engineering, Science and Technology Scholarship Program rule) is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule) is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (Authorization of degree-granting institutions) is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program) is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission. 


(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program) is authorized, with the following amendment:

On page 2, subsection 5.1, following the words “financial aid office” by inserting a new subdivision 5.1.3 to read as follows: “United States citizenship or legal immigrant status while actively pursuing United States citizenship.”

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System) is authorized.

§18B-17-3. Authorizing rule of the Council for Community and Technical College Education.

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (performance indicators rule) is authorized.

(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community and Technical College Education (Authorization of degree-granting institutions) is authorized.

(c) The legislative rule filed in the State Register on October 30, 2006, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program) is authorized.
(d) The legislative rule filed in the State Register on December 4, 2008, relating to the West Virginia Council for Community and Technical College Education (Employing and Evaluating Presidents) is authorized.

(e) The legislative rule filed in the State Register on December 23, 2008, relating to the West Virginia Council for Community and Technical College Education (Performance Indicators) is authorized.

(f) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Finance) is authorized.

(g) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Accountability System) is authorized.

CHAPTER 88

(H.B. 3229 - By Delegates M. Poling, Paxton, Stowers, Ennis, Moye, Shaver, Williams, Perry, Shott, Sumner and Canterbury)

[Passed April 8, 2009; in effect July 1, 2009.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-18B-1 and 18B-18B-2, all relating to creation of the Science and Research Council; establishing purposes; providing for membership
appointments, qualifications, and terms of office; providing that the council replaces the EPSCoR Advisory Council; requiring development of a strategic state plan for science and technology research; and requiring annual reports to the Legislative Oversight Commission on Education Accountability.

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 §18B-18B-1 and 18B-18B-2, all to read as follows:

ARTICLE 18B. SCIENCE AND RESEARCH COUNCIL.

§18B-18B-1. Science and Research Council established; purposes.

(a) The Science and Research Council is hereby established. For the purposes of this article only, "council" means the Science and Research Council established herein.

(b) The purposes of the council include, but are not limited to, the following:

(1) Increasing the capacity of the state and state institutions of higher education to attract, implement and use cutting-edge, competitive research funds and infrastructure;

(2) Providing expertise and policy guidance in science and research to the state, its agencies and state institutions of higher education regarding federal programs such as the Experimental Program to Stimulate Competitive Research ("EPSCoR") and similar state programs such as the West Virginia Research Trust Fund established in article eighteen-
(3) Encouraging research collaboration among public and private institutions of higher education and the private sector, both within and outside the state;

(4) Promoting education at all levels in the fields of science, technology, engineering and mathematics; and

(5) Providing recommendations to the Commission and state policymakers, including the Governor and Legislature, regarding science and research initiatives and effective programmatic activities, budgets and investments to implement those initiatives.

(c) The council replaces the EPSCoR State Advisory Council and consists of fifteen members as follows:

(1) The vice presidents in charge of research at Marshall University and West Virginia University;

(2) A representative of health sciences at Marshall University and a representative of health sciences at West Virginia University, appointed by the deans of the respective schools of medicine;

(3) The Secretary of Education and the Arts or designee;

(4) The State Superintendent of Schools or designee;

(5) The Secretary of Commerce or designee;

(6) The Vice Chancellor for Science and Research of the Commission;

(7) The Chancellor of the Commission who chairs the council;
(8) One member engaged in applied research at Marshall University and one member engaged in applied research at West Virginia University, appointed by the provosts of the respective universities; and

(9) Four members, appointed by the Governor, who have demonstrated interest, knowledge, skill and experience in academic research and scientific innovation and who possess recognized credentials and expertise in one or more of the following areas:

(A) Science, technology, engineering or mathematics ("STEM") fields;

(B) Cyberinfrastructure, information technology or computer science;

(C) Research and development;

(D) Technology based economic development or industry; or

(E) Undergraduate research or science education.

At least two of the members appointed by the Governor shall be representatives of business or industry.

(d) Of the initial appointments made by the Governor, one member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; and one member shall be appointed to a four-year term. Of the initial appointments made by the deans of schools of medicine, the member appointed by the dean of the Marshall University School of Medicine shall be appointed to a two-year term, and the member appointed by the dean of the West Virginia University School of Medicine shall be appointed to a three-year term. Of the initial appointments made by the provosts,
the member appointed by the West Virginia University provost shall be appointed to a two-year term, and the member appointed by the Marshall University provost shall be appointed to a four-year term.

(e) After the initial appointments, all members serve terms of four years. Each appointed member who qualifies under the provisions of this section may serve for no more than two successive terms. An appointment to fill a vacancy on the council or reappointment of a member who is eligible to serve an additional term is made in accordance with the provisions of this section.

(f) Members of the council serve without compensation, but are entitled to reimbursement by the commission for expenses, including travel expenses, actually incurred by the member in the official conduct of the business of the council.

§18B-18B-2. Strategic plan; reports.

(a) The council shall develop a strategic state plan for science and technology research that establishes a collaborative process to engage all scientific research resources, both public and private, in a comprehensive, strategic network. The council’s strategic state plan serves as the state plan for science and technology research.

(b) At a minimum, the strategic plan shall address science and technology research resources and their relation to the following areas of research:

(1) Human and physical infrastructure;

(2) Policy development;

(3) Education and outreach;

(4) Research innovation; and
(c) Periodically, the council shall reassess the strategic state plan and update it as needed. Any new or updated strategic state plan shall be approved by the commission prior to becoming effective.

(d) The EPSCoR Advisory Council’s current "Vision 2015: The West Virginia Science and Technology Strategic Plan" serves as the state plan for science and technology research until a plan is approved by the council.

(e) The council shall report to the Legislative Oversight Commission on Education Accountability by July 1, 2010, and annually thereafter, on progress in implementing the strategic state plan, as well as any updates to the plan.

CHAPTER 89

(Com. Sub. for S.B. 261 - By Senator Jenkins)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2009.]

AN ACT to amend and reenact §3-1-30 of the Code of West Virginia, 1931, as amended, relating to requiring party executive committees to submit their list of nominees to serve as election officials no later than the seventieth day before the election.

Be it enacted by the Legislature of West Virginia:
That §3-1-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least ten percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chairman or secretary on its behalf, shall
file in writing with the appointing body, no later than the seventieth day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by
the clerk of the county commission for any election ordered
by the county commission or for any joint county and
municipal election and by the official recorder of the
municipality for a municipal election.

(e) The appropriate governing body shall appoint the
election officials for each designated election board no later
than the forty-ninth day before the election as follows:

(1) Those eligible persons whose nominations for poll
clerk and election commissioner were timely filed by the
executive committees and those additional persons selected
to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which
no nominations were filed.

(f) At the same time as the appointment of election
officials or at a subsequent meeting the governing body shall
appoint persons as alternates. However, no alternate may be
eligible for compensation for election training unless the
alternate is subsequently appointed as an election official or
is instructed to attend and actually attends training as an
alternate and is available to serve on election day. Alternates
shall be appointed and serve as follows:

(1) Those alternates nominated by the executive
committees shall be appointed;

(2) The governing body may appoint additional alternates
who may be called upon to fill vacancies after all alternates
designated by the executive committees have been assigned,
have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of
persons who may be instructed to attend training as
alternates.
(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within fourteen days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If an appointed election official fails to appear at the polling place by forty-five minutes past five o'clock a. m. on election day, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;
(3) If two teams of election officials, as defined in section twenty-nine of this article, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(k) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

CHAPTER 90

(Com. Sub. for H.B. 2464 - By Delegates Spencer, Hatfield, Guthrie, M. Poling and Morgan)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §3-3-2a of the Code of West Virginia, 1931, as amended, relating to early voting and authorizing county commissions to designate voting locations other than the county courthouse or annex of the courthouse; requiring the Secretary of State to propose legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That §3-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.
§3-3-2a. Early voting areas; prohibition against display of campaign material.

(a) The county commission shall designate the courthouse or annex to the courthouse as the primary location for early voting and in addition, the commission may designate other locations as provided in subsection (b).

(b) The county commission may, with the approval of the county clerk or other official charged with the administration of elections, and the written agreement of the chairpersons of the county executive committees of the two major political parties, designate additional locations for early voting other than the county courthouse or courthouse annex. The additional locations shall comply with the requirements of this article for early in-person voting and criteria prescribed by the Secretary of State.

(c) The Secretary of State is hereby directed to propose legislative and emergency rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement the provisions of this section. The rules shall include establishment of criteria to assure neutrality and security in the selection of additional locations.

(d) Throughout the period of early in-person voting, the official designated to supervise and conduct absentee voting shall make the following provisions for voting:

(1) The official shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices are to be in an area separate from but within clear view of the public entrance area of the official’s office or other area designated by the county commission for absentee voting and are to be arranged to ensure the voter complete privacy in casting the ballot.
(2) The official shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the officials or employees of the official designated to supervise and conduct absentee voting or members of the board of ballot commissioners assigned to conduct absentee voting, may enter the area or room set aside for voting.

(3) The official designated to supervise and conduct absentee voting shall request the county commission designate another area within the county courthouse, any annex of the courthouse or any other designated as early in-person voting locations within the county, as a portion of the official’s office, for the purpose of absentee in-person voting in the following circumstances:

(A) If the voting area is not accessible to voters with physical disabilities;

(B) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct absentee voting; or

(C) If there is no suitable area for absentee in-person voting within the office.

Any designated area is subject to the same requirements as the regular absentee voting area.

(4) The official designated to supervise and conduct absentee voting shall have at least two representatives to assist with absentee voting: Provided, That the two representatives may not be registered with the same political party affiliation or two persons registered with no political
party affiliation. The representatives may be full-time employees, temporary employees hired for the period of absentee voting in person or volunteers.

(5) No person may do any electioneering nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters or material of any kind which tends to influence the voting for or against any candidate or any public question on the property of the county courthouse, any annex facilities, or any other designated early voting locations within the county, during the entire period of regular in-person absentee voting. The official designated to supervise and conduct absentee voting is authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

CHAPTER 91

(Com. Sub. for H.B. 3134 - By Delegates Fleischauer, Beach, Marshall, Shook, Hunt, Frazier, Brown, Miley, Longstreth, Lawrence and Manchin)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §3-3A-1, §3-3A-2, §3-3A-3, §3-3A-4 and §3-3A-5, all relating to voting by mail; creating a two phase vote by mail pilot program for municipalities; allowing class IV municipalities to conduct early voting in municipal elections by mail; requiring adoption of an ordinance; requiring the Secretary of State select five
municipalities for a pilot project; allowing selected municipalities conduct municipal elections by mail; requiring emergency and legislative rules; setting forth criteria; granting authority to conduct voting by mail; and providing for termination of phase two of the pilot project.

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 §3-3A-1, §3-3A-2, §3-3A-3, §3-3A-4 and §3-3A-5, all to read as follows:

ARTICLE 3A. VOTE BY MAIL PILOT PROGRAM.

§3-3A-1. Short title.
1 This article shall be known as the “West Virginia Vote By Mail Pilot Program”.

§3-3A-2. Vote by mail pilot program.
1 This article establishes a two phase pilot project that will allow certain municipalities to vote by mail. Phase one authorizes Class IV municipalities to conduct only early voting for municipal elections by mail beginning with the municipal election of 2010. Phase two authorizes five municipalities in the state to conduct all voting by mail beginning with the primary election of 2011. The pilot project will permit registered and other qualified voters of the authorized municipalities to vote a ballot by mail during the pilot program period. The Class IV municipalities that choose to participate in phase one may conduct only the early voting for the municipal elections entirely by mail. The five
13 municipalities selected for participation in phase two may
14 conduct both the primary and general elections entirely by
15 mail.

§3-3A-3. Secretary of State Rulemaking.

(a) The Secretary of State is hereby directed to propose
1 emergency and legislative rules in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code
3 necessary to implement phase one of the vote by mail pilot
4 program. In addition to any other provisions the Secretary
5 believes are necessary to provide for the effective, efficient
6 and orderly administration of phase one of the vote by mail
7 pilot program, the rules proposed by the Secretary shall
8 provide for phase one municipal elections the requirements
9 and procedures for conducting an election by mail including:

(1) That a notice of early voting by mail will be mailed to
12 each registered voter in the municipality no more than four
13 weeks nor less than two weeks prior to the start of the early
14 voting period. The notice may be included in any utility or
15 service statement or invoice mailed to every household in the
16 municipality or a postcard sent to all registered voters in the
17 municipality;

(2) That each ballot packet shall consist of the actual
19 ballot, instructions, a secrecy envelope and a ballot return
20 envelope;

(3) That each ballot will be mailed with detailed
22 instructions on how to mark the ballot, place it in the secrecy
23 envelop and the ballot return envelope and how to sign the
24 ballot return envelope, a warning that the ballot return
25 envelope must be signed or the ballot will not be counted, a
26 warning that signing someone else's ballot return envelope is
27 illegal, an alternative procedure for any person who is unable
28 to sign a ballot return envelope and a procedure for returning
a spoiled ballot should the voter make a mistake or otherwise
need a new ballot; and

(4) That each ballot must be mailed or brought to the
municipal precinct by the close of the early voting period.

(b) The Secretary of State is hereby directed to propose
legislative rules in accordance with the provisions of article
three, chapter twenty-nine-a of this code necessary to
implement the phase two vote by mail pilot program. In
addition to any other provisions the Secretary believes are
necessary to provide for the effective, efficient and orderly
administration of phase two of the vote by mail pilot
program, the rules proposed by the Secretary shall include:

(1) Criteria for the selection of up to five municipalities
to participate in the vote by mail pilot program;

(2) Procedures for conducting voting by mail including
those specified in subsection (a) of this section;

(3) Requirements and criteria for the designation of
places of deposit for the ballots cast in an election; and

(4) Dates and times the places of deposit must be open
and the security requirements for the places of deposit.
Places of deposit shall be open on the date of the election for
a period of eight or more hours, but must be open until at
least eight p.m., at a minimum.

(c) Each municipality wishing to conduct early voting by
mail shall adopt an ordinance expressing the municipality’s
intent and notifying the public of the changes in voting.

(d) It is the duty of all officials designated to supervise
and conduct the vote by mail program, other municipal
officials, and all election commissioners and poll clerks to
abide by the Secretary of State’s rules, orders and instructions
§3-3A-4. Authority to conduct voting by mail.

1. The voting by mail program is to be supervised and conducted by the municipal recorder or other officer authorized by charter or ordinance provisions to conduct voting for any election held entirely within the municipality.
2. All other provisions of this article for conducting a municipal election shall apply.

§3-3A-5. Termination of pilot project.

1. The provisions of this article related to phase two of the pilot project shall terminate on January 1, 2014, unless sooner terminated, continued or reestablished.

CHAPTER 92

(H.B. 2981 - By Delegates Fleischauer, Hatfield, Staggers, Doyle, Shook, Moore, Klempa, Brown, Susman, Frazier and Longstreth)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §3-5-7, §3-5-23 and §3-5-24 of the Code of West Virginia, 1931, as amended, all relating to elections generally, requiring candidates for the Senate and House of Delegates to file announcement of candidacy with the Secretary of State; reducing number of signatures needed for
nomination of third-party candidates; making filing deadline for the nomination of candidates August 1; eliminating requirement that persons signing nomination certificate state a desire to vote for nominated candidate; permitting duly registered voters who sign nomination certificates to vote in the corresponding primary election; establishing the date by which the filing fee must be paid; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §3-5-7, §3-5-23 and §3-5-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcement of candidacies; requirements; withdrawal of candidates when section applicable.

§3-5-23. Certificate nominations; requirements and control; penalties.

§3-5-24. Filing of nomination certificates; time.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates or the State Senate and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State;
(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates or State Senate, shall file a certificate of announcement with the clerk of the county commission;

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January next preceding the primary election day, and not later than the last Saturday in January next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the
magisterial district of residence for candidates elected from
magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which
the candidate resides at the time of filing, including number
and street or rural route and box number and city, state and
zip code;

(6) For partisan elections, the name of the candidate's
political party and a statement that the candidate: (A) Is a
member of and affiliated with that political party as
evidenced by the candidate's current registration as a voter
affiliated with that party; and (B) has not been registered as
a voter affiliated with any other political party for a period of
sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the
name of the presidential candidate to be listed on the ballot as
the preference of the candidate on the first convention ballot;
or a statement that the candidate prefers to remain
"uncommitted";

(8) A statement that the person filing the certificate of
announcement is a candidate for the office in good faith;

(9) The words "subscribed and sworn to before me this
_____ day of ____________, 20__" and a space for the
signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot
commissioners, as the case may be, may refuse to certify the
candidacy or may remove the certification of the candidacy
upon receipt of a certified copy of the voter's registration
record of the candidate showing that the candidate was
registered as a voter in a party other than the one named in
the certificate of announcement during the sixty days
immediately preceding the filing of the certificate: Provided,
That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate may not be refused certification for this reason.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with section three, article nine of this chapter.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: Provided, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw,
as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

(j) The provisions of this section enacted during the regular session of the Legislature in the year 1991 shall apply to the primary election held in the year 1992 and every primary election held thereafter. The provisions of this section enacted during the regular session of the Legislature in the year 2009 shall apply to the primary election held in the year 2010 and every primary election held thereafter.

§3-5-23. Certificate nominations; requirements and control; penalties.

(a) Groups of citizens having no party organization may nominate candidates who are not already candidates in the primary election for public office otherwise than by conventions or primary elections. In that case, the candidate or candidates, jointly or severally, shall file a nomination certificate in accordance with the provisions of this section and the provisions of section twenty-four of this article.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on the certificate or certificates, may solicit or canvass duly registered voters residing within the county, district or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of .................., ss:

This certifies that the holder of this credential is hereby authorized to solicit and canvass duly registered voters
residing in .................... (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ......................... (here place name of candidate heading list on certificate) for the office of ......................... and others, at the general election to be held on ........................., 20.....

Given under my hand and the seal of my office this .................... day of ........................., 20.....

Clerk, county commission of ................... County.

The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein the canvass or solicitation is made by the person or persons duly authorized. The signatures need not all be on one certificate. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for any statewide, congressional or presidential candidate, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. A
signature on a certificate may not be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein the certificate was presented.

(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to have the candidates placed on the ballot; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

Notwithstanding any other provision of this code to the contrary, a duly registered voter may sign the certificate provided in this section and may vote for candidates of his or her choosing in the corresponding primary election.

(e) The Secretary of State, or the clerk of the county commission, as the case may be, may investigate the validity of the certificates and the signatures thereon. If, upon investigation, there is doubt as to the legitimacy and the validity of certificate, the Secretary of State may ask the Attorney General of the state, or the clerk of the county commission may ask the prosecuting attorney of the county, to institute a quo warranto proceeding against the nominee by
certificate to determine his or her right to the nomination to public office and upon request being made, the Attorney General or prosecuting attorney shall institute the quo warranto proceeding. The clerk of the county commission shall, at the request of the Secretary of State or the clerk of the circuit court, compare the information from any certificate to the county voter registration records in order to assist in determining the validity of any certificates.

(f) In addition to penalties prescribed elsewhere for violation of this chapter, any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail not more than one year, or both fined and imprisoned: Provided, That a criminal penalty may not be imposed upon anyone who signs a nomination certificate and votes in the primary election held after the date the certificate was signed.

§3-5-24. Filing of nomination certificates; time.

(a) All certificates nominating candidates for office under the preceding section shall be filed, in the case of a candidate to be voted for by the voters of the entire state or by any subdivision of the state other than a single county, with the Secretary of State, and in the case of all candidates for county and magisterial district offices, including all offices to be filled by the voters of a single county, with the clerk of the county commission, not later than August 1 preceding the general election.

(b) Each candidate shall pay the filing fee required by section eight of this article, at the time of the filing of the nomination certificate. If any nomination certificate is not timely filed or if the filing fee is not timely paid, the certificate may not be received by the Secretary of State, or by the clerk of the county commission, as the case may be.
AN ACT to amend and reenact §3-6-9 of the Code of West Virginia, 1931, as amended, relating to election recount procedures; providing that certification of results in multiple county races will not be made final until each county has declared results of election; and requiring Secretary of State notify each county that results have been declared.

Be it enacted by the Legislature of West Virginia:

That §3-6-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CANVASS OF RETURNS; DECLARATION OF RESULTS; RECORDKEEPING.

§3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping.

1 (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.

(1) 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.

(2) 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.

(3) They may adjourn, from time to time, but no longer
than absolutely necessary.

(4) 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.

(5) All meetings of the commissioners sitting as a board
of canvassers shall be open to the public.

(6) 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.
(7) 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.

(8) After canvassing the returns of the election, the board shall publicly declare the results of the election.

(A) For a candidate on the ballot in entirely one county, the board shall not enter an order certifying the election results for a period of forty-eight hours after the declaration. 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.

(B) For a candidate on the ballot in more than one county, the board may not enter an order certifying the election results for a period of forty-eight hours after the final county's board has publicly declared the results of the election. In such case, each relevant board shall notify the Secretary of State immediately following each relevant board's public declaration of results. For offices on the ballot in more than one county, the Secretary of State shall notify the board of each relevant county when the final county has made a public declaration of the results of the election. At the end of the 48-hour period in this section, an order shall be entered by each relevant county certifying all election results except for those offices in which a recount has been demanded.

(b) Within the 48-hour period, a candidate on the ballot in entirely one county may demand the board to open and examine any of the sealed packages of ballots and recount them.

(c) If a candidate is on the ballot in more than one county, then within the 48-hour period after the final county's board has made a public declaration of the results, such candidate
may demand the board to open and examine any of the sealed packages of ballots and recount them.

(d) After any recount pursuant to either subsection (b) or (c) of this section the board 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 ____________.

(e) In computing the 48-hour period as used in this section, Saturdays, Sundays and legal holidays shall be excluded. A candidate on the ballot in more than one county shall not be precluded from demanding a recount in any county in which the candidate is on the ballot until the final county in which the candidate is on the ballot has certified the election results.

(f) If a recount has been demanded, the board shall have forty-eight hours 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 (g) 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.

(g) 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 $20. The return shall be evidence of the manner and time of service.

(h) 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.

(i) 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.

(j) 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 94


[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §3-8-5 and §3-8-7 of the Code of West Virginia, 1931, as amended, all relating to lengthening the time frame for the filing of final post-primary and post-general campaign financial statements.

Be it enacted by the Legislature of West Virginia:

That §3-8-5 and §3-8-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.
§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

§3-8-5. Detailed accounts and verified financial statements required.

(a) Every candidate, treasurer, person and association of persons, organization of any kind, including every corporation, directly, or by an independent expenditure, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office, and the treasurer of every political committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value and of all expenditures and disbursements made, liabilities incurred, by the candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of the committee, or any person acting under its authority or on its behalf.

(b) Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized sworn statement:

(1) Of all financial transactions, whenever the total exceeds $500, which have taken place before the last Saturday in March, to be filed within six days thereafter and annually whenever the total of all financial transactions relating to an election exceeds $500;
(2) Of all financial transactions which have taken place before the fifteenth day preceding each primary or other election and subsequent to the previous statement, if any, to be filed within four business days after the fifteenth day;

(3) Of all financial transactions which have taken place before the thirteenth day after each primary or other election and subsequent to the previous statement, if any, to be filed within twenty business days after the thirteenth day; and

(4) Of all financial transactions, whenever the total exceeds $500 or whenever any loans are outstanding, which have taken place before the forty-third day preceding the general election day, to be filed within four business days after the forty-third day.

(c) Every person who announces as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person's candidacy has been made.

(d) For purposes of this section, the term "financial transactions" includes all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on.

(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of article twenty-one-a, chapter nineteen of this code are required to file only the reports required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the primary election; Provided, That during the election in the year 2008, the statements required by this subsection
shall be filed immediately prior to and after the general election.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 or confined in jail for not more than one year, or both, in the discretion of the court. Sixty days after any primary or other election, the Secretary of State, or county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent, or treasurer resides, is located or has its principal place of business.

(b)(1) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement may be assessed a civil penalty by the Secretary of State of $25 a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward
31 copies of such delinquent, incomplete or inaccurate
32 statements to the Secretary of State.

33 (2) A civil penalty assessed pursuant to this section shall
34 be payable to the State of West Virginia and is collectable as
35 authorized by law for the collection of debts.

36 (3) The Secretary of State may negotiate and enter into
37 settlement agreements for the payment of civil penalties
38 assessed as a result of the filing of a delinquent, grossly
39 incomplete or inaccurate statement.

40 (4) The Secretary of State and county clerk may review
41 and audit any sworn statement required to be filed pursuant
42 to this article. The State Election Commission shall propose
43 legislative rules for promulgation, in accordance with chapter
44 twenty-nine-a of this code, to establish procedures for the
45 assessment of civil penalties as provided in this section.

46 (c) No candidate nominated at a primary election who has
47 failed to file a sworn statement, as required by this article,
48 shall have his or her name placed on the official ballot for the
49 ensuing election, unless there has been filed by or on behalf
50 of such candidate, or by his or her financial agent, if any, the
51 financial statement relating to nominations required by this
52 article. It is unlawful to issue a commission or certificate of
53 election, or to administer the oath of office, to any person
54 elected to any public office who has failed to file a sworn
55 statement as required by this article and no person may enter
56 upon the duties of his or her office until he or she has filed
57 such statement, nor may he or she receive any salary or
58 emolument for any period prior to the filing of such
59 statement.
AN ACT to amend and reenact §21-3C-10a of the Code of West Virginia, 1931, as amended, relating to elevator safety; and clarifying the supervision requirements for elevator apprentices.

Be it enacted by the Legislature of West Virginia:

That §21-3C-10a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-10a. License requirements for elevator mechanics; contractors license required; supervision of elevator apprentices required.

(a) On and after January 1, 2010, a person may not 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.
(b) A person licensed under this article must:

(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 who is enrolled in a four year apprenticeship program approved by the Commissioner, and who is in good standing in the program, may work under the supervision of a licensed elevator mechanic, as follows:

(1) An apprentice who has not successfully completed the equivalent of at least one year of the program may work only under the direct supervision of a licensed elevator mechanic who is present on the premises and available to the apprentice at all times.

(2) An apprentice who has successfully completed the equivalent of at least one year of the program may:

(A) Work under the direct supervision of a licensed elevator mechanic as set forth in subdivision (1) of this subsection; and

(B) Perform the tasks set forth in this paragraph, only if delegated by and performed under the general supervision of a licensed elevator mechanic, who must, at a minimum, meet the apprentice on the job at the beginning of each day to delegate the specific tasks, and who remains responsible for the delegated tasks:

(i) Oiling, cleaning, greasing and painting;
(ii) Replacing of combplate teeth;
(iii) Reclamping and fixture maintenance;
(iv) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and
(v) Observing operation of equipment.

CHAPTER 96

(S.B. 436 - By Senator Kessler)

[Passed April 3, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §22-3-8 of the Code of West Virginia, 1931, as amended, relating to environmental permitting of surface coal mining; and correcting antiquated language with respect to the state agencies charged with cooperating with the Department of Environmental Protection to ensure that permit applicants comply with certain fiscal and reporting requirements imposed by the state’s unemployment compensation and workers’ compensation laws.

Be it enacted by the Legislature of West Virginia:

That §22-3-8 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.

§22-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

No person may engage in surface mining operations unless he or she has first obtained a permit from the director in accordance with the following:

(1) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the director may extend a permit for a longer term: Provided, however, That subject to the prior approval of the director, with the approval being subject to the provisions of subsection (c), section eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a permit, within thirty days of succeeding to the interest and who is able to obtain the bond coverage of the original permittee, may continue surface mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor’s permit application or application for transfer is granted or denied.

(2) Proof of insurance is required on an annual basis.

(3) A permit terminates if the permittee has not commenced the surface mining operations covered by the permit within three years of the date the permit was issued: Provided, That the director may grant reasonable extensions of time upon a timely showing that the extensions are
necessary by reason of litigation precluding commencement, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided, however, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric-generating facility, the permittee shall be considered to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.

(4) Each application for a new surface mining permit filed pursuant to this article shall be accompanied by a fee of $1,000. All permit fees and renewal fees provided for in this section or elsewhere in this article shall be collected by the director and deposited with the Treasurer of the State of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the director, for the administration of this article.

(5) Prior to the issuance of any permit, the director shall ascertain from the Commissioner of the Division of Labor whether the applicant is in compliance with section fourteen, article five, chapter twenty-one of this code. Upon issuance of the permit, the director shall forward a copy to the Commissioner of the Division of Labor, who shall assure continued compliance under the permit.

(6) (A) Prior to the issuance of any permit the director shall ascertain from the Executive Director of Workforce West Virginia and the Insurance Commissioner whether the applicant is in compliance with the provisions of section six-c, article two, chapter twenty-one-a of this code and section five, article two, chapter twenty-three of this code with regard to any required subscription to the Unemployment Compensation Fund or to the Workers’ Compensation Fund, the payment of premiums and other charges to the fund, the timely filing of payroll reports and the maintenance of adequate deposits. If the applicant is
63 delinquent or defaulted, or has been terminated by the
64 executive director or the Insurance Commissioner, the permit
65 may not be issued until the applicant returns to compliance
66 or is restored by the executive director or the Insurance
67 Commissioner under a reinstatement agreement: Provided,
68 That in all inquiries the Executive Director of Workforce
69 West Virginia and the Insurance Commissioner shall make
70 response to the Department of Environmental Protection
71 within fifteen calendar days; otherwise, failure to respond
72 timely is considered to indicate the applicant is in compliance
73 and the failure will not be used to preclude issuance of the
74 permit.

75 (B) It is a requirement of this article that each operator
76 maintain continued compliance with the provisions of section
77 five, article two, chapter twenty-three of this code and section
78 six-c, article two, chapter twenty-one-a of this code and
79 provide proof of compliance to the director on a quarterly
80 basis.

CHAPTER 97

(Com. Sub. for H.B. 2860 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §22-11-4, §22-11-22, §22-11-24 and
§22-11-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article,
designated §22-11A-1, §22-11A-2, §22-11A-3, §22-11A-4, §22-11A-5, §22-11A-6, §22-11A-7, §22-11A-8 and §22-11A-9, all relating to regulating the sequestration and storage of carbon dioxide; providing for powers and duties of the Department of Environmental Protection; providing for civil penalties and injunctive relief; providing for criminal penalties; providing for civil liability; setting forth legislative findings; defining terms; specifying powers and duties; specifying carbon dioxide permitting requirements; establishing a working group to study and make recommendations regarding carbon dioxide sequestration; and authorizing the promulgation of legislative rules and cooperative agreements.

Be it enacted by the Legislature of West Virginia:

That §22-11-4, §22-11-22, §22-11-24 and §22-11-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §22-11A-1, §22-11A-2, §22-11A-3, §22-11A-4, §22-11A-5, §22-11A-6, §22-11A-7, §22-11A-8 and §22-11A-9, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

Article 11. Water Pollution Control Act.

11A. Carbon Dioxide Sequestration.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-4. General powers and duties of director with respect to pollution.

§22-11-22. Civil penalties and injunctive relief; administrative penalties.

§22-11-24. Violations; criminal penalties.

§22-11-25. Civil liability; Natural Resources Game Fish and Aquatic Life Fund; use of funds.

§22-11-4. General powers and duties of director with respect to pollution.

(a) In addition to all other powers and duties the director has and may exercise, subject to specific grants of authority
to the chief or the board in this article or elsewhere in this
code, the director has the following powers and authority and
shall perform the following duties:

(1) To perform any and all acts necessary to carry out the
purposes and requirements of this article and of the “Federal
Water Pollution Control Act,” 33 U.S.C. §1251, et seq., as
amended, relating to this state’s participation in the “National
Pollutant Discharge Elimination System,” 33 U.S.C. §1342,
established under that act;

(2) To encourage voluntary cooperation by all persons in
the conservation, improvement and development of water
resources and in controlling and reducing the pollution of the
waters of this state, and to advise, consult and cooperate with
all persons, all agencies of this state, the federal government
or other states, and with interstate agencies in the furtherance
of the purposes of this article, and to this end and for the
purpose of studies, scientific or other investigations, research,
experiments and demonstrations pertaining thereto, the
division may receive moneys from such agencies, officers
and persons on behalf of the state. The division shall pay all
moneys so received into a special fund hereby created in the
State Treasury, which fund shall be expended under the
direction of the director solely for the purpose or purposes for
which the grant, gift or contribution was made;

(3) To encourage the formulation and execution of plans
by cooperative groups or associations of municipal
corporations, industries, industrial users, and other users of
waters of the state, who, jointly or severally, are or may be
the source of pollution of such waters, for the control and
reduction of pollution;

(4) To encourage, participate in, or conduct or cause to be
conducted studies, scientific or other investigations, research,
experiments and demonstrations relating to the water
resources of the state and water pollution and its causes, control and reduction, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(5) To study and investigate all problems concerning water flow, water pollution and the control and reduction of pollution of the waters of the state, and to make reports and recommendations with respect thereto;

(6) To collect and disseminate information relating to water pollution and the control and reduction thereof;

(7) To develop a public education and promotion program to aid and assist in publicizing the need for, and securing support for, pollution control and abatement;

(8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;

(9) To develop programs for the control and reduction of the pollution of the waters of the state;

(10) To exercise general supervision over the administration and enforcement of the provisions of this article, and all rules, permits and orders issued pursuant to the provisions of this article, article eleven-a of this chapter and article one, chapter twenty-two-b of this code;

(11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage,
66 industrial wastes, and other wastes, and the control and
67 reduction of water pollution, and to this end, the director may
68 cooperate with any public or private agency and receive
69 therefrom, on behalf of the state, and for deposit in the State
70 Treasury, any moneys which such agency may contribute as
71 its part of the expenses thereof, and all gifts, donations or
72 contributions received as aforesaid shall be expended by the
73 director according to the requirements or directions of the
74 donor or contributor without the necessity of an appropriation
75 therefor, except that an accounting thereof shall be made in
76 the fiscal reports of the division;

77 (12) To require the prior submission of plans,
78 specifications, and other data relative to, and to inspect the
79 construction and operation of, any activity or activities in
80 connection with the issuance and revocation of such permits
81 as are required by this article, article eleven-a of this chapter
82 or the rules promulgated thereunder;

83 (13) To require any and all persons directly or indirectly
84 discharging, depositing or disposing of treated or untreated
85 sewage, industrial wastes or other wastes, or the effluent
86 therefrom, into or near any waters of the state or into any
87 underground strata, and any and all persons operating an
88 establishment which produces or which may produce or from
89 which escapes, releases or emanates or may escape, release
90 or emanate treated or untreated sewage, industrial wastes or
91 other wastes, or the effluent therefrom, into or near any
92 waters of the state or into any underground strata, to file with
93 the division such information as the director may require in
94 a form or manner prescribed for such purpose, including, but
95 not limited to, data as to the kind, characteristics, amount and
96 rate of flow of any such discharge, deposit, escape, release or
97 disposition;

98 (14) To adopt, modify, or repeal procedural rules and
99 interpretive rules in accordance with the provisions of
chapter twenty-nine-a of this code administering and implementing the powers, duties and responsibilities vested in the director by the provisions of this article and article eleven-a of this chapter;

(15) To cooperate with interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to: (A) The control and reduction of water pollution; and (B) the state’s share of waters in watercourses bordering the state;

(16) To adopt, modify, repeal and enforce rules, in accordance with the provisions of chapter twenty-nine-a of this code: (A) Implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the director and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; and (C) facilitating the state’s participation in the “National Pollutant Discharge Elimination System” pursuant to the “Federal Water Pollution Control Act,” as amended: Provided, That no rule adopted by the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

(17) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development and conservation.

(b) Whenever required to carry out the objectives of this article or article eleven-a of this chapter the director shall require the owner or operator of any point source or establishment to: (i) Establish and maintain such records; (ii) make such reports; (iii) install, use and maintain such monitoring equipment or methods; (iv) sample such effluents
in accordance with such methods, at such locations, at such
intervals and in such manner as the director shall prescribe;
and (v) provide such other information as the director may
reasonably require.

(c) The director upon presentation of credentials: (i) Has
a right of entry to, upon or through any premises in which an
effluent source is located or in which any records required to
be maintained under subsection (b) of this section are
located; and (ii) may at reasonable times have access to and
copy any records, inspect any monitoring equipment or
method required under subsection (b) of this section and
sample any streams in the area as well as sample any
effluents which the owner or operator of such source is
required to sample under subsection (b) of this section.
Nothing in this subsection eliminates any obligation to follow
any process that may be required by law.

(d) The director is hereby authorized and empowered to
investigate and ascertain the need and factual basis for the
establishment of public service districts as a means of
controlling and reducing pollution from unincorporated
communities and areas of the state, investigate and ascertain,
with the assistance of the Public Service Commission, the
financial feasibility and projected financial capability of the
future operation of any such public service district or
districts, and to present reports and recommendations thereon
to the county commissions of the areas concerned, together
with a request that such county commissions create a public
service district or districts, as therein shown to be needed and
required and as provided in article thirteen-a, chapter sixteen
of this code. In the event a county commission fails to act to
establish a county-wide public service district or districts, the
director shall act jointly with the Commissioner of the
Bureau of Public Health to further investigate and ascertain
the financial feasibility and projected financial capability
and, subject to the approval of the Public Service
Commission, order the county commission to take action to
establish such public service district or districts as may be
necessary to control, reduce or abate the pollution, and when
so ordered the county commission members must act to
establish such a county-wide public service district or
districts.

(e) The director has the authority to enter at all
reasonable times upon any private or public property for the
purpose of making surveys, examinations, investigations and
studies needed in the gathering of facts concerning the water
resources of the state and their use, subject to responsibility
for any damage to the property entered. Upon entering, and
before making any survey, examination, investigation and
study, such person shall immediately present himself or
herself to the occupant of the property. Upon entering
property used in any manufacturing, mining or other
commercial enterprise, or by any municipality or
governmental agency or subdivision, and before making any
survey, examination, investigation and study, such person
shall immediately present himself or herself to the person in
charge of the operation, and if he or she is not available, to a
managerial employee. All persons shall cooperate fully with
the person entering such property for such purposes. Upon
refusal of the person owning or controlling such property to
permit such entrance or the making of such surveys,
examinations, investigations and studies, the director may
apply to the circuit court of the county in which such
property is located, or to the judge thereof in vacation, for an
order permitting such entrance or the making of such
surveys, examinations, investigations and studies; and
jurisdiction is hereby conferred upon such court to enter such
order upon a showing that the relief asked is necessary for
the proper enforcement of this article: Provided, That
nothing in this subsection eliminates any obligation to follow
any process that may be required by law.
§22-11-22. Civil penalties and injunctive relief; administrative penalties.

(a) Any person who violates any provision of any permit issued under or subject to the provisions of this article or article eleven-a of this chapter is subject to a civil penalty not to exceed $25,000 per day of such 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, article eleven-a of this chapter or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed $25,000 per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the director in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

Upon application by the director, the circuit courts of the state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, article eleven-a of this chapter, the rules of the board or director, effluent limitations, the terms and conditions of any permit granted under the provisions of this article or article eleven-a of this chapter or any order of the director or board, and the venue of any such actions shall be the county in which the violations or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. 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 injunction application filed. Any other section of this code to the contrary notwithstanding, the state is not required to furnish bond as a prerequisite to obtaining injunctive relief under this article or article eleven-a of this chapter. An application for an injunction under the provisions of this section may be filed
and injunctive relief granted notwithstanding that all of the
administrative remedies provided for in this article have not
been pursued or invoked against the person or persons
against whom such relief is sought and notwithstanding that
the person or persons against whom such relief is sought
have not been prosecuted or convicted under the provisions
of this article.

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. Any such 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 in any injunctive proceeding must be
filed with said Supreme Court of Appeals within ninety days
from the date of entry of the judgment of the circuit court.

Legal counsel and services for the chief, director or the
board in all civil penalty and injunction proceedings in the
circuit court and in the Supreme Court of Appeals of this
state shall be provided by the Attorney General or his or her
assistants and by the prosecuting attorneys of the several
counties as well, all without additional compensation, or the
chief, director or the board, with the written approval of the
Attorney General, may employ counsel to represent him or
her or it in a particular proceeding.

(b) In addition to the powers and authority granted to the
director by this chapter to enter into consent agreements,
settlements and otherwise enforce this chapter, the director
shall propose, for legislative promulgation, rules in
accordance with the provisions of article three, chapter
twenty-nine-a of this code to establish a mechanism for the
administrative resolution of violations set forth in this section
through consent order or agreement as an alternative to
instituting a civil action.
§22-11-24. Violations; criminal penalties.

(a) Any person who causes pollution or who fails or refuses to discharge any duty imposed upon him or her by this article, by article eleven-a of this chapter or by any rule of the board or director, promulgated pursuant to the provisions and intent of this article or article eleven-a of this chapter, or by an order of the director or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article or article eleven-a of this chapter, or who fails or refuses to comply with any term or condition of such permit, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for a period not exceeding six months, or by both fine and imprisonment.

(b) Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article, article eleven-a of this chapter or any rules promulgated by the director thereunder is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $1,000 nor more than $10,000 or by imprisonment in jail not exceeding six months or by both fine and imprisonment.

(c) Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or article eleven-a of this chapter or who willfully or negligently violates any provision of this article or article eleven-a of this chapter, any rule of the board or director, any effluent limitation or any order of the director or board is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation or by
imprisonment in jail not exceeding one year or by both fine and imprisonment.

(d) Any person convicted of a second or subsequent willful violation of subsections (b) or (c) of this section or knowingly and willfully violates any provision of any permit, rule or order issued under or subject to the provisions of this article or article eleven-a of this chapter, or knowingly and willfully violates any provision of this article or article eleven-a of this chapter, is guilty of a felony and, upon conviction, shall be imprisoned in a correctional facility not less than one nor more than three years, or fined not more than $50,000 for each day of violation, or both fined and imprisoned.

(e) Any person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided in this article have been pursued or invoked against said person and notwithstanding that civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against such person.

(f) Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of the permit, the person is not subject to criminal prosecution for pollution recognized and authorized by the permit.

§22-11-25. Civil liability; Natural Resources Game Fish and Aquatic Life Fund; use of funds.

If any loss of game fish or aquatic life results from a person or persons' failure or refusal to discharge any duty imposed upon such person by this article, section seven, article six of this chapter or article eleven-a of this chapter,
either the West Virginia Division of Natural Resources or the Division of Environmental Protection, or both jointly may initiate a civil action on behalf of the State of West Virginia to recover from such person or persons causing such loss a sum equal to the cost of replacing such game fish or aquatic life. Any moneys so collected shall be deposited in a special revenue fund entitled “Natural Resources Game Fish and Aquatic Life Fund” and shall be expended as hereinafter provided. The fund shall be expended to stock waters of this state with game fish and aquatic life. Where feasible, the Director of the Division of Natural Resources shall use any sum collected in accordance with the provisions of this section to stock waters in the area in which the loss resulting in the collection of such sum occurred. Any balance of such sum shall remain in said fund and be expended to stock state-owned and operated fishing lakes and ponds, wherever located in this state, with game fish and aquatic life.

ARTICLE 11A. CARBON DIOXIDE SEQUESTRATION.

§22-11A-1 Legislative findings.
§22-11A-3. Prohibition of carbon dioxide sequestration without a permit; injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article.
§22-11A-4. General powers and duties of the secretary with respect to carbon dioxide sequestration.
§22-11A-5. Permit application requirements and contents; permit application fees.
§22-11A-6. Carbon dioxide sequestration working group.
§22-11A-8. Oil, natural gas and coaled methane activities at carbon dioxide sequestration sites; extraction of sequestered carbon dioxide.

§22-11A-1. Legislative findings.

(a) The Legislature finds that:

(1) Carbon dioxide is a colorless, odorless gas that can be produced by burning carbon and organic compounds;
(2) Carbon dioxide is emitted into the atmosphere from a number of sources including fossil-fueled power plants, automobiles, certain industrial processes and other naturally occurring sources;

(3) By far, fossil-fueled power plants are the largest source of carbon dioxide emissions. These power plants emit approximately one-third of carbon dioxide emissions worldwide;

(4) On average, the United States generates approximately fifty-one percent of its electricity from coal-burning power plants, which are a prominent source of carbon dioxide emissions;

(5) West Virginia’s reliance on electricity produced from coal is even more pronounced, as West Virginia generates approximately ninety-eight percent of its electricity from coal-burning power plants;

(6) There is increasing pressure, both nationally and worldwide, to produce electrical power with an ever-decreasing amount of carbon dioxide emissions;

(7) West Virginia is a state rich in natural resources, and its economy depends largely upon the demand for energy produced from materials found within the state, not the least of which is coal;

(8) As demand for energy produced from alternative and renewable resources rises, new technologies are needed to burn coal more cleanly and efficiently if West Virginia is to remain competitive as an energy producing state;

(9) Carbon dioxide capture and sequestration is the capture and secure storage of carbon dioxide that would otherwise be emitted to, or remain in, the atmosphere. This
technology is currently being used and tested to reduce the carbon footprint of electricity generated by the combustion of coal;

(10) The science of carbon dioxide capture and sequestration is advancing rapidly, but the environmental effects of large, long-term carbon dioxide sequestration operations are still being studied and evaluated;

(11) Although the state is committed to expanding its portfolio of alternative and renewable energy resources, electricity generated from these resources is insufficient in the near term to meet the rising demand for energy;

(12) It is in the public interest to advance the implementation of carbon dioxide capture and sequestration technologies into the state’s energy portfolio;

(13) The transportation by pipeline and sequestration of carbon dioxide by a public utility engaged in the generation of electricity may be integral to the construction, maintenance and operation of electric light, heat and power plants operating in the state; and

(14) Therefore, in order to expand more rapidly the generation of electricity with little or no carbon dioxide emissions, it is critical to encourage the development of carbon dioxide capture and sequestration technologies; to examine factors that may be integral to the construction, maintenance and operation of carbon dioxide sequestration facilities; and to study the economic and environmental feasibility of large, long-term carbon dioxide sequestration operations.

(b) It is therefore the purpose of this article to:
(1) Establish a legal and regulatory framework for the permitting of carbon dioxide sequestration operations;

(2) Designate a state agency responsible for establishing standards and rules for the permitting of carbon dioxide sequestration operations including, but not limited to, rules pertaining to:

(A) Environmental surveillance of carbon dioxide sequestration operations;

(B) The monitoring of geologic migration of carbon dioxide and the detection of carbon dioxide excursions;

(C) Construction standards for carbon dioxide sequestration operations;

(D) Bonding or other financial assurances; and

(E) The closure of carbon dioxide sequestration operations, including post-closure monitoring, verification and maintenance; and to

(3) With the aid of a carbon dioxide sequestration working group, develop a long-term strategy for the regulation of carbon dioxide sequestration.


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

(a) "Department" means the Department of Environmental Protection;

(b) "Carbon dioxide sequestration" means the injection of carbon dioxide and associated constituents into subsurface
geologic formations intended to prevent its release into the atmosphere;

(c) "Carbon dioxide sequestration facilities" means the surface equipment used for transport, storage and injection of carbon dioxide, excluding pipelines used to transport carbon dioxide from one or more capture facilities to the sequestration injection site or sites.

(d) "Carbon dioxide sequestration site" means the underground carbon dioxide formations where the carbon dioxide is stored or is intended to be stored;

(e) "Excursion" means the migrating of carbon dioxide at or beyond the boundary of a carbon dioxide sequestration site; and

(f) "Secretary" means the Secretary of the Department of Environmental Protection.

§22-11A-3. Prohibition of carbon dioxide sequestration without a permit; injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article.

(a) The provisions of article eleven of this chapter apply to all permits issued pursuant to this article except, where the express provisions of this article conflict with the provisions of article eleven of this chapter, the express provisions of this article control.

(b) Except as set forth in subsection (c) of this section, no person shall engage in carbon dioxide sequestration in this state unless authorized by a permit issued by the department in accordance with section eight, article eleven of this chapter.
(c) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other minerals pursuant to a project approved by the department shall not be subject to the provisions of this article.

(d) If an oil, natural gas or coalbed methane operator converts its operations to carbon dioxide sequestration upon the cessation of oil or other mineral recovery operations, then the carbon dioxide sequestration facility and the carbon dioxide sequestration site shall be regulated pursuant to this article and article eleven of this chapter. If an operator does not convert its operations to carbon dioxide sequestration upon the cessation of oil or other mineral recovery operations, the wells shall be plugged and abandoned in accordance with article six of this chapter.

(e) Any entity owning or operating a carbon dioxide sequestration facility which has commenced construction on or before the effective date of this article is hereby authorized to continue operating until such time as the secretary has established operational and procedural requirements applicable to such existing facilities and the entity owning or operating such facility has had a reasonable opportunity to comply with those requirements.

§22-11A-4. General powers and duties of the secretary with respect to carbon dioxide sequestration.

(a) The secretary, after receiving public comment and after consultation with the state geologist and the working group established in section six of this article, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article, including without limitation:

(1) The requirements for issuance of permits for carbon dioxide sequestration;
(2) The requirements for carbon dioxide sequestration permit applications;

(3) The issuance of notice following the approval of a permit application, which shall identify the location at which the public may examine the permit, describe the nature of the public’s opportunity to comment, and list any public hearing that may be held in connection with the permit. The secretary shall allow no less than thirty days for public comment on the draft permit and may for good cause extend the comment period up to an additional thirty days. Notice of any public hearing shall be given no less than thirty days prior to its conduct; and

(4) The creation of subclasses of wells within the existing Underground Injection Control (UIC) program administered by the United States Environmental Protection Agency pursuant to Part C of the Safe Drinking Water Act, 42 U.S.C. §300h, et seq., to protect human health, safety and the environment and to allow for the permitting of the sequestration of carbon dioxide;

(5) The appropriate bonding or other financial assurance procedures necessary to ensure that carbon dioxide sequestration sites and facilities will be constructed, operated and closed in accordance with the purposes and provisions of this article; and

(6) The proper duration of the post-closure care period for carbon dioxide sequestration sites.

(b) The secretary shall propose amendments to the rules promulgated under this section and take such action as may be required in order to fulfill the state’s primary responsibility for assuring compliance with the federal Safe Drinking Water Act, including any amendments thereto.
§22-11A-5. Permit application requirements and contents; permit application fees.

1 (a) A carbon dioxide sequestration permit application shall include:

3 (1) A description of the general geology of the area to be affected by the injection of carbon dioxide, including geochemistry, structure and faulting, fracturing and seals, and stratigraphy and lithology, including petrophysical attributes;

7 (2) A characterization of the injection zone and aquifers above and below the injection zone that may be affected by the injection of carbon dioxide, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

12 (3) The identification of all other drill holes and operating wells that exist or have existed within and adjacent to the proposed sequestration site;

15 (4) An assessment of the effect on fluid resources, on subsurface structures and on the surface of lands that may reasonably be expected to be affected by the injection of carbon dioxide, together with the measures required to mitigate those effects;

20 (5) The plans and procedures for environmental surveillance and excursion detection, prevention and control programs;

23 (6) A site and facilities description, including a description of the proposed carbon dioxide sequestration facilities and documentation sufficient to demonstrate that the applicant has, or will have prior to the commencement of the operation, all legal rights, including without limitation the right to surface or pore space use, necessary to sequester
carbon dioxide and associated constituents into the proposed carbon dioxide sequestration site;

(7) Proof that the proposed injection wells are designed, at minimum, to the construction standards set forth by the department;

(8) A plan for periodic mechanical integrity testing of all wells;

(9) A monitoring plan to assess the migration of the injected carbon dioxide and to ensure the retention of the carbon dioxide in the sequestration site;

(10) Proof of bonding or financial assurance to ensure that carbon dioxide sequestration sites and facilities will be constructed, operated and closed in accordance with the purposes and provisions of this article and the rules promulgated pursuant to this article;

(11) A detailed plan for post-closure monitoring, verification, accounting, maintenance and mitigation;

(12) Procedures for the operator of the facilities to provide immediate verbal notice to the department of any excursion after the excursion is discovered, followed by written notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests within thirty days of discovering the excursion;

(13) Procedures for the termination or modification of any applicable Underground Injection Control (UIC) permit issued under Part C of the Safe Drinking Water Act, 42 U.S.C. §300h, et seq., if an excursion cannot be controlled or mitigated;
A plan to provide proof of notice to surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests regarding the contents of the application. At a minimum, the notice shall include:

(A) The publication of a Class I legal advertisement in a newspaper of general circulation in each county of the proposed operation. The applicant shall publish the notice at the time of filing and shall identify in the notice the location where the public may examine the application;

(B) The mailing of a copy of the notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests that are located within one mile of the proposed boundary of the carbon dioxide sequestration site; and

(15) Any other requirement set forth in legislative rules promulgated under this article.

(b) Upon filing an application, an applicant shall pay a reasonable fee, as established by the secretary in legislative rules, to the department for the costs of reviewing, evaluating and processing the permit, serving notice of an application and holding any hearings. The fee shall be credited to a separate account and shall be used by the department as required to complete the tasks necessary to process, publish and reach a decision on the permit application.

§22-11A-6. Carbon dioxide sequestration working group.

(a) The secretary shall establish the carbon dioxide sequestration working group.

(b) The secretary, in cooperation with the state geologist, shall appoint at least fifteen persons to serve on the working group.
(c) In selecting persons to serve on the working group, the secretary and the state geologist shall appoint at least three persons who are experts in carbon dioxide sequestration or related technologies, at least one person who is an expert in environmental science, at least one person who is an expert in geology, at least one person who is an attorney with an expertise in environmental law, at least one person who is an expert in engineering, at least one person who is an expert in the regulation of public utilities in West Virginia, one person who is a representative of a citizen’s group advocating environmental protection, a representative of a coal power electric generating utility advocating carbon dioxide sequestration development, at least one person who is an engineer with an expertise in the underground storage of natural gas, the chairman of the National Council of Coal Lessors or his/her designee, a representative of the West Virginia Coal Association, a representative of the West Virginia Land and Mineral Owners Association, and at least one representative advocating the interests of surface owners of real property.

(d) The working group shall study issues pertaining to carbon dioxide sequestration including, but not limited to, scientific, technical, legal and regulatory issues, and issues regarding ownership and other rights and interest in subsurface space that can be used as storage space for carbon dioxide and other associated constituents, or other substances, commonly referred to as “pore space,” and shall report to the secretary and the Legislature its recommendations with respect to the development, regulation and control of carbon dioxide sequestration and related technologies.

(e) In addition, the working group shall develop a long-term strategy for the regulation of carbon dioxide sequestration in West Virginia.
(f) The working group may conduct or initiate studies, scientific or other investigations, research, experiments and demonstrations pertaining to carbon dioxide sequestration, and to this end, the working group may cooperate with state institutions of higher education or any public or private agency. The secretary may receive on behalf of the state for deposit in the State Treasury any moneys which such institutions or state agencies may be authorized to transfer to the Secretary, and all gifts, donations or contributions which such private agencies or other may provide, to defray the expenses of the working group. Any amounts so received shall be expended by the secretary solely for the purposes set forth in subsection (d) of this section.

(g) The working group shall issue a preliminary report to the secretary and the Legislature by July 1, 2010, containing any preliminary recommendations or findings of the working group.

(h) The working group shall issue a final report to the Legislature by July 1, 2011, which report shall, at a minimum:

1. Recommend appropriate methods to encourage the development of carbon dioxide sequestration technologies;

2. Assess the economic and environmental feasibility of large, long-term carbon dioxide sequestration operations;

3. Recommend any legislation the working group may determine to be necessary or desirable to clarify issues regarding the ownership and other rights and interest in pore space;

4. Recommend methods of facilitating the widespread use of carbon dioxide sequestration technology throughout West Virginia;
(5) Identify geologic sequestration monitoring sites to assess the short-term and long-term impact of carbon dioxide sequestration;

(6) Assess the feasibility of carbon dioxide sequestration in West Virginia and the characteristics of areas within the state where carbon dioxide could be sequestered;

(7) Assess the costs, benefits, risks and rewards of large-scale carbon dioxide sequestration projects in West Virginia;

(8) Assess the potential carbon dioxide sequestration capacity in this state;

(9) Identify areas of research needed to better understand and quantify the processes of carbon dioxide sequestration;

(10) Outline the working group’s long-term strategy for the regulation of carbon dioxide sequestration in West Virginia.

(i) The working group, along with the state geologist, shall assist the secretary in developing and promulgating legislative rules under this article.


The department shall include within the reports to the Legislature required by section six, article twelve of this chapter its observations concerning all aspects of compliance with this article, including without limitation the promulgation of rules, the formation of the carbon dioxide sequestration working group, the permitting process and any pertinent changes to federal rules or regulations.
§22-11A-8. Oil, natural gas and coalbed methane activities at carbon dioxide sequestration sites; extraction of sequestered carbon dioxide.

(a) Nothing in this article shall be deemed to affect the otherwise lawful right of a mineral owner to drill or bore through a carbon dioxide sequestration site, if done in accordance with the rules promulgated under this article for protecting the carbon dioxide sequestration site against the escape of carbon dioxide.

(b) Nothing in this article is intended to impede or impair the ability of an oil, natural gas or coalbed methane operator to inject carbon dioxide through an approved enhanced oil, natural gas or coalbed methane recovery project and to establish, verify, register and sell emission reduction credits associated with the project.

(c) The Office of Oil and Gas shall have jurisdiction over any subsequent extraction of sequestered carbon dioxide that is intended for commercial or industrial purposes.


The secretary is authorized to enter into cooperative agreements with other governments or government entities for the purpose of regulating carbon dioxide storage projects that extend beyond state regulatory authority under this article.
AN ACT to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to extending the time for compliance with selenium effluent limits; requiring a certain comprehensive study; and filing a report with Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §22-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply therewith: Provided, That where necessary and proper, the chief may specify a reasonable time for persons not
complying with such standards and limitations to comply therewith, and upon the expiration of any such period of time, the chief shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduction of the quality of such waters below the standards and limitations established therefor by rules of the board or director. The Legislature finds that there are concerns within West Virginia regarding the applicability of the research underlying the federal selenium criteria to a state such as West Virginia which has high precipitation rates and free-flowing streams and that the alleged environmental impacts that were documented in applicable federal research have not been observed in West Virginia and, further, that considerable research is required to determine if selenium is having an impact on West Virginia streams, to validate or determine the proper testing methods for selenium and to better understand the chemical reactions related to selenium mobilization in water. For existing NPDES permits, the department may extend the time period for achieving water quality-based effluent limits for selenium discharges into waters supporting aquatic life uses to July 1, 2012, upon compliance with all federally required public notice requirements for such modifications, upon a finding that the permittee cannot comply with its existing compliance schedule and that an extension is not in violation of any state or federal laws, rules or regulations. The West Virginia Department of Environmental Protection is hereby directed to undertake a comprehensive study relating to selenium and prepare a report detailing such findings and submitting the report to the Joint Committee on Government and Finance no later than January 1, 2010. In conducting such study, the West Virginia Department of Environmental Protection shall consult with, among others, West Virginia University and the West Virginia Water Research Institute.
An ACT to amend and reenact §22-16-12 of the Code of West Virginia, 1931, as amended, relating to facilitate the complete closure of the Gwinn, or otherwise known as the Midwest Landfill, located in Summers County, by having the Secretary of the Department of Environmental Protection place said closure as a top priority use of Solid Waste Facility Closure Cost Assistance Fund moneys.

Be it enacted by the Legislature of West Virginia:

That §22-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE.**

§22-16-12. Solid Waste Facility Closure Cost Assistance Fund; closure extension; reporting requirements.

(a) The "Closure Cost Assistance Fund" is continued as a special revenue account in the State Treasury. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall remain in such account and be available for
expenditure in the succeeding fiscal year. Separate subaccounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

(c) The fund consists of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by acts of the Legislature for inclusion in the fund, including moneys collected and deposited into the fund pursuant to section four of this article;

(2) Contributions, grants and gifts from any source, both public and private, which may be used by the secretary for any project or projects;

(3) Amounts repaid by permittees pursuant to section eighteen, article fifteen of this chapter; and

(4) All interest earned on investments made by the state from moneys deposited in this fund.

(d) The Solid Waste Management Board, upon written approval of the secretary, has the authority to pledge all or such part of the revenues paid into the Closure Cost Assistance Fund as may be needed to meet the requirements of any revenue bond issue or issues of the Solid Waste Management Board authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such 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 such revenue bond issue or issues when other moneys pledged may be insufficient therefor. Any pledge of moneys in the Closure Cost Assistance Fund for revenue bonds shall be a prior and superior charge on such fund over the use of
any of the moneys in such fund to pay for the cost of any
project on a cash basis. Expenditures from the fund, other
than for the retirement of revenue bonds, may only be made
in accordance with this article.

(e) The amounts deposited in the fund may be expended
only on the cost of projects as provided for in sections three
and fifteen of this article, as provided in subsection (f) of this
section and for payment of bonds and notes issued pursuant
to section five of this article. No more than two percent of
the annual deposits to such fund may be used for
administrative purposes.

(f) Notwithstanding any provision of this article, upon
request of the Solid Waste Management Board, and with the
approval of the projects by the Secretary of the Department
of Environmental Protection, the secretary may pledge and
place into escrow accounts up to an aggregate of $2,000,000
of the fund to satisfy two years debt service requirement
that permittees of publicly-owned landfills and transfer
stations are required to meet in order to obtain loans. Pledges
shall be made on a project-by-project basis, may not exceed
$500,000 for a project and shall be made available after loan
commitments are received. The secretary may pledge funds
for a loan only when the following conditions are met:

(1) The proceeds of the loan are used only to perform
construction of a transfer station or a composite liner system
that is required to meet title forty-seven, series thirty-eight,
solid waste management rules;

(2) The permittee dedicates all yearly debt service
revenue, as determined by the Public Service Commission,
to meet the repayment schedule of the loan, before it uses
available revenue for any other purpose; and

(3) That any funds pledged may only be paid to the
lender if the permittee is in default on the loan.
(g) Any landfills which were ordered to close by December 31, 1994, and which have been granted a certificate of need pursuant to subsection (b), section one-c, article two, chapter twenty-four of this code or section one-i of said article are hereby granted a closure extension until January 1, 1996. No landfill which closed on or before September 30, 1994, shall be eligible for such an extension.

(h) The Department of Environmental Protection is required to file, by January 1 of each ensuing year, an annual report with the Joint Committee on Government and Finance providing details on the manner in which the landfill closure assistance funds were expended for the prior fiscal year.

(i) Notwithstanding any other contrary provision of this code, the secretary shall place as a top priority to expend any and all funds derived from the Solid Waste Facility Closure Cost Assistance Fund necessary to facilitate the complete closure forthwith of the now-defunct Gwinn or otherwise known as the Midwest Landfill, located in Summers County.
a notice of hearing to be published; and making technical clarifications.

Be it enacted by the Legislature of West Virginia:

That §22-21-6, §22-21-15, §22-21-16 and §22-21-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

§22-21-15. Drilling units and pooling of interests.


§22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

(a) It is unlawful for any person to commence, operate, deepen or stimulate any coalbed methane well, to conduct any horizontal drilling of a well commenced from the surface for the purpose of commercial production of coalbed methane or to convert any existing well, vent hole or other hole to a coalbed methane well, including in any case site preparation work which involves any disturbance of land, without first securing from the chief a permit pursuant to this article.

(b) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of: (i) The well operator; (ii) the agent required to be designated under subsection (e) of this section; and (iii) every person or entity whom the applicant must notify under section nine of this article;
(2) The name and address of each coal operator of record and each coal owner of record or providing a record declaration of notice pursuant to section thirty-six, article six of this chapter of any coal seam which is: (i) To be penetrated by a proposed well; (ii) within seven hundred fifty horizontal feet of any portion of the proposed well bore; or (iii) within one hundred vertical feet of the designated coal seams to be stimulated in the proposed well, except that in the case of an application to convert a ventilation hole to a gob well, the name and address only of such owner or operator of the seams to be penetrated by a proposed well shall be necessary;

(3) The well name or such other identification as the chief may require;

(4) The approximate depth to which the well is to be drilled, deepened or converted, the coal seams (stating the depth and thickness of each seam) in which the well will be completed for production and any other coal seams (including the depth and thickness of each seam) which will be penetrated by the well;

(5) A description of any means to be used to stimulate the well;

(6) If the proposed well will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(7) If the proposed operation is to convert an existing well, as defined in section one, article six of this chapter, or to convert a vertical ventilation hole to a coalbed methane well, all information required by this section, all formations
(8) Except for a gob well or vent hole proposed to be converted to a well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the well which will protect all workable coal seams which will be penetrated by the well;

(9) If the proposed operations will include horizontal drilling of a well commenced on the surface, a description of such operations, including both the vertical and horizontal alignment and extent of the well from the surface to total depth;

(10) Any other relevant information which the chief may require by rule.

(c) Each application for a coalbed methane well permit shall be accompanied by the following:

(1) The applicable bond prescribed by section eight of this article;

(2) A permit application fee of $650;

(3) The erosion and sediment control plan required under subsection (d) of this section;

(4) The consent and agreement of the coal owner as required by section seven of this article and, if applicable, section twenty of this article;

(5) A plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the drill site is located, the name of the surface owner of the drill site tract, the acreage of the same, the names of the
surface owners of adjacent tracts, the names of all coal
owners underlying the drill site tract, the proposed or actual
location of the well determined by a survey, the courses and
distances of such location from two permanent points or
landmarks on said tract, the location of any other existing or
permitted coalbed methane well or any oil or gas well located
within two thousand five hundred feet of the drill site, the
number to be given the coalbed methane well, the proposed
date for completion of drilling, the proposed date for any
stimulation of the well and, if horizontal drilling of a well
commenced on the surface is proposed, the vertical and
horizontal alignment and extent of the well;

(6) A certificate by the applicant that the notice
requirements of section nine of this article have been satisfied
by the applicant. Such certification may be by affidavit of
personal service, or the return receipt card, or other postal
receipt, for certified mailing.

(d) An erosion and sediment control plan shall
accompany each application for a permit. Such plan shall
contain methods of stabilization and drainage, including a
map of the project area indicating the amount of acreage
disturbed. The erosion and sediment control plan shall meet
the minimum requirements of the West Virginia erosion and
sediment control manual as adopted and, from time to time,
amended by the Office of Oil and Gas in consultation with
the several soil conservation districts pursuant to the control
program established in this state through Section 208 of the
federal Water Pollution Control Act Amendments of 1972,
33 U. S. C. §1288. The erosion and sediment control plan
shall become part of the terms and conditions of a permit and
the provisions of the plan shall be carried out where
applicable in operations under the permit. The erosion and
sediment control plan shall set out the proposed method of
reclamation which shall comply with the requirements of
section thirty, article six of this chapter.
(e) The well operator named in such application shall designate the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the State of West Virginia, upon whom notices, orders or other communications issued pursuant to this article may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the office of such termination and designate a new agent.

(f) The well owner or operator shall install the permit number as issued by the chief in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the chief.

(g) The chief shall deny the issuance of a permit if he or she determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation. In the event that the chief finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, he or she may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all work being conducted under the permit until the chief reinstates the permit, at which time the work may be continued. The chief shall make written findings of any such determination made by him or her and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to section twenty-five of this article. The chief shall make a written finding of any such determination.
(h) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or be confined in jail not more than one year, or both fined and confined.

§22-21-15. Drilling units and pooling of interests.

(a) In the absence of a voluntary agreement, an operator, owner or other party claiming an ownership interest in the coalbed methane may file an application with the chief to pool: (i) Separately owned interests in a single tract; (ii) separately owned tracts; (iii) separately owned interests in any tract; and (iv) any combination of (i), (ii) and (iii) to form a drilling unit for the production of coalbed methane from one or more coalbed methane wells.

(b) The application for a drilling unit may accompany the application for a permit for a coal bed methane well or be filed as a supplement to the permit application. Such application shall be verified by the applicant and contain the following information for the proposed unit:

(1) The identity of each well and operator as set out in the well permit application;

(2) Each well number, if one has been assigned;

(3) The acreage of the proposed unit, the identity and acreage of each separate tract to be included in the proposed unit and, where parts of tracts are included, the acreage of such parts;

(4) The district and county in which the unit is located;

(5) The names and addresses of all persons to whom notice must be provided under subsection (a), section sixteen of this article known to the applicant. When any coal seam is separately owned, the list of names shall identify such
(6) A statement describing the actions taken by the applicant to obtain a voluntary agreement from each interest owner or claimant named in the application to whom notice must be provided under subsection (a), section sixteen of this article or any other owner or claimant who has notified the applicant of a claim from which agreement has not been obtained;

(7) Other pertinent and relevant information as the chief may prescribe by rules.

(c) The application for a drilling unit shall be accompanied with the following:

(1) A plat prepared by a licensed land surveyor or registered professional engineer showing the location of the coalbed methane well or wells, or proposed well or wells, the boundary and acreage of the proposed drilling unit, the boundary and acreage of each tract contained in the unit and, where parts of tracts are included, the boundary and acreage of such parts, a name identification of each tract and the district and county in which the unit is located. All boundaries must be shown with courses and distances;

(2) A permit application fee of $250;

(3) A certificate by the applicant that the notice requirements of section sixteen of this article were satisfied by the applicant. Such certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing;

(4) An estimate of the cost, or the actual cost if known, of drilling, completing and equipping, operating, plugging and abandoning any well or wells in the proposed unit.

(a) At least thirty days prior to the date set for hearing under section seventeen of this article, the applicant shall deliver by personal service or by certified mail, return receipt requested, notice to the following:

(1) Each coal owner of record and coal operator of record of any coal seam underlying any tract or portion thereof which is proposed to be included in the unit;

(2) Each owner and lessee of record and each operator of natural gas surrounding the well bore and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower. Notices to gas operators shall be sufficient if served upon the agent of record with the Office of Oil and Gas; and

(3) Any coalbed methane owner to the extent not otherwise named which interest arises from a deed, lease, contract, will, inheritance or other instrument of record wherein a person or entity identified in subdivision (1) or (2), subsection (a) of this section or the predecessor in title to such person or entity, expressly granted, leased, reserved or conveyed coalbed methane.

(b) At least thirty days prior to the date set for the hearing under section seventeen of this article, the applicant shall publish a notice by a Class II legal advertisement in the county or counties in which the well unit is to be located. The legal advertisement shall contain the information required by subsection (c) and any other information as the chief shall prescribe by rule.

(c) The notice required by this section shall specify a time and place for a conference and a hearing on this
application, shall advise the persons notified that the applicant has filed an application for a drilling unit for the production of coalbed methane, that they may be present and object or offer comments to the formation of the proposed unit and shall be accompanied with copies of: (i) The permit application for the coalbed methane well; (ii) the permit application for the drilling unit; and (iii) the plat of the drilling unit. However, in the case of the notice required by subsection (b) of this section, only the address of where an interested party can obtain such copies is required to be published.

(d) Notice by the applicant to all persons to whom notice must be provided under subsection (a) of this section and notice by publication as provided by subsection (b) of this section shall be deemed to include, and shall be deemed to be sufficient notice to, all potential claimants to ownership of the coalbed methane.

§22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.

(a) Prior to the time fixed for a hearing under subsection (b) of this section, the board shall also set a time and place for a conference between the proposed applicant to operate a coalbed methane drilling unit and all persons to whom notice has been given under subsection (a), section sixteen of this article who have not entered into a voluntary agreement. At such conference the applicant and such other persons present or represented having an interest in the proposed unit shall be given an opportunity to enter into voluntary agreements for the development of the unit upon reasonable terms and conditions.
No order may be issued by the board as to any unit unless the applicant submits at the hearing a verified statement setting forth the results of the conference. If agreement is reached with all parties to the conference, the board shall find the unit is a voluntary unit and issue an order consistent with such finding.

(b) The review board shall, upon request of a proposed applicant for a drilling unit or upon request of a coal owner or operator, provide a convenient date and time for a hearing on the application for a drilling unit, which hearing date shall be no sooner than thirty-five days nor more than sixty days of the date the request for hearing is made. The review board shall review the application and on the date specified for a hearing shall conduct a public hearing. The review board shall take evidence, making a record thereof and consider:

(1) The area which may be drained efficiently and economically by the proposed coalbed methane well or wells;

(2) The plan of development of the coal and the need for proper ventilation of any mines or degasification of any affected coal seams;

(3) The nature and character of any coal seam or seams which will be affected by the coalbed methane well or wells;

(4) The surface topography and property lines of the lands underlaid by the coal seams to be included in the unit;

(5) Evidence relevant to the proper boundary of the drilling unit;

(6) The nature and extent of ownership of each coalbed methane owner or claimant and whether conflicting claims exist;
(7) Whether the applicant for the drilling unit proposes to be the operator of the coalbed methane well or wells within the unit; and if so, whether such applicant has a lease or other agreement from the owners or claimants of a majority interest in the proposed drilling unit;

(8) Whether a disagreement exists among the coalbed methane owners or claimants over the designation of the operator for any coalbed methane wells within the unit and, if so, relevant evidence to determine which operator can properly and efficiently develop the coalbed methane within the unit for the benefit of the majority of the coalbed methane owners;

(9) If more than one person is interested in operating a well within the unit, the estimated cost submitted by each such person for drilling, completing, operating and marketing the coalbed methane from any proposed well or wells; and

(10) Any other available geological or scientific data pertaining to the pool which is proposed to be developed.

(c) The review board shall take into account the evidence introduced, comments received and any objections at the hearing, and if satisfied that a drilling unit should not be established, shall enter an order denying the application. If the review board is satisfied that a drilling unit should be established, it shall enter a pooling order establishing a drilling unit. Such pooling order shall:

(1) Establish the boundary of the proposed unit, making such adjustment in the boundary as is just;

(2) Authorize the drilling and operation of a coalbed methane well or wells for production of coalbed methane from the pooled acreage;
(3) Establish minimum distances for any wells in the unit and for other wells which would drain the pooled acreage;

(4) Designate the operator who will be authorized to drill, complete and operate any well or wells in the unit;

(5) Establish a reasonable fee for the operator for operating costs, which shall include routine maintenance of the well and all accounting necessary to pay all expenses, royalties and amounts due working interest owners;

(6) Such other findings and provisions as are appropriate for each order.

(d) The operator designated in such order shall be responsible for drilling, completing, equipping, operating, plugging and abandoning the well, shall market all production therefrom, shall collect all proceeds therefor and shall distribute such proceeds in accordance with the division order issued by the review board.

(e) Upon issuance of the pooling order, the coalbed methane owners or any lessee of any such owners or any claimants thereto may make one of the following elections within thirty days after issuance of the order:

(1) An election to sell or lease its interest to the operator on such terms as the parties may agree, or if unable to agree, upon such terms as are set forth by the board in its order;

(2) An election to become a working interest owner by participating in the risk and cost of the well; or

(3) An election to participate in the operation of the well as a carried interest owner.

Any entity which does not make an election within said thirty days prescribed herein shall be deemed to have elected to sell or lease under subdivision (1) of this subsection.
(f) The working interest in the well shall include: (i) The right to participate in decisions regarding expenditures in excess of operating costs, taxes, any royalties in excess of one-eighth, and other costs and expenses allowed in the pooling order; and (ii) the obligation to pay for all expenditures. The working interest shall exist in: (i) All well operators and owners who participate in the risk and cost of drilling and completing the well; and (ii) carried interest owners after recoupment provided in subsection (h) of this section. The working interest owners' net revenue share shall be seven eighths of the proceeds of sales of coalbed methane at the wellhead after deduction of operating costs, taxes, any royalties in excess of one-eighth and other costs and expenses allowed in a pooling order. Unless the working interest owners otherwise agree, the working interest owners shall share in all costs and decisions in proportion to their ownership interest in the unit. If any working interest owner deposits or contributes amounts in the escrow account which exceed actual costs, such owner shall be entitled to a refund; and if amounts deposited or contributed are less than actual costs, such owner shall make a deposit or contribution for the deficiency.

(g) The royalty interest in a well shall include the right to receive one eighth of the gross proceeds resulting from the sale of methane at the wellhead and such interest shall exist in the coalbed methane owners: Provided, That any coalbed methane owner who in good faith has entered a lease or other contract prior to receiving notice of an application to form the drilling unit as provided herein shall be entitled to such owner's fractional interest in the royalty calculated at a rate provided for in such contract. Each such owner shall be entitled to share in the royalty in proportion to his or her fractional interest in the unit.

(h) Where a coalbed methane owner elects to become a carried interest owner, such owner shall be entitled to his or
her proportionate share of the working interest after the other
working interest owners have recouped three hundred percent
of the reasonable capital costs of the well or wells, including
drilling, completing, equipping, plugging and abandoning
and any further costs of reworking or other improvements of
a capital nature.

(i) Each pooling order issued shall provide for the
establishment of an escrow account into which the payment
of costs and proceeds attributable to any conflicting interests
shall be deposited and held for the interest of the claimants as
follows:

(1) Each participating working interest owner, except for
the operator, shall deposit in the escrow account its
proportionate share of the costs allocable to the ownership
interest claimed by such working interest owner.

(2) The operator shall deposit in the escrow account all
proceeds attributable to the conflicting interests of any
coalbed methane owners who lease, or are deemed to have
leased, their interest, plus all proceeds in excess of
operational expenses, as allowed in the pooling order,
attributable to the conflicting working and carried interest
owners.

(j) After each coalbed methane owner has made, or has
been deemed to have made, an election under subsection (e)
of this section, the review board shall enter a division order
which shall set out the net revenue interest of each working
interest owner, including each carried interest owner and the
royalty interest of each coalbed methane owner. Thereafter
payments shall be made to working interest owners, carried
interest owners and royalty interest owners in accordance
with the division order, except that payments attributable to
conflicting claims shall be deposited in the escrow account.
The fractional interest of each owner shall be expressed as a decimal carried to the sixth place.

(k) Upon resolution of conflicting claims either by voluntary agreement of the parties or a final judicial determination, the review board shall enter a revised division order in accordance with such agreement or determination and all amounts in escrow shall be distributed as follows:

(1) Each legally entitled working interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests;

(2) Each legally entitled carried interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests, after recoupment of amounts provided in subsection (h) of this section;

(3) Each legally entitled entity leasing, or deemed to have leased, its coalbed methane shall receive a share of the royalty proceeds attributable to the conflicting interests; and

(4) The operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner.

(l) The review board shall enact rules for the administration and protection of funds delivered to escrow accounts.

(m) No provision of this section or article shall obviate the requirement that the coal owner's consent and agreement be obtained prior to the issuance of a permit as required under section seven of this article.
AN ACT to amend and reenact §29-1-11 of the Code of West Virginia, 1931, as amended, relating to authorizing distribution of fairs and festivals’ funding by the Commissioner of the Division of Culture and History.

Be it enacted by the Legislature of West Virginia:

That §29-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-11. Power to accept and receive funds; power to apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

(a) The division may, in the name of the State of West Virginia, through the commissioner or its commissions, accept and receive grants, appropriations, gifts, bequests and funds from any public or private source for the purpose of carrying out the duties and purposes of this article.
(b) The division may, through the commissioner or its commissions, apply for grants from the federal government, private foundations and any other source for the purposes of this article.

(c) All funds received from any source shall be paid into the Treasury of the state and disbursed upon warrant by the State Auditor following requisition by the division. The requisitions shall be signed by the commissioner or by another person as the commissioner may authorize by written document deposited with the Auditor or, in the event of emergency, by the Governor or the Governor's designee.

(d) No funds or gifts received from any source shall be expended or used for any purpose other than that intended as evidenced by a positive and affirmative declaration or by a negative restriction or limitation.

(e) The division may assist in the promotion and operation of an annual state fair and other regional or local fairs and festivals entitled to aid when funds are available and to expend those funds for the support and development of fairs and festivals.

(f) All federal or state funds received to provide grants-in-aid or awards to further the purposes of this article shall be approved and distributed by the appropriate commission established by this article.
CHAPTER 102

(S.B. 610 - By Senators Palumbo, Stollings and Plymale)

[Passed April 10, 2009; in effect ninety days from passage.]  
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §11-13X-3, §11-13X-5, §11-13X-6, §11-13X-8, §11-13X-9 and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Film Industry Investment Act; providing and eliminating definitions; increasing the amount of credit allowed in certain years; providing requirements to claim credit; providing for use of credit and transfer process; eliminating liability of transferees for credit that is disqualified; authorizing issuance of rules by the Secretary of Commerce for administration of the film credit; and making amendments retroactively applicable to taxable years beginning after December 31, 2007.

Be it enacted by the Legislature of West Virginia:

That §11-13X-3, §11-13X-5, §11-13X-6, §11-13X-8, §11-13X-9 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-5. Amount of credit allowed; limitation of the credits.
§11-13X-6. Requirements for credit.
§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.

(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, fees and costs for related fringe benefits provided for talent, management or labor that are subject to West Virginia income tax;

(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) "Film industry production" means a qualified project intended for reasonable national or international commercial exploitation.

(6) "Film office" means the West Virginia Film Office, which is a division of the West Virginia Department of Commerce.

(7) "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.

(8) "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
$25,000 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 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;
84 (E) Is intended for reasonable commercial exploitation
85 for the delivery medium used; and

86 (F) Does not contain content that portrays the State of
87 West Virginia in a significantly derogatory manner.

88 (9) "Tax Commissioner" means the West Virginia State
89 Tax Commissioner or his or her designee.

§11-13X-5. Amount of credit allowed; limitation of the credits.

1 (a) Base allowance. --

2 The amount of credit allowed to every eligible company,
3 except as provided in subsection (b) of this section, shall be
4 twenty-seven percent.

5 (b) Extra allowance for hiring of local workers. -- Any
6 amount allowed in subsection (a) of this section shall be
7 increased by an additional four percent if the eligible
8 company, or its authorized payroll service company, employs
9 ten or more West Virginia residents as part of its full-time
10 employees working in the state or as apprentices working in
11 the state.

12 (c) Application of the credits. -- The tax credit allowed
13 under this section shall be applied to the eligible company's
14 state tax liability as provided in section seven of this article.

15 (d) Limitation of the credits. -- No more than $10 million
16 of the tax credits shall be allocated by the film office in any
17 given West Virginia state fiscal year. The film office shall
18 allocate the tax credits in the order the applications therefor
19 are received.

§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; and
   B. 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:

1. An eligible company shall have filed all required West Virginia tax reports and returns and paid any balance of West Virginia tax due on those returns;
(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 a document granting the appropriate tax credit to the eligible company and shall report this information to the Tax Commissioner.

§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 subsection (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 is allowed to a prior taxable year that does not have qualified expenditures 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 issued 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 or the Tax Commissioner.

(3) The film office shall not approve the transfer or assignment of a tax credit if the seller or transferor has an outstanding tax obligation with the State of West Virginia 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 specified in this article.

(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) The Tax Commissioner shall not seek recourse against the transferee for any portion of the credit that may be subsequently disqualified.

Failure to comply with this section will result in the disallowance of the tax credit until the seller or transferor is in full compliance.


(a) The Tax Commissioner shall propose for promulgation rules pursuant to article three, chapter twenty-
nine-a of this code as may be necessary to carry out the purposes of this article.

(b) The Secretary of the West Virginia Department of Commerce may propose for promulgation rules pursuant to article three, chapter twenty-nine-a of this code as may be necessary to carry out the purposes of this article.


(a) The credit allowed by this article shall be allowed upon eligible expenditures occurring after December 31, 2007.

(b) The amendments to this article enacted in the year 2009 shall apply to all taxable years beginning after December 31, 2007, and shall apply with retroactive effect with relation to taxable years beginning prior to the date of passage of such amendments.

CHAPTER 103

(S.B. 384 - By Senators Unger, Snyder, Stollings, Green and Barnes)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2009.]

AN ACT to amend and reenact §29-3A-1 of the Code of West Virginia, 1931, as amended, relating to the control of an emergency scene; providing for transfer of authority to permit safe traffic flow; and providing for the use of property to prevent the spread of a fire.
Be it enacted by the Legislature of West Virginia:

That §29-3A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. AUTHORITY OF LOCAL FIRE DEPARTMENTS.

§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency; definition.

(a) While any fire department recognized or approved by the West Virginia State Fire Commission is responding to, operating at or returning from a fire, fire hazard, service call or other emergency, the fire chief, any other elected or appointed fire line officer or any member serving in the capacity of appointed fire line officer in charge, except on industrial property where trained industrial fire-fighting personnel are present, shall have the authority:

(1) To control and direct firefighting and fire control activities at such scene;

(2) To order any person or persons to leave any building or place in the vicinity of such scene for the purpose of protecting such persons from injury;

(3) To blockade any public highway, street or private right-of-way temporarily while at such scene in accordance with the following provisions:

(A) If the emergency incident occurs on a public highway and it is reasonably expected that the highway may be closed for a period of at least two hours or upon the request of the incident commander acting in accordance with the provisions of the National Incident Management System in effect as of December 31, 2008, the Secretary of Transportation or his or
(B) The Secretary of Transportation or his or her designee(s) shall respond to the notification of the incident in order to assist with the restoration of traffic flow or with the development and implementation of a traffic diversion plan;

(C) All authorized persons who respond to the scene of the emergency incident and all of their available resources will become part of the incident command system;

(D) All of those persons are to collaborate and cooperate with the incident commander and appropriate law-enforcement personnel at the emergency incident scene in order to restore traffic flow as soon as possible after the scene is deemed safe by the incident commander; and

(E) Once the incident commander has declared the emergency incident scene to be safe, the control of the traffic at the emergency incident scene will be transferred to the Department of Transportation or the appropriate law-enforcement agency;

(4) To enter the building, structure, enclosure or other property of any person or persons at any time of the day or night, without liability, while operating at such scene;

(5) To enter any building, including private dwellings, or upon any premises where an emergency exists, or where there is reasonable cause to believe an emergency exists, for the purpose of eliminating the emergency;

(6) To enter any building, including private dwellings, or premises near the scene of the emergency for the purpose of protecting the building or premises or for the purpose of eliminating the emergency which is in progress in another building or premises;
(7) To inspect for preplanning all buildings, structures or other places in their fire district, excepting, however, the interior of a private dwelling, with the consent of the owner or occupant, where any combustible materials, including waste paper, rags, shavings, waste, leather, rubber, crates, boxes, barrels, rubbish or other combustible material that is or may become dangerous as a fire menace to such building or buildings, structure or other places has been allowed to accumulate or where such chief or his or her designated representative has reason to believe that such material of a combustible nature has accumulated or is liable to be accumulated;

(8) To direct the removal, use or destruction of any fence, house, motor vehicle or other thing which may reasonably be determined to be necessary to be pulled down, destroyed or removed to prevent the further spread of the fire or hazardous condition;

(9) To request and be supplied with additional materials such as sand, treatments, chemicals, etc., and special equipment when dealing with an accident on a public highway or railroad right-of-way when it is deemed a necessity to prevent the further spread of the fire or hazardous condition, the cost of which to be borne by the owner of the instrumentality which caused the fire or hazardous condition; and

(10) To order disengagement or discouplement of any convoy, caravan or train of vehicles, craft or railway cars if deemed a necessity in the interest of safety of persons or property.

(b) As used in this article, the term "emergency" means a situation in which the fire officer in charge knows or in which a reasonable person would believe that there exists an imminent threat of serious bodily harm or death to a person or significant damage to property.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31A-2-4c; to amend said code by adding thereto a new section, designated §38-1-8a; to amend said code by adding thereto a new section, designated §44-13-4a; and to amend and reenact §59-1-10 of said code, all relating to the gathering and reporting of foreclosure data and statistics; providing for the gathering and reporting of information pertaining to sales of residential real estate pursuant to deeds of trust; providing for the compilation and filing of data by trustees with the report of sales filed with the county clerks; providing for the periodic forwarding of gathered information to the Commissioner of Banking; identifying the minimum information to be provided; providing for fees to be paid for receipt and processing of the filed information; providing for the reporting of foreclosure statistics by the Commissioner of Banking; authorizing the Commissioner of Banking to establish appropriate forms and filing requirements and procedures by rule.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31A-2-4c; that said
code be amended by adding thereto a new section, designated §38-1-8a; that said code be amended by adding thereto a new section, designated §44-13-4a; and that §59-1-10 of said code be amended and reenacted, all to read as follows:

Chapter
31A. Banks and Banking.
38. Liens.
44. Administration of Estates and Trusts.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4c. County Clerk to file reports of trustees regarding sales of residential real property pursuant to deeds of trust and forward to the banking commissioner.

(a) In addition to the jurisdiction, powers, and duties set out in section four of this article, the banking commissioner is vested with the jurisdiction, powers and duties to receive and compile the data into an electronic data base and make available the raw data that is required to be reported by trustees to county clerks pursuant to chapter thirty-eight, article one, section eight-a of the Code of West Virginia. The commissioner has the power to promulgate rules in accordance with this section and the provisions of article three, chapter twenty-nine-a of this code in order to carry out the requirements of this section. The commissioner is authorized to expend funds for this purpose.

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-8a. Reports by Trustee to County Clerk; additional information to be filed with report of sale.
(a) This section applies to deeds of trust if the property conveyed therein includes real property that is occupied, or is intended to be occupied as a residence by the grantor at time the deed of trust is executed and delivered.

(b) Beginning July 1, 2009, when a report of the sale of the property sold pursuant to a deed of trust is placed of record by the trustee with the clerk of the county commission as provided in section eight of this article, the trustee shall include the following information on a disclosure form submitted with and made a part of the report of sale:

(1) Name or names of the grantor of the deed of trust;

(2) Street address, city, state and zip code of real property subject to the trust;

(3) Original trustee name;

(4) Substitute trustee name, if any, and date of appointment;

(5) The address, telephone number and electronic contact information for the trustee making the sale;

(6) Date, time and place advertised for sale;

(7) Name of original secured lender;

(8) Current holder of deed of trust, and the current holder’s address;

(9) Original principal amount of the secured debt;

(10) Original interest rate;

(11) Whether the loan was adjustable and if so current rate;
(12) Total secured indebtedness at time of sale;

(13) The number of months the loan is delinquent at time of notice of sale; and

(14) The date, time and place of sale;

(15) The name of the purchaser;

(16) The appraised value at the time of loan, if available;

(17) The net amount applied to the secured loan;

(18) The date the report of sale is recorded; and

(19) Any other information the banking commissioner may require by rule.

The Commissioner of Banking shall publish a form setting out the information required by subsection (b) and instructions as to how this information is to be filed with the report of sale.

Notwithstanding any other provision of this code, nothing in this section shall be deemed to create a responsibility by the Commissioner of Banking to provide any report other than the compiled raw data submitted from each county clerk or to verify the accuracy of the data submitted.

Failure to comply with this the provisions of this section shall not affect the validity of the sale or the title to the property sold by the trustee.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.
ARTICLE 13. POWERS AND DUTIES OF CLERKS OF COUNTY COURTS IN COUNTIES HAVING SEPARATE TRIBUNAL FOR POLICE AND FISCAL PURPOSES.


(a) Beginning with the third quarter of 2009, the clerk of each county commission shall file quarterly with the Division of Banking the disclosure forms of deed of trust foreclosure sales that were recorded in that county for the preceding calendar year quarter. The reports shall be filed within fifteen days of the last day of September, December, March and June of each year. The reports shall be filed in electronic format, where possible.

(b) Notwithstanding any other provision of this code, nothing in this section shall be deemed to create a responsibility on the division of banking to provide any report other than the compiled raw data submitted from each county clerk or to verify the accuracy of the data submitted.

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

*CLERK'S NOTE: This section was also amended by SB 528 (Chapter 49), which passed subsequent to this act.
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, $15.

(2) Trustee’s report of sale for any property for which additional information and filing requirements are required by section eight-a, article one, chapter thirty-eight of this code, $40, provided that $20 of each recording fee received pursuant to this subdivision shall be deposited into the county’s general revenue fund and $20 of each of the aforesaid recording fees shall be paid by the county clerk to the State Treasurer quarterly and deposited in the banking commissioner’s fund to cover its expenses in aggregating, collecting and publishing the data.

(3) Financing, continuation, termination or other statement or writing permitted to be filed under chapter forty-six of this code, $10.

(4) Plat or map (with no deed of conveyance), $10.

(5) Service discharge record, no charge.

(6) Any document or writing other than those referenced in subdivisions (1), (2), (3), (4) and (5) of this subsection, $10.

(7) If any document or writing contains more than five pages, for each additional page, $1.

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.

(8) 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 $4 of each of the aforesaid recording fees together with
$5 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
two 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, $5.

(c) For issuance of marriage license and other duties
pertaining to the marriage license (including preparation of
the application, administering the oath, registering and
recording the license, mailing acknowledgment of minister's
return to one of the licensees and notification to a licensee
after sixty days of the nonreceipt of the minister's return),
$35.

(1) One dollar of the marriage license fee received
pursuant to this subsection shall be paid by the county clerk
into the State Treasury as a state registration fee in the same
manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury for the Family Protection Shelter Support act in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(3) Ten dollars of the marriage license fee received pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d)(1) For a copy of any writing or document, if it is not otherwise provided for, one dollar fifty cents.

(2) If the copy of the writing or document contains more than two pages, for each additional page, $1.

(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, $5.

(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.
AN ACT to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating to granting exemptions from disclosure under the Freedom of Information Act for certain information retained by the Division of Corrections and the Regional Jail Authority.

Be it enacted by the Legislature of West Virginia:

That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

(a) The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a
commercial concern who are using it to fabricate, produce or
compound an article or trade or a service or to locate
minerals or other substances, having commercial value, and
which gives its users an opportunity to obtain business
advantage over competitors;

(2) Information of a personal nature such as that kept in
a personal, medical or similar file, if the public disclosure
thereof would constitute an unreasonable invasion of privacy,
unless the public interest by clear and convincing evidence
requires disclosure in the particular instance: Provided, That
nothing in this article shall be construed as precluding an
individual from inspecting or copying his or her own
personal, medical or similar file;

(3) Test questions, scoring keys and other examination
data used to administer a licensing examination, examination
for employment or academic examination;

(4) Records of law-enforcement agencies that deal with
the detection and investigation of crime and the internal
records and notations of such law-enforcement agencies
which are maintained for internal use in matters relating to
law enforcement;

(5) Information specifically exempted from disclosure by
statute;

(6) Records, archives, documents or manuscripts
describing the location of undeveloped historic, prehistoric,
archaeological, paleontological and battlefield sites or
constituting gifts to any public body upon which the donor
has attached restrictions on usage or the handling of which
could irreparably damage such record, archive, document or
manuscript;

(7) Information contained in or related to examination,
operating or condition reports prepared by, or on behalf of,
40 or for the use of any agency responsible for the regulation or
41 supervision of financial institutions, except those reports
42 which are by law required to be published in newspapers;
43
44 (8) Internal memoranda or letters received or prepared by
45 any public body;
46
47 (9) Records assembled, prepared or maintained to prevent,
48 mitigate or respond to terrorist acts or the threat of terrorist acts,
49 the public disclosure of which threaten the public safety or the
50 public health;
51
52 (10) Those portions of records containing specific or unique
53 vulnerability assessments or specific or unique response plans,
54 data, databases and inventories of goods or materials collected
55 or assembled to respond to terrorist acts; and communication
56 codes or deployment plans of law enforcement or emergency
57 response personnel;
58
59 (11) Specific intelligence information and specific
60 investigative records dealing with terrorist acts or the threat
61 of a terrorist act shared by and between federal and
62 international law-enforcement agencies, state and local law
63 enforcement and other agencies within the Department of
64 Military Affairs and Public Safety;
65
66 (12) National security records classified under federal
67 executive order and not subject to public disclosure under
68 federal law that are shared by federal agencies and other
69 records related to national security briefings to assist state
70 and local government with domestic preparedness for acts of
71 terrorism;
72
73 (13) Computing, telecommunications and network
74 security records, passwords, security codes or programs used
75 to respond to or plan against acts of terrorism which may be
76 the subject of a terrorist act;
(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222; and

(19) Records of the Division of Corrections and the Regional Jail Authority relating to design of corrections and jail facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates, that if released, could be utilized by an inmate to escape a corrections or jails facility, or to cause injury to another inmate or to facility personnel.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;
101 (3) Affect the conduct of a branch or level of government by intimidation or coercion; or

103 (4) Retaliate against a branch or level of government for a policy or conduct of the government.

105 (c) Nothing in the provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section should be construed to make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

CHAPTER 106

(Com. Sub. for S.B. 575 - By Senators Guills, Caruth, Kessler, Bowman and Foster)

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on May 7, 2009.]

all relating to gaming at a historic resort hotel and pari-mutuel racetracks generally; designating certain moneys as state moneys and establishing audit provisions; updating and conforming provisions for consistency purposes between hotel and racetracks; legislative findings and intent; authorizing certain West Virginia Lottery games; modifying licensure requirements and fees therefor; renaming State Gaming Fund the Historic Resort Hotel Fund; providing for distribution of the Historic Resort Hotel Fund; creating formula for renewal fee assessments; expanding licensees’ authority to set wagers with commission approval; altering maximum bets for video lottery machines; redefining “gross terminal income” to allow and account for promotional play at hotel and racetracks; authorizing hotel to contract for management services with commission approval; authorizing the hotel to lease certain services; creating the Human Resource Benefit Fund; permissible expenditures; establishing Human Resource Benefit Advisory Board and setting criteria for its membership; powers and duties; authorizing certain complimentary services; restricting who may enter the designated gaming area of the hotel to overnight guests, certain participants at hotel-based events and residents; clarifying and specifying forfeiture of property provisions; authorizing commission to operate slot machines and video lottery games; establishing requirements for video lottery terminals; establishing specific duties required of the gaming facility; creating Capital Reinvestment Fund; imposing surcharge against share of gross terminal income to be paid into the Capital Reinvestment Fund; declaring all authorized games to be owned by the state; preempting inconsistent county and municipal ordinances or rules; limiting taxing authority; declaring exemption from federal law to facilitate authorization of legal gaming; establishing rules of play and dispute resolution; authorizing shipment of gambling devices into state; modifying distribution of revenue; license suspension and revocation; revising civil penalties; authorizing emergency rulemaking; and establishing and modifying criminal offenses and penalties.
Be it enacted by the Legislature of West Virginia:


ARTICLE 22. STATE LOTTERY ACT.

§29-22-29. Moneys transferred or allocated to nongovernmental entities are state moneys and have been so in the past; right to audit state moneys transferred to nongovernmental entities.

(a) Moneys transferred by the commission under provisions of this article and articles twenty-two-a, twenty-two-b, twenty-two-c and twenty-five of this chapter to nongovernmental recipients, are state moneys and have been state moneys in prior fiscal periods.

(b) All nongovernmental entities that have received state moneys as described in subsection (a) of this section are subject to audit by the commission. An audit provided for by this section may be conducted by employees or agents of the commission. An audit provided for by this section may also be conducted by the Legislative Auditor.
CHAPTER 14. GAMES OF CHANCE

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-1. Authorization of limited gaming facility; findings; intent.

(a) Operation of West Virginia Lottery table games. -- Notwithstanding any provision of law to the contrary, the
operation of West Virginia Lottery games permitted by this article and the related operation of a gaming facility and ancillary activities is not unlawful when conducted under the terms specified in this article and article twenty-two-c of this chapter.

(b) Legislative findings. -- The Legislature finds and declares that the tourism industry plays a critical role in the economy of this state and that a substantial state interest exists in protecting that industry. It further finds and declares that the authorization of the operation of a gaming facility at no more than one well-established historic resort hotel in this state as provided in this article will serve to protect and enhance the tourism industry, and indirectly other segments of the economy of this state, by providing a resort hotel amenity which is becoming increasingly important to many actual and potential resort hotel patrons.

The Legislature finds and declares that video lottery operations pursuant to section twenty-eight of this article and the operation of the other West Virginia Lottery table games permitted by this article constitute the operation of lotteries within the purview of section thirty-six, article VI of the Constitution of West Virginia.

(c) Legislative intent. -- It is the intent of the Legislature in the enactment of this article to promote tourism and year-round employment in this state. It is expressly not the intent of the Legislature to promote gaming. As a consequence, it is the intent of the Legislature to allow limited gaming as authorized by this article and article twenty-two-c of this chapter with all moneys gained from the operation of the gaming facility, other than those necessary to reimburse reasonable costs of operation, to inure to the benefit of the state. Further, it is the intent of the Legislature that amendments made to this article during the 2009 regular session will establish appropriate conformity between the
operations of video lottery and West Virginia Lottery table
games at the licensed gaming facility under this article and
the operations of video lottery and table games at the pari-
mutuel racetracks licensed under articles twenty-two-a and
twenty-two-c of this chapter.


As used in this article, unless the context otherwise
requires, the following words and phrases have meanings
indicated:

(a) "Applicant" means any person or entity applying for
a license.

(b) "Adjusted gross receipts" means the gross receipts of
a gaming facility from West Virginia Lottery table games
less winnings paid to wagerers in such games.

(c) "Annual average gross receipts of the pari-mutuel
racetracks with table games licenses" means the amount
obtained by adding the adjusted gross receipts of all West
Virginia pari-mutuel racetracks with table games licenses and
then dividing that calculation by the number of West Virginia
pari-mutuel racetracks with table games licenses.

(d) "Background investigation" means a security,
criminal and credit investigation of an applicant who has
applied for the issuance or renewal or a license pursuant to
this article or a licensee who holds a current license.

(e) "Controlling interest" means:

(1) For a partnership, an interest as a general or limited
partner holding more than five percent interest in the entity;
(2) For a corporation, an interest of more than five percent of the stock in the corporation; and

(3) For any other entity, an ownership interest of more than five percent in the entity.

(f) “Controlling person” means, with respect to another person, any person directly or indirectly owning or holding a controlling interest in that other person.

(g) “Commission” means the State Lottery Commission created in section four, article twenty-two of this chapter.

(h) “Designated gaming area” means one or more specific floor areas of a licensed gaming facility within which the commission has authorized operation of video lottery terminals or West Virginia Lottery table games, or the operation of both video lottery terminals and West Virginia Lottery table games.

(i) “Director” means the Director of the State Lottery Commission.

(j) “Erasable programmable read-only memory chips” or “EPROM” means the electronic storage medium on which the operation software for all games playable on a video lottery terminal resides and can also be in the form of CD ROM, flash ROM or other new technology medium that the commission may from time to time approve for use in video lottery terminals. All electronic storage media are considered to be property of the State of West Virginia.

(k) “Fringe benefits” means sickness and accident benefits and benefits relating to medical and pension coverage.
(l) "Gaming devices and supplies" mean gaming tables for all West Virginia Lottery table games, roulette wheels, wheels of fortune, video lottery terminals, cards, dice, chips, tokens, markers or any other mechanical, electronic or other device, mechanism or equipment or related supplies utilized in the operation of a West Virginia Lottery table game.

(m) "Gaming facility" means a designated area on the premises of an existing historic resort hotel in which West Virginia Lottery table games are conducted by a gaming licensee.

(n) "Gaming licensee" means the licensed operator of a gaming facility.

(o) "Gross receipts" means the total amount of money exchanged for the purchase of chips, tokens or electronic cards by patrons of a gaming facility reduced by gross terminal income to the extent gross terminal income is included in the amount of money exchanged.

(p) "Gross terminal income", as used in this article and as used in article twenty-two-a of this chapter, means the total amount of cash, vouchers or tokens inserted into the video lottery terminals operated by a licensee, minus promotional credits played, and minus the total value of coins and tokens won by a player and game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(q) "Historic resort hotel" means a resort hotel registered with the United States Department of the Interior as a national historic landmark in its National Registry of Historic Places having not fewer than five hundred guest rooms under common ownership and having substantial recreational guest amenities in addition to the gaming facility.
(r) "Historic Resort Hotel Fund" means the special fund in the State Treasury created in section twenty-two of this article.

(s) "Human Resource Benefit Fund" means the special fund in the State Treasury created in section twenty-two-a of this article.

(t) "Human Resource Benefit Advisory Board" or "board" means the advisory board created in section twenty-two-a of this article.

(u) "License" means a license issued by the commission, including:

(1) A license to operate a gaming facility;

(2) A license to supply gaming devices and supplies to a gaming facility;

(3) A license to be employed in connection with the operation of a gaming facility; or

(4) A license to provide management services under a contract to a gaming facility under this article.

(v) "Licensed gaming facility employee" means any individual licensed to be employed by a gaming licensee in connection with the operation of a gaming facility.

(w) "Licensed gaming facility supplier" means a person who is licensed by the commission to engage in the business of supplying gaming devices and gaming supplies to a gaming facility.

(x) "Licensee" means a gaming licensee, a licensed gaming facility supplier or a licensed gaming facility employee.
(y) "Manufacturer" means any person holding a license granted by the commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random number generator of the video lottery terminals, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed gaming facility in West Virginia and who contracts directly with the licensee for the sale, lease or other assignment to a licensed gaming facility in West Virginia.

(z) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual cost of administering video lottery at the licensed gaming facility. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(aa) "Person" means any natural person, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

(bb) "Premises of an existing historic resort hotel" means the historic resort hotel, attachments of the historic resort hotel, and the traditional, immediate grounds of the historic resort hotel.

(cc) "Promotional credits" means credits given by the licensed gaming facility or licensed racetrack to players allowing limited free play of video lottery terminals in total amounts and under conditions approved in advance by the commission.

(dd) "Video lottery game", as used in this article and as used in article twenty-two-a of this chapter, means a
commission-approved, -owned and -controlled electronically simulated game of chance which is displayed on a video lottery terminal and which:

1. Is connected to the commission’s central control computer by an online or dial-up communication system;

2. Is initiated by a player’s insertion of cash, vouchers or tokens into a video lottery terminal, which causes game play credits to be displayed on the video lottery terminal and, with respect to which, each game play credits entitles a player to choose one or more symbols or numbers or to cause the video lottery terminal to randomly select symbols or numbers;

3. Allows the player to win additional game play credits, coins or tokens based upon game rules which establish the random selection of winning combinations of symbols or numbers or both and the number of free play credits, coins or tokens to be awarded for each winning combination of symbols or numbers or both;

4. Is based upon a computer-generated random selection of winning combinations based totally or predominantly on chance;

5. In the case of a video lottery game which allows the player an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play, either:

   A. Signals the player, prior to any optional selection by the player of randomly generated replacement symbols or numbers, as to which symbols or numbers should be retained by the player to present the best chance, based upon probabilities, that the player may select a winning combination;
(B) Signals the player, prior to any optional selection by the player of randomly generated additional symbols or numbers, as to whether such additional selection presents the best chance, based upon probabilities, that the player may select a winning combination; or

(C) Randomly generates additional or replacement symbols and numbers for the player after automatically selecting the symbols and numbers which should be retained to present the best chance, based upon probabilities, for a winning combination, so that in any event, the player is not permitted to benefit from any personal skill, based upon a knowledge of probabilities, before deciding which optional numbers or symbols to choose in the course of video lottery game play;

(6) Allows a player at any time to simultaneously clear all game play credits and print a redemption ticket entitling the player to receive the cash value of the free plays cleared from the video lottery terminal; and

(7) Does not use the following game themes commonly associated with casino gambling: Roulette, dice or baccarat card games: Provided, That games having a display with symbols which appear to roll on drums to simulate a classic casino slot machine, game themes of other card games and keno may be used.

(ee) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

(ff) “West Virginia Lottery table game” means any game played with cards, dice or any mechanical, electromechanical or electronic device or machine for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette, wheel of fortune or any variation of these games similar in design or operation
and expressly authorized by rule of the commission, including multiplayer electronic table games, machines and devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets, pull tabs or similar games.


(a) Duties. -- In addition to the duties set forth elsewhere in this article, the commission shall:

1. Establish minimum standards for gaming devices and supplies, including electronic or mechanical gaming devices;

2. Approve, modify or reject game rules of play for all West Virginia Lottery table games proposed to be operated by a gaming licensee;

3. Approve, modify or reject minimum internal control standards proposed by the licensee gaming facility for a West Virginia Lottery table game, including the maintenance of financial books and records;

4. Provide staff to supervise, inspect and monitor the operation of any gaming facility, including inspection of gaming devices and supplies used in the operation to assure continuous compliance with all rules of the commission and provisions of this article;

5. Establish minimum levels of insurance to be maintained with respect to a gaming facility;

6. Investigate applicants to determine eligibility for any license and, where appropriate, select among competing applicants;
(7) Designate appropriate classifications of personnel to be employed in the operation of a gaming facility and establish appropriate licensing standards within the classifications;

(8) Issue all licenses;

(9) Charge and collect the taxes and fees authorized, required or specified in this article:

(i) Receive, accept and pay the specified percentage of taxes collected under sections twenty and twenty-one of this article into the Historic Resort Hotel Fund; and

(ii) Receive, accept and pay the specified percentage of taxes collected under sections twenty and twenty-one of this article into the Human Resource Benefit Fund;

(10) Maintain a record of all licenses issued;

(11) Keep a public record of all commission actions and proceedings; and

(12) File a written annual report to the Governor, the President of the Senate and the Speaker of the House of Delegates on or before January 30 of each year and any additional reports as the Governor or Legislature may request.

(b) Powers. -- In addition to the powers set forth elsewhere in this article, the commission has the following powers:

(1) To sue to enforce any provision of this article by injunction;
(2) To hold hearings, administer oaths and issue subpoenas for the attendance of a witness to testify and to produce evidence;

(3) To enter a gaming facility at any time and without notice to ensure strict compliance with the rules of the commission;

(4) To bar, for cause, any person from entering or participating in any capacity in the operation of a gaming facility; and

(5) To exercise such other powers as may be necessary to effectuate the provisions of this article.

§29-25-5. Rules.

The commission shall propose for promulgation legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to provide for implementation and enforcement of the provisions of this article. Any legislative rules proposed by the commission before September 1, 2009, may be by emergency rule.


(a) Generally. -- Notwithstanding any provision of this code to the contrary, the commission shall, by contract or cooperative agreement with the West Virginia State Police, arrange for those law-enforcement services uniquely related to gaming as such occurs at the gaming facility that are necessary to enforce the provisions of this article.

(b) Costs. — The actual cost of services provided by the West Virginia State Police pursuant to a contract or cooperative agreement entered into pursuant to the provisions
of subsection (a) of this section, including, but not limited to, necessary training costs, shall be paid by the commission as an administrative expense.

(c) Notwithstanding any provision of this code to the contrary, the West Virginia State Police shall have exclusive jurisdiction over felony offenses committed on the grounds of the gaming facility.

§29-25-8. Licenses required.

(a) No person may engage in any activity in connection with a gaming facility in this state for which a license is required by subsection (b) of this section unless that person has been licensed by the commission in accordance with this article.

(b) Licenses are required for the following purposes:

(1) For any person engaging in the business of operating a gaming facility in the state;

(2) For any person engaging in the business of supplying a gaming facility with gaming devices, gaming supplies or gaming services;

(3) For any individual employed by a gaming licensee in connection with the operation of a gaming facility in the state; and

(4) For any person providing management services under a contract to a gaming facility.

(c) Any license required under this article is in addition to all other licenses or permits otherwise required by law.

§29-25-9. License to operate a gaming facility.
(a) *Single license.* -- The commission may issue only one license to operate a gaming facility. If the one license limitation in the preceding sentence is found to be unconstitutional in a final, nonappealable order by a court of competent jurisdiction, the commission shall have no authority to issue any license under this article and, in such event, the provisions of this article shall not be severable and any license issued under the provisions of this article prior thereto shall be void. The Legislature intends that no more than one license to operate one gaming facility in this state shall be authorized in any event.

(b) *Applicant qualifications.* -- The applicant shall be the actual operator of the gaming facility to be located on the premises of an existing historic resort hotel. The applicant may be the owner of the existing historic resort hotel or a person that leases well-defined spaces on the premises of the historic resort hotel in order to operate a gaming facility as defined by this article. The resort hotel shall be located within the jurisdiction of a county approving the operation of a gaming facility in accordance with section seven of this article. The applicant shall meet the qualifications and requirements set forth in this article and rules adopted by the commission. In determining whether to grant a license to operate a gaming facility to an applicant, the commission shall consider:

1. The character, reputation, experience and financial integrity of the applicant and any controlling person of the applicant;

2. Whether the applicant has adequate capital to construct and maintain the proposed gaming facility for the duration of a license;

3. The extent to which the applicant meets standards contained in rules adopted by the commission relating to public safety or other standards; and
(4) The plan submitted by the applicant regarding employment levels and the extent to which the submitted plan demonstrates an ability on the part of the applicant to create at least one hundred full-time equivalent jobs with a salary and benefit package commensurate with existing employees at the historic resort hotel.

(c) **Floor plan submission requirement.** -- Prior to commencing the operation of any West Virginia Lottery table game in a designated gaming area, the gaming facility licensee shall submit to the commission for its approval a detailed floor plan depicting the location of the designated gaming area in which West Virginia Lottery table game gaming equipment will be located and its proposed arrangement of the West Virginia Lottery table game gaming equipment. If the floor plans for the designated gaming area preserve the historic integrity of the historic resort hotel where the licensed gaming facility is located, then any floor plan submission that satisfies the requirements of the rules promulgated by the commission shall be considered approved by the commission unless a gaming facility is notified in writing to the contrary within one month of filing a detailed floor plan.

(d) **Management service contracts.** --

(1) **Approval.** -- A gaming facility may not enter into any management service contract that would permit any person other than the licensee to act as the commission’s agent in operating West Virginia Lottery table game unless the management service contract: (A) Is with a person licensed under this article to provide management services; (B) is in writing; and (C) the contract has been approved by the commission.

(2) **Material change.** -- A licensed gaming facility shall submit any material change in a management service contract
previously approved by the commission to the commission for its approval or rejection before the material change may take effect.

(3) Prohibition on assignment or transfer. -- A management services contract may not be assigned or transferred to a third party.

(4) Other commission approvals and licenses. -- The duties and responsibility of a management services provider under a management services contract may not be assigned, delegated, subcontracted or transferred to a third party to perform without the prior approval of the commission. Third parties shall be licensed under this article before providing service. The commission shall license and require the display of West Virginia Lottery game logos on appropriate game surfaces and other gaming items and locations as the commission considers appropriate.

(e) License application requirements. -- An applicant for a license to operate a gaming facility shall:

(1) Submit an application to the commission on a form prescribed by the commission, which form shall include:

(A) Information concerning the applicant and of any controlling person of the applicant sufficient to serve as a basis for a thorough background check;

(B) Subject to the provisions of subsection (g) of this section with respect to publicly-traded corporations, the identity of all stockholders or other persons having a financial interest in either the applicant or any controlling person of the applicant and the identity of each director or executive officer of the applicant and of any controlling person of the applicant;
(C) The identity of the historic resort hotel at which the gaming facility is to be located, including identification of the county in which the historic resort hotel is located; and

(D) Any other information designated by the commission as appropriate to assist it in determining whether a license should be issued;

(2) Pay to the commission a nonrefundable application fee for deposit into the Community-Based Service Fund created in section twenty-seven, article twenty-two-c of this chapter in the amount of $65,000.

(f) Privately held corporations. — In the event that an applicant or any controlling person of an applicant is a privately held corporation, then the commission may not grant a license until the commission determines that each person who has control of the applicant also meets all of the qualifications the applicant must meet to hold the license for which application is made. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation;

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commission determines to have the ability to control the applicant; and

(3) Key personnel of an applicant, including any executive, employee or agent, having the power to exercise
significant influence over decisions concerning any part of
the applicant's business operation.

(g) Publicly traded corporations. -- In the event that an
applicant or any controlling person of an applicant is a
publicly traded corporation, then information otherwise
required to be furnished by an applicant with respect to
stockholders, directors and executive officers of the publicly
traded corporation shall be limited to information concerning
only those executive officers of the publicly traded
corporation whose ongoing and regular responsibilities relate
or are expected to relate directly to the operation or oversight
of the gaming facility. "Publicly traded corporation" as used
herein means any corporation or other legal entity, except a
natural person, which has one or more classes of securities
registered pursuant to Section twelve of the Securities
Exchange Act of 1934, as amended (15 U. S. C.§78), or is an
issuer subject to Section fifteen-d of said act.

(h) Gaming facility qualifications. -- An applicant for a
license to operate a gaming facility shall demonstrate that the
gaming facility will: (1) Be accessible to disabled
individuals; (2) not be located at the main entrance to the
historic resort hotel; (3) be licensed in accordance with all
other applicable federal, state and local laws; and (4) meet
any other qualifications specified by rules adopted by the
commission.

(i) Surety bond requirement. -- The licensed gaming
facility shall execute a surety bond to be given to the state to
guarantee the licensee faithfully makes all payments in
accordance with the provisions of this article and rules
promulgated by the commission. The surety bond shall be:

(1) In an amount determined by the commission to be
adequate to protect the state against nonpayment by the
licensee of amounts due the state under this article;
(2) In a form approved by the commission; and

(3) With a surety approved by the commission who is licensed to write surety insurance in this state. The bond shall remain in effect during the term of the license and may not be canceled by a surety on less than thirty days' notice in writing to the commission. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

(j) Authorization of license. -- A license to operate a gaming facility authorizes the licensee to engage in the business of operating a gaming facility while the license is effective. A license to operate a gaming facility is not transferable or assignable and cannot be sold or pledged as collateral.

(k) Audits. -- A licensed gaming facility operator shall submit to the commission an annual audit, by a certified public accountant who is, or whose firm is, licensed in the State of West Virginia, or by a nationally recognized accounting firm, of the financial transactions and condition of the licensee's total operations. The audit shall be in accordance with generally accepted auditing principles.

(l) Annual license renewal fee. -- For the second year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee of $250,000. For the third year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee of $500,000. For every year after the third year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee that is calculated by determining the annual average gross receipts of the West Virginia pari-mutuel racetracks with table games licenses for the last full fiscal year of adjusted gross receipts available, and dividing that number into the licensed gaming facility operator's adjusted gross receipts for
the same full fiscal year of adjusted gross receipts to obtain
a percentage, and by multiplying the resulting percentage by
$2,500,000: *Provided,* That the amount required to be paid
by the licensed gaming facility shall be not less than
$500,000, nor more than $2,500,000.

(m) The licensed gaming facility shall provide to the
commission, at no cost to the commission, suitable office
space at the gaming facility to perform the duties required of
it by the provisions of this article.

§29-25-11. License to supply gaming facility.

(a) *Licenses.* -- The commission may issue a license to
each applicant for a license to supply a gaming facility with
gaming devices, gaming supplies or services who meets the
requirements of this section.

(b) *License qualifications.* -- To qualify for a license, an
applicant shall meet the requirements of this section. Each
applicant who is an individual who is a controlling person of
an applicant that is not an individual shall be of good moral
character and reputation and shall have the necessary
experience and financial ability to successfully carry out the
functions of a gaming facility supplier. The commission may
adopt rules establishing additional requirements for a gaming
facility supplier.

(c) *Supplier specification.* -- An applicant for a license to
supply gaming devices, equipment and supplies to a gaming
facility shall demonstrate that the gaming devices, equipment
and supplies that the applicant plans to sell or lease to the
licensed operator of the gaming facility, conform or will
conform to standards established by rules of the commission
and applicable state law.
(d) License application requirements. -- An applicant for a license shall:

   (1) Submit an application to the commission on the form that the commission requires including adequate information to serve as a basis for a thorough background check;

   (2) Submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation; and

   (3) Pay to the commission a nonrefundable application fee in the amount of $100 to be retained by the commission as reimbursement for the licensing process.

(e) Authorization of licensee. -- A license to supply a gaming facility authorizes the licensee to engage in the business of selling gaming devices and supplies to a gaming facility while the license is effective.

(f) Inventory. -- A licensed gaming facility supplier shall submit to the commission a list of all equipment, gaming devices and supplies sold or delivered to a gaming facility in this state when required by the commission.

(g) Annual license renewal fee.-- A licensed gaming facility supplier shall pay to the commission an annual license renewal fee of $100.
§29-25-12. License to be employed by operator of gaming facility.

(a) Licenses. -- The commission shall issue a license to each applicant for a license to be employed in the operation of a gaming facility who meets the requirements of this section.

(b) License qualifications. -- To qualify for a license to be employed in a gaming facility, the applicant shall be an individual of good moral character and reputation and have been offered employment by the gaming facility contingent upon licensure pursuant to the provisions of this section. The commission, by rule, may specify additional requirements to be met by applicants based on the specific job classification in which the applicant is to be employed.

(c) License application requirements. -- An applicant for a license to be employed in the operation of a gaming facility shall:

(1) Submit an application to the commission on the form that the commission requires, including adequate information to serve as a basis for a thorough background check;

(2) Submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation; and
(3) Pay to the commission a nonrefundable application fee in the amount of $100 to be retained by the commission as reimbursement for the licensing process. This fee may be paid on behalf of the applicant by the employer.

(d) Authorization of licensee. -- A license to be employed by a gaming facility authorizes the licensee to be so employed in the capacity designated by the commission with respect to the license while the license is effective.

(e) Annual license renewal fee. -- Each licensed employee shall pay to the commission an annual license renewal fee set by the commission, which renewal fee may vary based on the capacity designated with respect to the licensee but in no event to exceed $100. The fee may be paid on behalf of the licensed employee by the employer.

§29-25-13. False statements on applications; other license requirements and prohibitions.

(a) Any person who knowingly makes a false statement on an application is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 and confined in jail for not more than six months except that in the case of a person other than a natural person, the amount of the fine imposed may not be more than $25,000.

(b) The commission may not grant a license pursuant to the provisions of this article if there is substantial evidence that the applicant:

(1) Has knowingly made a false statement of a material fact to the commission;

(2) Has been suspended from operating a gambling game, gaming device or gambling operation in another jurisdiction by a board or other governmental authority of that
jurisdiction having responsibility for the regulation of gambling or gaming activities;

(3) Has been convicted of a felony, an offense of moral turpitude, a gambling offense, a theft or fraud offense or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order;

(4) Has failed to meet any monetary obligation in connection with a gaming facility or any other form of gaming; or

(5) In the case of an applicant for a license to operate a gaming facility or to supply a gaming facility:

(A) Has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed;

(B) Is not the true owner of the enterprise or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in such enterprise; or

(C) Is a corporation and five percent or more of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is issued unless the contract or option was disclosed to and approved by the commission.

(c) In addition to any other grounds specified in this article, and subject to the hearing provisions of section seventeen of this article, in the case of a license to operate a gaming facility the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee or any controlling person of the applicant or licensee knowingly employs an individual
in a senior management position who has been convicted of a felony under the laws of this state, another state, a territory of the United States, or the United States or employs any individual in a senior management position who has had a license relating to the operation of a gaming facility revoked by this state or any other state.

(d) Character references may be required of persons licensed, but the character reference may not be obtained from persons in the same or similar occupations or professions in other states.

§29-25-16. License denial, revocation and reprimand.

(a) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee, or any controlling person of the applicant or license:

1. Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

2. Fraudulently or deceptively uses a license;

3. Is convicted of a felony under the laws of this state, another state, a territory of the United States or the United States;

4. Is convicted of a misdemeanor under the laws of this state, another state, the United States or a territory of the United States for gambling or a gambling-related activity; or

5. Is not complying with this act, the rules or the minimum internal control standards promulgated by the commission or the gaming facility.
(b) Instead of or in addition to reprimanding a licensee or suspending or revoking a license, the commission may impose a civil penalty under section twenty-seven of this article.

§29-25-17. Hearing procedures.

(a) Right to a hearing. -- Except as otherwise provided by law, before the commission takes any action involving a licensee under the provisions of this article, it shall give the persons against whom the action is contemplated an opportunity for a hearing before the commission.

(b) Notice of hearing and right to counsel. -- The commission shall give notice and hold the hearing in accordance with article five, chapter twenty-nine-a of this code. The notice shall be given to the person by certified mail to the last known address of the person at least thirty days before the hearing. The person may be represented at the hearing by counsel.

(c) Failure to comply with subpoena. -- If a person fails to comply with a subpoena issued under this section, on petition of the commission, the circuit court may compel obedience to the subpoena. If after due notice the person against whom the action is contemplated fails or refuses to appear, the commission may hear and determine the matter.

(d) Appeal. -- Any person aggrieved by a final decision of the commission in a contested case may file a petition for appeal in the circuit court of Kanawha County within thirty days after the person received notice of the final order or decision, as provided in section four, article five, chapter twenty-nine-a of this code.

As a condition of licensure, to inspect or investigate for criminal violations of this article or violations of the rule promulgated by the commission, the commission agents and the West Virginia State Police may each, without notice and without warrant:

1. Inspect and examine all premises of the gaming facility with West Virginia Lottery table games, gaming devices, the premises where gaming equipment is manufactured, sold, distributed or serviced or any premises in which any records of the activities are prepared or maintained;

2. Inspect any gaming equipment in, about, upon or around the premises of a gaming facility with West Virginia Lottery table games;

3. Seize summarily and remove from the premises and impound any gaming equipment for the purposes of examination, inspection or testing;

4. Inspect, examine and audit all books, records and documents pertaining to a gaming facility licensee’s operation;

5. Summarily seize, impound or assume physical control of any book, record, ledger, West Virginia Lottery table game, gaming equipment or device, cash box and its contents, counting room or its equipment or West Virginia Lottery table game operations; and

6. Inspect the person, and the person’s personal effects present on the grounds of a licensed gaming facility with West Virginia Lottery table games, of any holder of a license issued pursuant to this article while that person is present on the grounds of a licensed gaming facility having West Virginia Lottery table games.
§29-25-19. Consent to presence of law-enforcement officers; wagering limits; operations and services; posting of betting limits.

(a) Consent to presence of law-enforcement officers. -- Any individual entering the gaming facility shall be advised by the posting of a notice or other suitable means of the possible presence of state, county or municipal law-enforcement officers and by entering the gaming facility impliedly consents to the presence of the law-enforcement officers.

(b) Commission discretion in gaming operations. -- Video lottery terminals operated at the gaming facility may not allow more than five dollars to be wagered on a single game.

(1) Subject to the approval of the commission, the gaming facility licensee shall, with respect West Virginia Lottery table games, establish the following:

(A) Maximum and minimum wagers;

(B) Advertising and promotional activities;

(C) Hours of operation; and

(D) The days during which games may be played; and

(2) The commission may consider multiple factors, including, but not limited to, industry standards, outside competition and any other factors as determined by the commission to be relevant in its decision to approve the gaming facility’s determination of those items listed in subdivision (1) of this subsection.
(c) Setting of operations. — Notwithstanding anything to the contrary contained elsewhere in this chapter, the commission may establish the following parameters for commission regulated lottery games of any kind which is played at a licensed gaming facility:

(1) Minimum and maximum payout percentages;

(2) Any probability limits of obtaining the maximum payout for a particular play; and

(3) Limitations on the types and amounts of financial transactions, including extension of credit to a patron, which a gaming facility can enter into with its patrons.

(d) Posting of betting limits. -- A gaming facility shall conspicuously post a sign at each West Virginia Lottery table game indicating the permissible minimum and maximum wagers pertaining at that table. A gaming facility licensee may not require any wager to be greater than the stated minimum or less than the stated maximum. However, any wager actually made by a patron and not rejected by a gaming facility licensee prior to the commencement of play shall be treated as a valid wager.

§29-25-20. Accounting and reporting of gross terminal income; distribution.

The licensed gaming facility shall submit thirty-six percent of the gross terminal income from video lottery games at the licensed gaming facility to the commission through electronic funds transfer to be deposited into the Historic Resort Hotel Fund created in section twenty-two of this article. The licensed gaming facility shall also submit seventeen percent of the gross terminal income from video lottery games at the licensed gaming facility to the commission through electronic funds transfer to be deposited
into the Human Resource Benefit Fund created in section twenty-two-a of this article. Each of these submissions shall be made to the commission weekly. The gaming licensee shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. The gaming licensee shall provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

§29-25-21. Taxes on games other than video lottery games.

(a) Imposition and rate of limited gaming profits tax. -- There is hereby levied and shall be collected a privilege tax against a gaming license in an amount to be determined by the application of the rate against adjusted gross receipts of the licensed gaming facility. The rate of tax is thirty-five percent. Of that thirty-five percent, thirty percent shall be directly deposited by the commission into the Historic Resort Hotel Fund created in section twenty-two of this article and the remaining five percent shall be directly deposited by the commission into the Human Resource Benefit Fund created in section twenty-two-a of this article. For purposes of calculating the amount of tax due under this section, the licensee shall use the accrual method of accounting. This tax is in addition to all other taxes and fees imposed: Provided, that the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code may not apply to the proceeds from any wagering with respect to a West Virginia Lottery table game pursuant to this article.

(b) Computation and payment of tax. -- The taxes levied under the provisions of this section are due and payable to the commission in weekly installments on or before the Wednesday of each week. The taxpayer shall, on or before the Wednesday of each week, make out and submit by electronic communication to the commission a return for
the preceding week, in the form prescribed by the commission, showing: (1) The total gross receipts from the gaming facility for that month and the adjusted gross receipts; (2) the amount of tax for which the taxpayer is liable; and (3) any further information necessary in the computation and collection of the tax which the Tax Commissioner or the commission may require. Payment of the amount of tax due shall accompany the return. All payments made pursuant to this section shall be deposited in accordance with sections twenty-two and twenty-two-a of this article. Payments due to the commission under this section and payments due to the commission under section twenty of this article shall be sent simultaneously.

(c) **Negative adjusted gross receipts.** -- When adjusted gross receipts for a week is a negative number because the winnings paid to patrons wagering on the gaming facility’s West Virginia Lottery table games exceeds the gaming facility’s gross receipts from the purchase of table game tokens, chips or electronic media by patrons, the commission shall allow the licensee to, pursuant to rules of the commission, carry over the negative amount of adjusted gross receipts to returns filed for subsequent weeks. The negative amount of adjusted gross receipts may not be carried back to an earlier week and the commission is not required to refund any tax received by the commission, except when the licensee surrenders its license to act as agent of the commission in operating West Virginia Lottery table game under this article and the licensee’s last return filed under this section shows negative adjusted gross receipts. In that case, the commission shall multiply the amount of negative adjusted gross receipts by the applicable rate of tax and pay the amount to the licensee, in accordance with rules of the commission.

(d) **Prohibition on credits.** -- Notwithstanding any other provision of this code to the contrary, no credits may be
allowed against any tax imposed on any taxpayer by this code for an investment in gaming devices and supplies, for an investment in real property which would be directly utilized for the operation of a gaming facility or for any jobs created at a gaming facility. Notwithstanding any other provision of this code to the contrary, the tax imposed by this section may not be added to federal taxable income in determining West Virginia taxable income of a taxpayer for purposes of article twenty-four, chapter eleven of this code.

(e) Tax imposed by this section is in lieu of other taxes. --

(1) With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the tax imposed by this section is in lieu of all other state taxes and fees imposed on the operation of, or the proceeds from operation of West Virginia Lottery table games, except as otherwise provided in this section. The consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code shall not apply to the licensee’s gross receipts from any wagering on a West Virginia Lottery table game pursuant to this article or to the licensee’s purchasing of gaming equipment, supplies or services directly used in operation of a West Virginia Lottery table games authorized by this article. These purchases are also exempt from the use tax imposed by article fifteen-a, chapter eleven of this code.

(2) With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the tax imposed by this section is in lieu of all local taxes and fees levied on or imposed with respect to the privilege of offering a West Virginia Lottery table game to the public, including, but not limited to, the municipal business and occupation taxes and amusement taxes authorized by article thirteen, chapter eight of this code and the municipal sales and service tax and use tax authorized by article thirteen-c of said chapter.
§29-25-22. Historic Resort Hotel Fund; allocation of adjusted gross receipts; disposition of license fees.

(a) There is hereby created a special fund in the State Treasury which shall be designated and known as the Historic Resort Hotel Fund. Thirty-six percent of the gross terminal income received by the commission under section twenty of this article and thirty percent of the adjusted gross receipts received by the commission under section twenty-one of this article shall be deposited with the State Treasurer and placed in the Historic Resort Hotel Fund. The fund shall be an interest bearing account with interest to be credited to and deposited in the Historic Resort Hotel Fund.

(b) All expenses of the commission shall be paid from the Historic Resort Hotel Fund, including reimbursement of the State Police for activities performed at the request of the commission in connection with background investigations or enforcement activities pursuant to this article. At no time may the commission’s expenses under this article exceed fifteen percent of the total of the annual revenue received from the licensee under this article, including all license fees, taxes or other amounts required to be deposited in the Historic Resort Hotel Fund.

(c) The balance of the Historic Resort Hotel Fund shall become net income and shall be divided as follows:

(1) Sixty-four percent of the Historic Resort Hotel Fund net income shall be paid into the General Revenue Fund to be appropriated by the Legislature;

(2) Nineteen percent of the Historic Resort Hotel Fund net income shall be paid into the State Debt Reduction Fund established in section twenty-seven, article twenty-two-c of this chapter to be appropriated by the Legislature;
(3) The Tourism Promotion Fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the Historic Resort Hotel Fund net income;

(4) The county where the gaming facility is located shall receive four percent of the Historic Resort Hotel Fund net income;

(5) The municipality where the gaming facility is located or the municipality closest to the gaming facility by paved road access as of the effective date of the reenactment of this section by the 2009 regular session of the Legislature shall receive two and one-half percent of the Historic Resort Hotel Fund net income;

(6) The municipalities within the county where the gaming facility is located, except for the municipality receiving funds under subdivision (5) of this subsection, shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income;

(7) Each county commission in the state that is not eligible to receive a distribution under subdivision (4) of this subsection shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income: Provided, That funds transferred to the county commission under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements; and

(8) The governing body of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6) of this subsection shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income: Provided, That funds transferred to municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension
funds and the costs of infrastructure improvements and other capital improvements.

(d) Notwithstanding any provision of this article to the contrary, all limited gaming facility license fees and license renewal fees received by the commission pursuant to section nine of this article shall be deposited into the Community-Based Service Fund created in section twenty-seven, article twenty-two-e of this chapter.

(e) With the exception of the license fees and license renewal fees received by the commission pursuant to section nine of this article, all revenues received from licensees and license applicants under this article shall be retained by the commission as reimbursement for the licensing process.


(a) There is hereby created a special fund in the State Treasury which shall be designated and known as the Human Resource Benefit Fund. Seventeen percent of the gross terminal income received by the commission under section twenty of this article and five percent of the adjusted gross receipts received by the commission under section twenty-one of this article shall be deposited with the State Treasurer and placed in the Human Resource Benefit Fund. The fund shall be an interest-bearing account with interest to be credited to and deposited in the Human Resource Benefit Fund.

(b) For each dollar expended by the historic resort hotel for fringe benefits for the employees of the historic resort hotel, the commission shall transfer to the historic resort hotel one dollar of recoupment from the Human Resource Benefit Fund: Provided, That the historic resort hotel is not entitled to recoupment for money spent on fringe benefits beyond the amount of money available to be expended from
the Human Resource Benefit Fund at the time the request for recoupment is made by the historic resort hotel.

(c) The commission shall have full rights and powers to audit the spending of money from the Human Resource Benefit Fund to ensure that the money is being used in the manner prescribed under this section. The commission shall have the power and authority to audit as frequently as it sees fit, so long as it conducts at least two audits each fiscal year.

(d) There is hereby created the Human Resource Benefit Advisory Board, which shall meet every six months to verify the commission’s audit.

(1) The board shall consist of five members, all residents and citizens of the State of West Virginia:

(A) One member shall be a representative of the collective bargaining unit that represents a majority of the employees of the historic resort hotel;

(B) One member shall be a representative of the historic resort hotel; and

(C) Three members shall be employees of the commission.

(2) The members shall be appointed or elected by the entity or persons that they represent. Establishment of terms for members shall be determined by the entity or persons that they represent, if the entity or persons choose to set terms.

(3) A majority of members constitutes a quorum for the transaction of business.

(4) The board shall meet every six months at the headquarters of the commission. Upon its own motion or
upon the request of the commission, it may hold meetings in addition to the required meetings. The commission shall pay the travel expenses of members of the board who are not employed by the commission.

(5) All meetings of the board shall be open to the public.

(6) The board shall operate in an advisory capacity. Its functions shall include, but are not limited to, reviewing and verifying financial audits of the Human Resource Benefit Fund conducted by the commission and its employees and reviewing source documents associated with disbursements from the Human Resource Benefit Fund.

(7) Within thirty days of any board meeting, the board shall report to the commission its findings and any recommendations it may have. The report to the commission shall be made at a commission meeting that is open to the public.

(e) In the event that an audit conducted by the commission, or suggested changes to the audit submitted by the board and adopted by the commission, reveals that the historic resort hotel has acted improperly or negligently in its claim for money from the Human Resource Benefit Fund, the commission may impose a civil penalty against the historic resort hotel of up to one hundred percent of the improperly claimed amount. Any civil penalty imposed on the historic resort hotel by the commission under this subsection shall be deposited by the commission into the Historic Resort Hotel Fund.

§29-25-23. Prohibition on unauthorized wagering; complimentary service, gift, cash or other item.

(a) A gaming licensee may not permit any form of wagering except as authorized under this article or article twenty-two, twenty-two-a or twenty-two-c of this chapter.
(b) A gaming licensee may receive wagers only from an individual present in a licensed gaming facility.

(c) All gaming facility operations shall utilize a cashless wagering system whereby all players’ money is converted to tokens, paper vouchers, electronic cards or chips at the request of the wagerer which can only be used for wagering in a licensed gaming facility and wagering may not be conducted with money or other negotiable currency:

(1) Wagering on West Virginia Lottery table games may not be conducted with money or other negotiable currency or with tokens, electronic cards or other electronic media or chips not issued by the gaming facility where the West Virginia Lottery table game will be played.

(2) At the request of the player, the licensee shall convert a player’s tokens, electronic cards or other electronic media or chips back to money.

(3) The licensee may not charge a fee for converting a player’s money to an acceptable media for playing a West Virginia Lottery table game or charge a fee for converting the acceptable media for wagering a West Virginia Lottery table game back to money.

(d) The gaming licensee is prohibited from offering any complimentary service, gift, cash or other item of value to any person unless:

(1) The complimentary consists of room, food, beverage or entertainment expenses provided directly to the patron and his or her guests by the gaming facility licensee or indirectly to the patron and his or her guests on behalf of the licensee by a third party;

(2) The complimentary consists of documented transportation expenses provided directly to the patron and
his or her guests on behalf of a gaming facility licensee by a third party: Provided, That the licensee complies with the rules promulgated by the commission to ensure that a patron’s and his or her guests’ documented transportation expenses are paid for or reimbursed only once; or

(3) The complimentary consists of coins, tokens, cash or other complimentary items or services provided through any complimentary distribution program, the terms of which shall be filed with the commission upon implementation of the program or maintained pursuant to commission rule. Any change in the terms of a complimentary program shall be filed with the commission upon implementation of the change.

(e) Notwithstanding any provision of subsection (d) of this section to the contrary, a gaming facility licensee may offer and provide complimentary cash or noncash gifts that are not otherwise included in that subsection to any person: Provided, That any complimentary cash or noncash gifts in excess of an amount per trip to be set by interpretive rule of the commission are supported by documentation regarding the reason the gift was provided to the patron and his or her guests, including, where applicable, a patron’s player rating. The documentation shall be maintained by a gaming facility licensee in accordance with commission rules. For purposes of this subsection, all gifts presented to a patron and a patron’s guests directly by the gaming facility licensee or indirectly on behalf of the licensee by a third party within any five-day period shall be considered to have been made during a single trip.


(a) An individual may enter a designated gaming area or remain in a designated gaming area only if the individual:
(1) Is either;

(A) A registered overnight guest at the historic resort hotel on whose premises the gaming facility is located;

(B) A person who is a not a registered overnight guest, but is a registered participant at a convention or event being held at the historic resort hotel: Provided, That this paragraph does not apply on any calendar day when less than four hundred guest rooms are occupied at the historic resort hotel; or

(C) A member of a homeowner or facility association that entitles members to substantial privileges at the historic resort hotel on whose premises the gaming facility is located or an overnight guest of such a member: Provided, That the association was in existence as of April 1, 2009;

(2) Is at least twenty-one years of age;

(3) Is not visibly intoxicated;

(4) Has not been determined by the gaming facility operator or the commission to be unruly, disruptive or otherwise interfering with operation of the gaming facility; or to be likely to commit, or to attempt to commit, a violation of this article; and

(5) Has not been barred by the commission from entering a gaming facility.

(b) Notwithstanding any provisions of this code to the contrary, no employee of the commission or employee of the historic resort hotel or any member of his or her immediate household may wager at the gaming facility.

§29-25-25. Offenses and penalties.
(a) A gaming licensee is guilty of unlawful operation of a West Virginia Lottery table game when:

(1) The licensee operates a West Virginia Lottery table game or places a video lottery game or video lottery terminal in any location that is not a designated gaming area approved by the commission;

(2) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in a West Virginia Lottery table game in a gaming facility;

(3) The licensee knowingly permits an individual under the age of twenty-one years of age to enter or remain in a designated gaming area or to play video lottery terminals or West Virginia Lottery table game at a licensed gaming facility;

(4) The licensee exchanges tokens, chips or other forms of credit to be used for wagering in a gaming facility for anything of value except in exchange for money or credits to a player's account;

(5) The licensee operates a West Virginia Lottery table game or places a video lottery game or video lottery terminal into play without authority of the commission to do so;

(6) The licensee knowingly conducts, carries on, operates or exposes for play or allows to be conducted, carried on, operated or exposed for play any West Virginia Lottery table game, video lottery game, video lottery terminal or other device, equipment or material that has in any manner been tampered with or placed in a condition or operated in a manner, the result of which is designed to deceive the public; or
(7) The licensee employs an individual in a position or to perform duties, for which a license is required by this article or rules of the commission and the employee does not have a license issued under the provisions of this article or the licensee continues to employ the individual in a position or to perform duties, for which a license is required by this article or rules of the commission, after the employee’s license expired, was revoked by the commission or not renewed by the commission.

(b) A person is guilty of a misdemeanor when:

(1) The person operates, carries on or exposes for play a West Virginia Lottery table game prior to obtaining a license or after the person’s license has expired and prior to actual renewal of the license or before the West Virginia Lottery table game and the licensee’s rules for play for the game are approved or modified and approved by the commission;

(2) The person works or is employed in a position requiring a license under the provisions of this article without having the license required by this article;

(3) A licensee who possesses any video lottery terminal or other device, equipment or material which the person knows has been manufactured, distributed, sold, tampered with or serviced in violation of the provisions of this article;

(4) A licensee who knowingly conducts, carries on, operates or exposes for play, or allows to be conducted, carried on, operated or exposed for play any video lottery game, video lottery terminal, or other device, equipment or material which has in any manner been tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal random
selection of characteristics or the normal chance of the video lottery game.

(c) A person is guilty of a felony when:

(1) The person offers, promises or gives anything of value or benefit to a person who has an ownership or financial interest in, is employed by or has a service contract with a gaming facility or to that person's spouse or any dependent child or dependent parent, pursuant to an agreement or arrangement, in fact or implied from the circumstances, with intent that the promise or thing of value or benefit will influence the actions of the person in order to affect or attempt to affect the outcome of a West Virginia Lottery table game or to influence official action of the commission. For the purposes of this subdivision and subdivision (2) of this subsection, the term "person who is connected with a gaming facility" includes, but is not limited to, a person licensed under this article as well as an officer or employee of a licensee;

(2) The person solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with a gaming facility, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a West Virginia Lottery table game or to influence official action of the commission;

(3) The person uses or possesses on property owned by the licensed gaming facility or on property contiguous to the gaming facility, with the intent to use, an electronic, electrical or mechanical device that is designed, constructed or programmed to assist the user or another person:

(A) In projecting the outcome of a West Virginia Lottery table game;
(B) In keeping track of cards dealt or in play;

(C) In analyzing the probability of the occurrence of an event relating to a West Virginia Lottery table game;

(D) In analyzing the strategy for playing or betting to be used in a West Virginia Lottery table game, except as permitted in writing by the commission; or

(E) In obtaining an advantage at playing any West Virginia Lottery table game at a licensed gaming facility authorized under this article to operate a West Virginia Lottery table game;

(4) The person cheats at a West Virginia Lottery table game in a gaming facility;

(5) The person manufacturers, sells, or distributed any cards, chips, dice, game or device which is intended to be used to violate any provision of this article or the table gaming laws of any other state;

(6) The person instructs a person in cheating or in the use of a device for that purpose with the knowledge or intent that the information or use conveyed may be employed to violate any provision of the article;

(7) The person places a bet after acquiring knowledge, not available to all players, of the outcome of the West Virginia Lottery table game which is the subject of the bet or aids a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome;

(8) The person claims, collects, takes or attempts to claim, collect or take money or anything of value into or from a gaming facility, with intent to defraud, without having made a wager contingent on winning a West Virginia Lottery
table game, or claims, collects or takes an amount of money or thing of value or greater value than the amount won;

(9) The person knowingly uses chips, electronic media or tokens that are counterfeit to place a wager in a gaming facility;

(10) The person knowingly uses any medium other than chips, tokens or other methods of credit approved by the commission to place a wager in a gaming facility;

(11) The person, not a gaming licensee or employee or agent of a gaming facility licensed under this article acting in furtherance of the gaming licensee's interests, has in his or her possession on grounds owned by the gaming facility licensed under this article or on grounds contiguous to the gaming facility, any device, by whatever name called, intended to be used to violate a provision of this article or a rule of the commission implementing or explaining a provision of this article; or

(12) The person, not a gaming licensee or agent of a gaming licensee acting in furtherance of the gaming licensee's interests, has in his or her possession any key or device designed for the purpose of opening, entering or affecting the operation of a West Virginia Lottery table game, drop box or an electronic or mechanical device connected with or used in connection with a West Virginia Lottery table game in a gaming facility or for removing coins, tokens, chips or other contents therefrom.

(d) Any person who violates the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 and confined in jail for not more than six months, except that in the case of a person other than a natural person, the amount of the fine imposed may not be more than $25,000.
(e) Any person who violates the provisions of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000 and committed to a state correctional facility for a term of imprisonment of not less than one year nor more than five years.

(f) With regard to subdivision (3), subsection (c) of this section, the gaming facility licensee shall post notice of this prohibition and the penalties of this section in a manner determined by the commission.


(a) Anything of value, including all traceable proceeds including, but not limited to, real and personal property, moneys, negotiable instruments, securities and conveyances, is subject to forfeiture to the State of West Virginia if the item was used for any of the following:

1. As a bribe intended to affect the outcome of a West Virginia Lottery table game in a gaming facility; or

2. In exchange for or to facilitate a violation of this article.

(b) The Legislature finds and declares that the seizure and sale of items under the provisions of this section is not contemplated to be a forfeiture as that term is used in section five, article XII of the Constitution of West Virginia and, to the extent that a seizure and sale may be found to be a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article are not part of net proceeds as it is contemplated by section five, article XII of the Constitution of West Virginia.

(c) Subsection (a) of this section does not apply if the act or omission which would give rise to the forfeiture was
21 committed or omitted without knowledge or consent of the
22 owner of the property to be forfeited.


1 The commission is authorized to implement and operate
2 video lottery games at one gaming facility in this state in
3 accordance with the provisions of this article and the
4 applicable provisions of article twenty-two-a of this chapter.
5 The provisions of said article apply to this article, except in
6 the event of conflict or inconsistency between any of the
7 provisions of this article and the provisions of article twenty-
8 two-a of this chapter. In that event, the provisions of this
9 article shall supersede any conflicting or inconsistent
10 provisions contained in article twenty-two-a of this chapter.

§29-25-29. Video lottery terminal requirements; application for
approval of video lottery terminals; testing of
video lottery terminals; report of test results;
modifications to previously approved models;
conformity to prototype; seizure and destruction
of terminals.

(a) Video lottery terminals registered with and approved
by the commission for use at the gaming facility may offer
video lottery games regulated, controlled, owned and
operated by the commission in accordance with the
provisions of this section and utilizing specific game rules.

(b) A manufacturer may not sell or lease a video lottery
terminal for placement at the gaming facility unless the
terminal has been approved by the commission. Only
manufacturers with licenses may apply for approval of a
video lottery terminal or associated equipment. The
manufacturer shall submit two copies of terminal
illustrations, schematics, block diagrams, circuit analysis,
technical and operation manuals and any other information
requested by the commission for the purpose of analyzing and testing the video lottery terminal or associated equipment.

(c) The commission may require that two working models of a video lottery terminal be transported to the location designated by the commission for testing, examination and analysis.

(1) The manufacturer shall pay all costs of testing, examination, analysis and transportation of such video lottery terminal models. The testing, examination and analysis of any video lottery terminal model may require dismantling of the terminal and some tests may result in damage or destruction to one or more electronic components of such terminal model. The commission may require that the manufacturer provide specialized equipment or pay for the services of an independent technical expert to test the terminal.

(2) The manufacturer shall pay the cost of transportation of two video lottery terminals to lottery headquarters. The commission shall conduct an acceptance test to determine terminal functions and central system compatibility. If the video lottery terminal fails the acceptance test conducted by the commission, the manufacturer shall make all modifications required by the commission.

(d) After each test has been completed, the commission shall provide the terminal manufacturer with a report containing findings, conclusions and pass/fail results. The report may contain recommendations for video lottery terminal modification to bring the terminal into compliance with the provisions of this article. Prior to approving a particular terminal model, the commission may require a trial period not to exceed sixty days for a licensed gaming facility to test the terminal. During the trial period, the manufacturer
may not make any modifications to the terminal model unless
modifications are approved by the commission.

e) The video lottery terminal manufacturer and licensed
gaming facility are jointly responsible for the assembly and
installation of all video lottery terminals and associated
equipment. The manufacturer and licensed gaming facility
shall not change the assembly or operational functions of a
terminal licensed for placement in West Virginia unless a
request for modification of an existing video terminal
prototype is approved by the commission. The request shall
contain a detailed description of the type of change, the
reasons for the change and technical documentation of the
change.

(f) Each video lottery terminal approved for placement at
the gaming facility shall conform to the exact specifications
of the video lottery terminal prototype tested and approved
by the commission. If any video lottery terminal or any
video lottery terminal modification, which has not been
approved by the commission, is supplied by a manufacturer
and operated by the gaming facility, the commission shall
seize and destroy all of that licensed gaming facility’s and
manufacturer's noncomplying video lottery terminals and
shall suspend the license and permit of the licensed gaming
facility and manufacturer.

§29-25-30. Video lottery terminal hardware and software
requirements; hardware specifications; software
requirements for randomness testing; software
requirements for percentage payout; software
requirements for continuation of video lottery
game after malfunction; software requirements
for play transaction records.

(a) The commission may approve video lottery terminals
and in doing so shall take into account advancements in
computer technology, competition from nearby states and the preservation of jobs at the historic resort hotel. In approving video lottery terminals licensed for placement in this state the commission shall insure that the terminals meet the following hardware specifications:

1. Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

2. A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of one hundred eighty days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.

3. An on/off switch which controls the electrical current used in the operation of the terminal shall be located in an accessible place within the interior of the video lottery terminal.

4. The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.

5. A bill or voucher acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. All acceptors shall be approved by the commission prior to use on any video lottery terminal in this state.

6. Access to the interior of video lottery terminal shall be controlled through a series of locks and seals.

7. The main logic boards and all erasable programmable read-only memory chips ("EPROMS") are considered to be
owned by the commission and shall be located in a separate
locked and sealed area within the video lottery terminal.

(8) The cash compartment shall be located in a separate
locked area within or attached to the video lottery terminal.

(9) No hardware switches, jumpers, wire posts or any
other means of manipulation may be installed which alter the
pay tables or payout percentages in the operation of a game.
Hardware switches on a video lottery terminal to control the
terminal's graphic routines, speed of play, sound and other
purely cosmetic features may be approved by the
commission.

(10) Each video lottery terminal shall contain a single
printing mechanism capable of printing an original ticket and
capturing and retaining an electronic copy of the ticket data
as approved by the commission: Provided, That the printing
mechanism is optional on any video lottery terminal which is
designed and equipped exclusively for coin or token payouts.
The following information shall be recorded on the ticket
when credits accrued on a video lottery terminal are
redeemed for cash:

(i) The number of credits accrued;

(ii) Value of the credits in dollars and cents displayed in
both numeric and written form;

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the commission.

(11) A permanently installed and affixed identification
plate shall appear on the exterior of each video lottery
terminal and the following information shall be on the plate:
(i) Manufacturer of the video lottery terminal;  

(ii) Serial number of the terminal; and  

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the commission. For each video lottery game, there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols. All information required by this subdivision shall be displayed under glass or another transparent substance. No stickers or other removable devices may be placed on the video lottery terminal screen or face without the prior approval of the commission.

(13) Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the commission's central computer system by use of a communications protocol provided by the commission to each permitted manufacturer, which protocol shall include information retrieval and terminal activation and disable programs, and the commission may require each licensed racetrack to pay the cost of a central site computer as a part of the licensing requirement.

(14) All video lottery terminals shall have a security system which temporarily disables the gaming function of the terminal while opened.

(b) Each video lottery terminal shall have a random number generator to determine randomly the occurrence of each specific symbol or number used in video lottery games. A selection process is random if it meets the following statistical criteria:
95 (1) *Chi-square test.* -- Each symbol or number shall satisfy the ninety-nine percent confidence limit using the standard chi-square statistical analysis of the difference between the expected result and the observed result.

99 (2) *Runs test.* -- Each symbol or number may not produce a significant statistic with regard to producing patterns of occurrences. Each symbol or number is random if it meets the ninety-nine percent confidence level with regard to the "runs test" for the existence of recurring patterns within a set of data.

105 (3) *Correlation test.* -- Each pair of symbols or numbers is random if it meets the ninety-nine percent confidence level using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play.

110 (4) *Serial correlation test.* -- Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether each symbol or number is independently chosen without reference to the same symbol or number in a previous game.

116 (c) Each video lottery terminal shall pay out no less than eighty percent and no more than ninety-nine percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

120 (d) Each video lottery terminal shall be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. If a video lottery terminal is rendered totally inoperable during game play, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction shall be returned to the player.
(e) Each video lottery terminal shall at all times maintain electronic accounting regardless of whether the terminal is being supplied with electrical power. Each meter shall be capable of maintaining a total of no less than eight digits in length for each type of data required. The electronic meters shall record the following information:

(1) Number of coins inserted by players or the coin equivalent if a bill acceptor is being used or tokens or vouchers are used;

(2) Number of credits wagered;

(3) Number of total credits, coins and tokens won;

(4) Number of credits paid out by a printed ticket;

(5) Number of coins or tokens won, if applicable;

(6) Number of times the logic area was accessed;

(7) Number of times the cash door was accessed;

(8) Number of credits wagered in the current game;

(9) Number of credits won in the last complete video lottery game; and

(10) Number of cumulative credits representing money inserted by a player and credits for video lottery games won, but not collected.

(f) No video lottery terminal may have any mechanism which allows the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared,
all meter readings shall be recorded in the presence of a commission employee.

(g) The primary responsibility for the control and regulation of any video lottery games and video lottery terminals operated pursuant to this article rests with the commission.

(h) The commission shall directly or through a contract with a third party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery terminals, utilizing an online or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately disable and cause not to operate any video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.

§29-25-31. The specific video lottery duties required of the gaming facility.

The gaming facility licensee shall:

(a) Acquire video lottery terminals by purchase, lease or other assignment and provide a secure location for the placement, operation and play of the video lottery terminals;

(b) Pay for the installation and operation of commission approved telephone lines to provide direct dial-up or online communication between each video lottery terminal and the commission's central control computer;

(c) Permit no person to tamper with or interfere with the operation of any video lottery terminal;
(d) Ensure that any telephone lines from the commission’s central control computer to the video lottery terminals located at the licensed gaming facility are at all times connected and prevent any person from tampering or interfering with the operation of the telephone lines;

(e) Ensure that video lottery terminals are within the sight and control of designated employees of the license gaming facility;

(f) Ensure that video lottery terminals are placed and remain placed in the specific locations within the gaming facility that have been approved by the commission. No video lottery terminal or terminals at the gaming facility shall be relocated without the prior approval of the commission;

(g) Monitor video lottery terminals to prevent access to or play by persons who are under the age of twenty-one years or who are visibly intoxicated;

(h) Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals;

(i) Provide no access by a player to an automated teller machine (ATM) in the area of the gaming facility where video lottery games are played;

(j) Pay for all credits won upon presentment of a valid winning video lottery ticket;

(k) Report promptly to the manufacturer and the commission all video lottery terminal malfunctions and notify the commission of the failure of a manufacturer or service technician to provide prompt service and repair of such terminals and associated equipment;

(l) Install, post and display prominently at locations within or about the licensed gaming facility signs,
redemption information and other promotional material as required by the commission; and

(m) Promptly notify the commission in writing of any breaks or tears to any logic unit seals.

§29-25-32. Surcharge; Capital Reinvestment Fund.

(a) For all fiscal years beginning on or after July 1, 2009, there shall be imposed a surcharge of ten percent against the share of gross terminal income retained by the gaming facility as provided by section twenty of this article.

(b) The Capital Reinvestment Fund is hereby created within the Lottery Fund. The surcharge amount attributable to the historic resort hotel shall be retained by the commission and deposited into a separate capital reinvestment account for the historic resort hotel. For each dollar expended by the historic resort hotel for capital improvements at the historic resort hotel, or any amenity associated with the historic resort hotel’s destination resort facility operations, or at adjacent facilities owned by the historic resort hotel having a useful life of seven or more years and placed in service after April 1, 2009, the licensed gaming facility shall receive one dollar in recoupment from its Capital Reinvestment Fund account: If a historic resort hotel’s unrecouped capital improvements exceed its Capital Reinvestment Fund account at the end of any fiscal year, the excess improvements may be carried forward to seven subsequent fiscal years.

(c) Any moneys remaining in the historic resort hotel’s Capital Reinvestment Fund account at the end of any fiscal year shall be deposited in the Historic Resort Hotel Fund.

§29-25-33. License to be a provider of management services.
(a) License. -- The commission may issue a license to a
person providing management services under a management
services contract to a gaming facility when the commission
determines that the person meets the requirements of this
section and any applicable rules of the commission.

(b) License qualifications. -- Each applicant who is an
individual and each individual who controls an applicant, as
provided in subsection (f), section two of this article, shall be
of good moral character, honesty and integrity and shall have
the necessary experience and financial ability to successfully
carry out the functions of a management services provider.
The commission may adopt rules establishing additional
requirements for an authorized management services
provider. The commission may accept licensing by another
jurisdiction, specifically determined by the commission to
have similar licensing requirements, as evidence the applicant
meets authorized management services provider licensing
requirements.

(c) Management service provider specifications. -- An
applicant for a license to provide management services to a
gaming facility licensee shall demonstrate that the
management services that the applicant plans to offer to the
gaming facility licensee conform or will conform to standards
established by rules of the commission and applicable state
law.

(d) License application requirements. -- An applicant for
a license to provide management services to a gaming facility
licensee shall:

(1) Submit an application to the commission in the form
required by the commission including adequate information
to serve as a basis for a thorough background check;

(2) Submit fingerprints for a national criminal records
check by the Criminal Identification Bureau of the West
Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation; and

(3) Pay to the commission a nonrefundable application fee for deposit into the Historic Resort Hotel Fund in the amount of $100.

(e) Authorization. -- A license to provide management services to a gaming facility licensee authorizes the licensee to provide management service to a gaming facility while the license is active. The commission may by rule establish the conditions which constitute an emergency under which the commission may issue provisional licenses pending completion of final action on an application.

(f) Fees, expiration date and renewal. -- A licensed provider of management services shall pay to the commission an annual license fee of $100 for an initial term beginning prior to the date of the provider's first contract with a gaming facility licensee and continuing through the end of the twelfth month thereafter whenever the licensee has paid the renewal fee and has continued to comply with all applicable statutory and rule requirements. The commission shall renew a license to provide management services to a gaming facility annually thereafter. A gaming facility licensee may continue to use the management services provided by the management services provider while that provider was licensed, notwithstanding the expiration of the provider's license, unless the commission finds the services provided are not
§29-25-34. State ownership of West Virginia Lottery table games.

All West Virginia Lottery table games authorized by this article shall be West Virginia lottery games owned by the State of West Virginia. A gaming facility license granted to a historic resort hotel by the commission pursuant to this article shall include the transfer by the commission to the historic resort hotel limited license rights in and to the commission’s intellectual property ownership of the West Virginia lottery games which includes granting licensees limited lawful authority relating to the conduct of lottery table games for consideration, within the terms and conditions established pursuant to this article and any rules promulgated under this article.

§29-25-35. Preemption.

No local law or rule providing any penalty, disability, restriction, regulation or prohibition for operating a historic resort hotel with West Virginia Lottery table games or supplying a licensed gaming facility may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this article.

§29-25-36. Exemption from federal law.

Pursuant to Section 2, Chapter 1194, 64 Stat. 1134, 15 U. S. C.§1172, approved January 2, 1951, the State of West Virginia, acting by and through duly elected and qualified members of the Legislature, does declare and proclaim that the state is exempt from Chapter 1194, 64 Stat. 1134, 15 U. S. C.§1171 to §1178.
§29-25-37. Game rules of play; disputes.

(a) As an agent of the commission authorized to operate West Virginia Lottery table games, the gaming facility licensee shall have written rules of play for each West Virginia Lottery table game it operates that are approved by the commission before the West Virginia Lottery table game is offered to the public. Rules of play proposed by the gaming facility may be approved, amended or rejected by the commission.

(b) All West Virginia Lottery table games shall be conducted according to the specific rules of play approved by the commission. All wagers and pay-offs of winning wagers shall be made according to those rules of play, which shall establish any limitations necessary to assure the vitality of West Virginia Lottery table game operations.

(c) The gaming facility licensee shall make available in printed form to any patron, upon request of the patron, the complete texts of the rules of play of any West Virginia Lottery table games in operation at the gaming facility, pay-offs of winning wagers and any other advice to the player required by the commission.

(d) Patrons are considered to have agreed that the determination of whether the patron is a valid winner is subject to the game of play rules and, in the case of any dispute, will be determined by the commission. The determination by the commission shall be final and binding upon all patrons and shall not be subject to further review or appeal.

§29-25-38. Shipment of gambling devices.

All shipments of gambling devices, including video lottery machines, to the licensed gaming facility in this state,
the registering, recording and labeling of which have been 
completed by the manufacturer or dealer thereof in 
accordance with Chapter 1194, 64 Stat. 1134, 15 U. S. 
C.§1171 to §1178, are legal shipments of gambling devices 
into the State of West Virginia.

CHAPTER 107

(H.B. 3170 - By Delegates Webster, Wooton, Shook, 
Fleischauer, Miley, Manchin, Ellem, Frazier, Lane and Shott)

[Amended and again passed May 27, 2009, as a result of the 
objections of the Governor; in effect ninety days from passage.] 
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §44A-1-7, §44A-1-9, §44A-1-10 
and §44A-1-14 of the Code of West Virginia, 1931, as 
amended; to amend and reenact §44A-2-1, §44A-2-5, 
§44A-2-6, §44A-2-7, §44A-2-12, §44A-2-13, §44A-2-13a, 
§44A-2-14 and §44A-2-15 of said code; to amend and reenact 
§44A-3-11 of said code; and to amend and reenact §44A-4-1 
and §44A-4-5 of said code, all relating to the West Virginia 
Guardianship and Conservatorship Act; clarifying the filing and 
review of the periodic accounting of conservators of 
incapacitated persons generally; clarifying transfer of venue; 
clarifying the posting of bond by conservators; authorizing the 
West Virginia Supreme Court of Appeals to coordinate 
education program and update materials and forms; expanding 
temporary protective orders to include freezing accounts and 
producing records; increasing filing fee for guardianship and 
conservatorship; transferring certain funds to the Supreme 
Court of Appeals; using additional fee for review of reports and
accountings by fiduciary commissioner or other person; clarifying who can access case files; clarifying who is responsible for proper service; clarifying duties and fees of appointed counsel; clarifying when limited conservatorship is needed; clarifying orders of the court and time of entry; authorizing appointment of fiduciary commissioner or other person to review reports; creating a notice of appointment to be filed with the clerk of the county commission; increasing temporary guardianships and conservatorships to six months; clarifying procedure for subsequent petitions; clarifying time frame for reports and accountings; increasing penalties for failure to file reports and accountings; reporting elder abuse; clarifying when appointments terminate; clarifying duties of guardian and conservator subsequent to death of protected person; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §44A-1-7, §44A-1-9, §44A-1-10 and §44A-1-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44A-2-1, §44A-2-5, §44A-2-6, §44A-2-7, §44A-2-12, §44A-2-13, §44A-2-13a, §44A-2-14 and §44A-2-15 of said code be amended and reenacted; that §44A-3-11 of said code be amended and reenacted; and that §44A-4-1 and §44A-4-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

Article
2. Procedure for Appointment.
3. Guardianship and Conservatorship Administration.
4. Termination, Revocation and Modification of Appointments.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-7. Transfer of venue following appointment.
§44A-1-10. Mandatory education; written material; and forms.
§44A-1-7. Transfer of venue following appointment.

(a) Following the appointment of a full or limited guardian or conservator or committee, the court with jurisdiction over the proceeding may order the transfer of jurisdiction to another circuit court in this state or to an appropriate tribunal in another state if it appears to the court that the interests of the protected person will be best served by such transfer. Transfer of jurisdiction to another state shall be in accordance with the provisions of chapter forty-four-c of this code.

(b) Upon the transfer, the previously appointed guardian or conservator shall report to the county of transfer that is assuming jurisdiction. Any changes to the appointments shall be made by the court assuming jurisdiction.


(a) The court has the discretion to determine whether the posting of a bond by a guardian, once appointed, is necessary. No bond is required of any sheriff or representative of the Department of Health and Human Resources appointed as conservator or guardian, respectively.

(b) The court shall order the posting of a bond by a conservator prior to appointment except where the conservator is excused from posting bond under the provisions of section eighteen, article four, chapter thirty-one-a of this code. In determining the amount or type of a conservator's bond, the court or mental hygiene commissioner shall consider:

(1) The value of the personal estate and annual gross income and other receipts within the conservator's control;
(2) The extent to which the estate has been deposited under an arrangement requiring an order of court for its removal;

(3) Whether an order has been entered waiving the requirement that accountings be filed and presented or permitting accountings to be presented less frequently than annually;

(4) The extent to which the income and receipts are payable directly to a facility responsible for or which has assumed responsibility for the care or custody of the protected person;

(5) The extent to which the income and receipts are derived from state or federal programs that require periodic accountings;

(6) Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required; and

(7) Whether the conservator was appointed pursuant to a nomination which requested that bond be waived.

(c) Any required bond may be with a surety and in an amount and form as the court may order and the court may order additional bond or reduce the bond whenever the court finds that a modification is in the best interests of the protected person or of the estate. The court may allow a property bond in lieu of a cash bond. Proof of bonding must be submitted to the court within thirty days of entry of the order regarding bond.

(d) In case of a breach of any condition placed on the bond of any guardian or conservator, an action may be instituted by any interested person for the use and benefit of
the protected person, for the estate of the protected person or
for the beneficiaries of the estate.

(e) The following requirements and provisions apply to
any bond which the court may require under this section:

(1) Sureties are jointly and severally liable with the
guardian or conservator and with each other;

(2) By executing an approved bond of a guardian or
conservator, the surety consents to the jurisdiction of the
court in any proceeding pertaining to the fiduciary duties of
the conservator and naming the surety as a party respondent.
Notice of any proceeding must be delivered to the surety or
mailed by registered or certified mail to the address of the
surety listed with the court in which the bond is filed. If the
party initiating a proceeding possesses information regarding
the address of a surety which would appear to be more
current than the address listed with the court, notice shall also
be mailed by registered or certified mail to the last address of
the surety known to the party initiating the proceeding;

(3) On petition of a successor guardian or conservator or
any interested person, a proceeding may be initiated against
a surety for breach of the obligation of the bond of the
preceding guardian or conservator; and

(4) The bond of the guardian or conservator is not void
after any recovery but may be proceeded against from time
to time until the whole penalty is exhausted.

(f) No proceeding may be commenced against the surety
on any matter as to which an action or proceeding against the
guardian or conservator is barred by adjudication or
limitation.

§44A-1-10. Mandatory education; written material; and forms.
(a) Any individual appointed to serve as a guardian or conservator must receive educational material or complete mandated educational training, unless the court enters an order stating that the individual does not require the mandated educational training because he or she has completed the mandated educational training within the last three years.

(b) Upon a determination that the individual who is the subject of proceedings under this chapter is a protected person, as defined in section four of this article, the required educational training must be completed within thirty days of the court's determination. Upon completion, the appointed guardian or conservator shall provide an affidavit to the court, certifying that the educational training has been completed, and the court shall forthwith issue the order of appointment in accordance with the provisions of section thirteen, article two of this chapter.

(c) The West Virginia Supreme Court of Appeals shall coordinate the education program for guardians and conservators, and shall update the program materials and requisite forms as necessary. The educational training may include the following:

(1) Written materials;

(2) Recorded information, whether audio, visual or both; or

(3) A combination of the above.


The court or mental hygiene commissioner may, at the request of a petitioner or upon its own motion, issue temporary protective orders freezing bank or investment
accounts, ordering the production of records and otherwise prohibiting or limiting the expenditure, sale or other legal transfer of any assets of the alleged protected person until a final order is entered revoking the protective orders.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established.
§44A-2-5. Confidentiality.
§44A-2-12. Limited conservatorships.
§44A-2-13a. Time of entry of orders.
§44A-2-14. Temporary guardians and conservators.
§44A-2-15. Notice of hearing on petitions subsequent to the appointment of a guardian or conservator.

§44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established.

(a) A petition for the appointment of a guardian or conservator shall be filed with the clerk of the circuit court in the county in which the alleged protected person resides or, if an alleged protected person has been admitted to a health care or correctional facility, in the county in which that facility is located. A petition for the appointment of a conservator for a missing person shall be filed with the clerk of the circuit court in the county in which the missing person last resided. The circuit clerk is not required to accept for filing a petition that is not administratively complete.

(b) The circuit court in which the proceeding is first commenced shall have exclusive jurisdiction unless that court determines that a transfer of venue would be in the best interests of the person alleged to need protection.

(c) The fee for filing a petition shall be $110 payable upon filing to the circuit clerk, $75 of which shall be retained by the circuit clerk and $35 of which shall be remitted by the
(d) The person bringing the petition shall be responsible for fees for filing the petition and other papers, for service of process, and for copies of court documents and transcripts. In the event that a guardian, conservator, or both, is appointed by the court, such fees shall be reimbursed to the individual who filed the petition from the protected person's estate, if funds are available. Any person who is pecuniarily unable to pay the fees and costs as set forth in article one, chapter fifty-nine of this code and article two, chapter fifty-one of this code will not be required to pay the fees and costs.

(e) There is hereby created in the State Treasury a special revenue account, which shall be an interest-bearing account, to be known as the Enforcement of Guardianship and Conservatorship Act Fund.

(f) The reports of guardians and inventory and accountings of conservators required by this chapter shall be examined semi-annually by the, fiduciary commissioner or other person appointed by the court in accordance with section eleven, article three of this chapter.

(g) The special revenue account known as the Enforcement of Guardianship and Conservatorship Act Fund, previously administered by the State Auditor, shall, on and after the amendment and reenactment of this section, be administered by the West Virginia Supreme Court of Appeals. All moneys previously collected for deposit into the fund pursuant to this chapter and not expended in accordance with this chapter shall be transferred to the West Virginia Supreme Court of Appeals. All collections shall be deposited and used for payment of fiduciary commissioner or other person appointed by the court for review of the reports.
§44A-2-5. Confidentiality.

Upon filing of a petition requesting appointment of a guardian or conservator, all pleadings, exhibits and other documents contained in the court file shall be considered confidential and not open for public inspection, either during the pendency of the case or after the case is closed. The protected person, and his or her attorney, may inspect or copy the file. Another party may file a petition stating the reasons for inspecting or copying the file and, upon good cause shown, the court or mental hygiene commissioner may authorize the party, or his or her attorney, to inspect and copy the file.


(a) Upon the filing of the petition and evaluation report, the court shall promptly issue a notice fixing the date, hour and location for a hearing to take place within sixty days.

(b) The alleged protected person shall be personally served with the notice, a copy of the petition and the evaluation report not less than fourteen days before the hearing. The person may not waive notice and a failure to properly notify the person shall be jurisdictional.

(c) A copy of the notice, together with a copy of the petition, shall be mailed by certified mail, return receipt requested, by the petitioner, at least fourteen days before the hearing to all individuals seven years of age or older and to all entities whose names and post office addresses appear in the petition. In the case of a missing person, a copy of the petition for the appointment of a conservator shall be mailed
by certified mail, return receipt requested, by the petitioner, at least fourteen days before the hearing to the last known address of the missing person. A copy of certified mail return receipts shall be filed in the office of the circuit clerk on or before the date of hearing. It is the responsibility of the petitioner to obtain proper service and file the appropriate documentation with the circuit clerk before the hearing.

(d) The notice shall include a brief statement in large print of the purpose of the proceedings and shall inform the alleged protected person of the right to appear at the hearing, the right to an attorney and the right to object to the proposed appointment. Additionally, the notice shall include the following statement in large print:

POSSIBLE CONSEQUENCES OF A COURT FINDING THAT YOU ARE INCAPACITATED

At the hearing you may lose many of your rights. A guardian may be appointed to make personal decisions for you. A conservator may be appointed to make decisions concerning your property and finances. The appointment may affect control of how you spend your money, how your property is managed and controlled, who makes your medical decisions, where you live, whether you are allowed to vote and other important rights.

(e) No person may be appointed a guardian or conservator without first receiving proper notice and having the opportunity to be present at a hearing.


(a) The court shall appoint legal counsel for the alleged protected person to make recommendations to the court that are in the best interests of the alleged protected person. In appointing legal counsel, the court shall consider any known
preferences of the alleged protected person, or an alleged
protected person may hire and pay for an attorney of his or
her choice.

(b) Legal counsel shall have the following major areas of
concern: (1) Whether or not a guardian or conservator is
needed; (2) limitation of the role of the guardian or
conservator to the protected person's specific needs -- e.g.,
personal supervisor, business affairs, medical consent only;
(3) if needed, assure that the person or entity that will act in
the best interest of the protected person is appointed; (4) if
needed, assure the adequacy of the bond; and (5) if needed,
assure consideration of proper placement.

(c) In responsibly pursuing the major areas of concern set
forth in subsection (b) of this section, counsel may perform
any or all of the following: (1) Promptly notify the
individual and any caretaker of the appointment of counsel;
(2) contact any caretaker, review the file and all other
relevant information; (3) maintain contact with the client
throughout the case and assure that the client is receiving
services as are appropriate to the client's needs; (4) contact
persons who have or may have knowledge of the client; (5)
interview all possible witnesses; (6) pursue discovery of
evidence, formal and informal, including obtaining medical
and financial records; (7) file appropriate motions, including
temporary protective orders; (8) obtain independent
psychological examinations, medical examinations, home
studies, as needed; (9) advise the client on the ramifications
of the proceeding and inquire into the specific interests and
desires of the individual; (10) subpoena witnesses to the
hearing; (11) prepare testimony for cross-examination of
witnesses to assure relevant material is introduced; (12)
review all medical reports; (13) apprise the decision maker of
the individual's desires; (14) produce evidence on all relevant
issues; (15) interpose objections to inadmissible testimony;
(16) raise appropriate questions to all nominations for
guardian and conservator and the adequacy of the bond; (17) take all steps to limit the scope of guardianship and conservatorship to the individual's actual needs, and make all arguments to limit the amount of the intervention; (18) ensure that the court considers all issues as to the propriety of the individual's current or intended housing or placement and that the limitations are set forth in the order; (19) inform the client of the right to appeal, and file an appeal to an order when appropriate; (20) file a motion for modification of an order or a petition for a writ of habeas corpus if a change of circumstances occurs which warrants a modification or termination upon counsel being reappointed by the court; and (21) otherwise zealously represent the interests and desires of the client while also reporting to the court what actions are in the best interests of the client.

(d) The protected person shall have the right to an independent expert of his or her choice to perform an evaluation and present evidence.

(e) A person appointed by the court as counsel for a nonindigent alleged protected person shall inform the court or the mental hygiene commissioner of his or her hourly rate at the onset of the case and seek approval of his or her fee for the case by submitting it to the court or the mental hygiene commissioner for approval using forms provided by the West Virginia Supreme Court of Appeals. The hourly rate and fee for the case must be reasonable in light of the going rate for legal services, the complexity of the matter and the amount of legal work involved. The court may set the fee at the time of appointment.

§44A-2-12. Limited conservatorships.

A limited conservator may be appointed for an individual deemed to be a protected person in need of a conservator within the meaning of section four, article one of this chapter,
but whose property or financial affairs are so limited that there is only one or more designated contexts for which a limitation of the individual's legal rights is warranted.


(a) An order appointing a guardian or conservator may only be issued by the court upon the following:

(1) The guardian or conservator has subscribed to and filed an oath promising to faithfully perform the duties of the office in accordance with all provisions of this chapter;

(2) Posting of any bond, if required; and

(3) The completion of mandatory education, as required under the provisions of section ten, article one of this chapter, unless the court enters an order stating that an individual does not require educational training because he or she has completed the mandatory education within the last three years.

(b) In addition to the findings of fact and conclusions of law required in section nine of this article, the order shall include the specific areas of protection or assistance granted in the case of a guardian and the specific areas of management and assistance granted in the case of a conservator and address other areas of concern pursuant to the circumstances of the case.

(c) Within fourteen days following the entry of an order of appointment, the guardian or conservator shall mail a copy of the order of appointment, together with a brief statement in large print of rights to seek an appeal for modification or termination, to the protected person and to all individuals and entities given notice of the petition.
(d) Within ten days following the entry of an order of appointment, the circuit clerk shall mail a notice of appointment for recordation in the office of the clerk of the county commission to be recorded with the records of deeds and records of powers of attorneys, and listed in the appropriate indexes under the name of the protected person stating the case name and number, the name of the protected person, and the names of the guardian and conservator so that persons are put on notice of the existence of a guardianship or conservatorship.

§44A-2-13a. Time of entry of orders.

The mental hygiene commissioner or the court shall prepare an order within fourteen days of the hearing directing the appointees to complete the mandatory education and post any required bond within thirty days of the hearing. After the mandatory education is completed and the bond posted, then the court shall enter a final order on the petition within fourteen days.

§44A-2-14. Temporary guardians and conservators.

(a) The court may appoint a temporary guardian or temporary conservator, or both, under this section upon a finding that an immediate need exists, that adherence to the procedures otherwise set forth in this chapter for the appointment of a guardian or conservator may result in significant harm to a person or the estate, and that no other individual or entity appears to have authority to act on behalf of the person, or that the individual or entity with authority to act is unwilling, or has ineffectively or improperly exercised the authority.

(b) A temporary guardian or temporary conservator shall have only those powers and duties that are specifically set forth in the order of appointment. The appointment of a
temporary guardian or temporary conservator shall expire within six months unless it is terminated or extended for up to six months by the court or mental hygiene commissioner for good cause shown following a hearing.

(c) An appointment of a temporary guardian or temporary conservator shall be made upon timely and adequate notice to the protected person after appointment or notice of appearance of counsel and after all other protections have been afforded, in accordance with due process of law, including any other conditions as the court may order. The protected person may petition the court for a substitution of a temporary guardian or temporary conservator at any time.

(d) Within five days following the entry of an order of appointment, a temporary guardian or temporary conservator shall mail a copy of the order of appointment, together with a brief statement in large print of rights to seek an appeal for modification or termination, to the person for whom the appointment was made and to all individuals and entities that would be entitled to notice of hearing on a petition for appointment as set forth in section six of this article.

§44A-2-15. Notice of hearing on petitions subsequent to the appointment of a guardian or conservator.

(a) Except as otherwise provided herein or as ordered by the court for good cause shown, notice of hearing on a petition for an order subsequent to the appointment of a guardian or conservator shall be personally served upon the protected person and mailed to an appointed counsel or attorney of record, to those individuals who would be entitled to notice of the filing of an original petition to appoint, to any facility that is responsible for the care and custody of the protected person, to the guardian or conservator, if the guardian or conservator is not the petitioner, and to other individuals or entities as the court may order.
(b) Unless otherwise ordered by the court, the notice shall be personally served upon the protected person and mailed by the petitioner by certified mail return receipt requested to other parties entitled to notice at least fourteen days prior to the hearing and shall be accompanied by a copy of the petition and other relevant documents. A copy of the certified mail return receipts shall be filed in the office of the circuit clerk on or before the date of the hearing.

(c) The court or mental hygiene commissioner may conduct hearings on subsequent petitions filed pursuant to this chapter.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-11. Filing of reports and accountings; misdemeanor for failure to file; reporting elder abuse.

(a) Reports of guardians and accountings of conservators, as described in this article shall be filed with the circuit clerk of the county in which appointed and also with the fiduciary commissioner of the county or other person if the court has made a referral in its order:

(1) Within six months of being appointed;

(2) By December 31 of each year thereafter;

(3) When the court orders additional reports or accountings to be filed;

(4) When the guardian or conservator resigns or is removed; and

(5) When the appointment of the guardian or conservator is terminated, except that in the case of a guardian, the court
may determine that there is no need for a report upon the
termination; and in the case of a conservator, no accounting
is required if all persons entitled to any proceeds of the estate
consent thereto.

(b) The circuit clerk shall notify the court if the required
reports are not filed or are administratively incomplete. The
fiduciary commissioner, or other person appointed by the
court or mental hygiene commissioner, shall review the
reports and accountings semi-annually, and may request
additional information from the guardian or conservator. If
the reports or accountings are not filed, or if there are any
questions or discrepancies in the reports or accountings, the
person reviewing the report shall notify the court or mental
hygiene commissioner for further investigation or action of
the court, including but not limited to, a court order
requesting copies of bank or investment records, appointing
counsel to investigate the matter or setting a hearing on the
matter.

(c) If the court has in its order made a referral to the
fiduciary commissioner of the county:

(1) The accounting shall be governed by and the fiduciary
commissioner shall handle the same under the provisions of
sections ten, eleven, twelve, thirteen and fourteen, article
four, chapter forty-four of this code, except that all
compensation and expenses of the conservator shall be
allowed and approved only by the circuit court in accordance
with the provisions of section thirteen, article one of this
chapter.

(2) The fiduciary commissioner may not publish any
notice concerning the filing of a proposed accounting, but
shall serve a copy of the proposed accounting of the
conservator together with the notice by United States mail on
the protected person, all individuals and entities given notice
of the petition and any other person or entity found to be interested in the affairs of the protected person, all of whom have standing to file exceptions to or falsify the accounting before the fiduciary commissioner.

(3) In the settlement of the accounting of a conservator, the fiduciary commissioner is entitled to fees as are allowed for fiduciary commissioners in the handling of accountings of a decedent's estate, or as otherwise set by order of the circuit court.

(4) If the court or mental hygiene commissioner appoints a person other than the fiduciary commissioner to review the reports, such person shall report to the court as required by this article. The court shall establish a fee for reviewing a report which shall be paid by the Supreme Court of Appeals from the Enforcement of Guardianship and Conservatorship Act Fund.

(5) Any party feeling aggrieved of a settlement or decision by the fiduciary commissioner concerning the accounting may on motion filed within four months of the settlement or decision appeal the same to the circuit court.

(d) Any guardian or conservator who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500.

(e) The parties, attorneys or mental hygiene commissioner shall report violations of this section, or any other alleged elder abuse violations, including criminal elder abuse pursuant to section twenty-nine, article two, chapter sixty-one of this code, to the Department of Health and Human Resources or county prosecutor for further investigation and action.
(f) The West Virginia Supreme Court of Appeals shall
prescribe forms for reports, accountings and inventories
required to be filed pursuant to the provisions of this article.

ARTICLE 4. TERMINATION, REVOCATION AND
MODIFICATION OF APPOINTMENTS.

§44A-4-1. Termination of appointment of guardian or conservator.

(a) The appointment of a guardian or conservator shall
terminate upon the death, resignation or removal of the
 guardian or conservator.

(b) The appointment further terminates upon the death of
the protected person. The guardian or conservator shall file
the certified death certificate of the protected person with the
circuit clerk with a final report or accounting.

(c) A guardianship or conservatorship shall terminate
whenever jurisdiction is transferred to another state or if
ordered by the court following a hearing on the petition of
any interested person.

(d) In the case of a missing person, a conservatorship
shall terminate when the missing person is located or when
the person's death is established by the production of a
certified death certificate, or the person is presumed dead
pursuant to the provisions of article nine, chapter forty-four
of this code.

(e) The court or the mental hygiene commissioner shall
prepare a termination order dismissing the guardianship or
conservatorship case and discharging any bond posted by the
 guardian or conservator.
(f) A termination of an appointment does not affect the liability of a guardian or conservator for prior acts or the responsibility of a conservator to account for the estate of the protected person.

§44A-4-5. Duty of guardian or conservator subsequent to death of protected person.

1 In the absence of an advanced directive, such as a will, living will or power of attorney, or preneed burial or cremation contract, after the death of the protected person, a guardian or a conservator, if there is no guardian, shall continue to have authority to make decisions regarding the body of the deceased protected person for the purposes of authorizing an autopsy and making funeral arrangements. The guardian’s or conservator’s authority shall continue until an executor or executrix or an administrator or administratrix has been appointed.

CHAPTER 108

(Com. Sub. for S.B. 414 - By Senators Prezioso, Foster, Jenkins, Stollings, Caruth, Laird, Unger, Minard and Kessler)

[Amended and again passed May 28, 2009, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to repeal §5-16-7b of the Code of West Virginia, 1931, as amended; to repeal §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17 of said
code; to amend and reenact §5F-2-2 of said code; to amend and reenact §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4 and §16-29H-5 of said code; and to amend said code by adding thereto five new sections, designated §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10, all relating generally to the creation of the Governor’s Office of Health Enhancement and Lifestyle Planning; setting forth legislative findings; setting forth the powers and duties of the office; transferring the powers and duties of the Pharmaceutical Cost Management Council to the office; creating the position of director; setting forth the qualifications of the director; setting forth the powers and duties of the director; providing for staff; creating an advisory council; setting forth the membership of the advisory council; setting forth terms of office for the advisory council; setting forth powers and duties of the advisory council; requiring the development of a five-year strategic plan; providing for legislative rule-making authority; providing for coordination with various state agencies, departments, boards, bureaus and commissions; requiring reporting to the Governor and the Legislature; establishing pilot projects for patient-centered medical homes; setting forth legislative findings; defining terms; evaluating existing medical home pilot programs; establishing criteria for pilot projects for patient-centered medical homes; defining four types of pilot projects; setting forth evaluation criteria; granting rule-making authority; and exempting the office from Purchasing Division requirements.

Be it enacted by the Legislature of West Virginia:

That §5-16-7b of the Code of West Virginia, 1931, as amended, be repealed; that §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17 of said code be repealed; that §5F-2-2 of said code be amended and reenacted; that §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4 and §16-29H-5 of said code be amended and reenacted; and that said code be amended by adding thereto five new
sections, designated §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29-10, all to read as follows:

Chapter
5F. Organization of the Executive Branch of State Government.

CHAPTER 5F. ORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary employees as may be necessary to carry out the functions of the secretary, which employees shall serve at the will and pleasure of the secretary;

(2) Cause the various agencies and boards to be operated effectively, efficiently and economically and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members and name a person to fill more than one position;

(4) Transfer permanent state employees between departments in accordance with the provisions of section seven of this article;

(5) Delegate, assign, transfer or combine responsibilities or duties to or among employees, other than administrators or board members;
(6) Reorganize internal functions or operations;

(7) Formulate comprehensive budgets for consideration by the Governor and transfer within the department funds appropriated to the various agencies of the department which are not expended due to cost savings resulting from the implementation of the provisions of this chapter: Provided, That no more than twenty-five percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the State Road Fund transferred to the office of the Secretary of the Department of Transportation is not a use other than the purpose for which the funds were dedicated and is permitted: Provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the appropriate secretary may transfer the funds formerly appropriated to the agency, board or function in order to implement consolidation. The authority to transfer funds under this section shall expire on June 30, 2010;

(8) Enter into contracts or agreements requiring the expenditure of public funds and authorize the expenditure or obligation of public funds as authorized by law: Provided, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department under this chapter;
(9) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever kind or character as authorized by law: Provided, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall be exercised in accordance with the provisions of articles three, ten and eleven, chapter five-a of this code: Provided, however, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department under this chapter;

(10) Conduct internal audits;

(11) Supervise internal management;

(12) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter in accordance with the provisions of chapter twenty-nine-a of this code;

(13) Grant or withhold written consent to the proposal of any rule, as defined in section two, article one, chapter twenty-nine-a of this code, by any administrator, agency or board within the department. Without written consent, no proposal for a rule shall have any force or effect;

(14) Delegate to administrators the duties of the secretary as the secretary may deem appropriate, from time to time, to facilitate execution of the powers, authority and duties delegated to the secretary; and
(15) Take any other action involving or relating to internal management not otherwise prohibited by law.

(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

(1) The elimination, reduction and restriction of the state's vehicle or other transportation fleet;

(2) The elimination, reduction and restriction of state government publications, including annual reports, informational materials and promotional materials;

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment and services;

(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

(5) The adoption of revised procurement practices to facilitate cost-effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases; and

(6) The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries herein shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any
federal law or regulation, any federal-state program or
federally delegated program or jeopardize the approval,
existence or funding of any program.

(d) The layoff and recall rights of employees within the
classified service of the state as provided in subsections (5)
and (6), section ten, article six, chapter twenty-nine of this
code shall be limited to the organizational unit within the
agency or board and within the occupational group
established by the classification and compensation plan for
the classified service of the agency or board in which the
employee was employed prior to the agency or board's
transfer or incorporation into the department: Provided, That
the employee shall possess the qualifications established for
the job class. The duration of recall rights provided in this
subsection shall be limited to two years or the length of
tenure, whichever is less. Except as provided in this
subsection, nothing contained in this section shall be
construed to abridge the rights of employees within the
classified service of the state as provided in sections ten and
ten-a, article six, chapter twenty-nine of this code.

(e) Notwithstanding any other provision of this code to
the contrary, the secretary of each department with authority
over programs which have an impact on the delivery of
health care services in the state or are payors for health care
services or are payors for prescription drugs, including, but
not limited to, the Public Employees Insurance Agency, the
Department of Health and Human Resources, the Bureau of
Senior Services, the Children's Health Insurance Program, the
Health Care Authority, the Office of the Insurance
Commissioner, the Division of Corrections, the Division of
Juvenile Services, the Regional Jail and Correctional Facility
Authority, state colleges and universities, public hospitals,
state or local institutions including nursing homes and
veterans' homes, the Division of Rehabilitation Services,
public health departments, the Bureau for Medical Services
and other programs, which have an impact on the delivery of
health care services or are payors for health care services or
are payors for prescription drugs, in West Virginia shall
cooperate with the Governor’s Office of Health Enhancement
and Lifestyle Planning established pursuant to article twenty-
nine-h, chapter sixteen of this code for the purpose of
improving the health care delivery services in West Virginia
for any program over which they have authority.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29H. GOVERNOR’S OFFICE OF HEALTH ENHANCEMENT AND LIFESTYLE PLANNING.

§16-29H-1. Legislative findings.

The Legislature finds:

(1) Rising health care costs have a significant impact not
only on the citizens of the state, but also the state's ability to
develop a competitive advantage in seeking new business.
Reducing this level of costs and developing new, more
effective options for reducing growth in health care spending
is essential to ensuring the health of West Virginia's citizens
and to the advancement of a well-developed workforce.

(2) West Virginia spends thirteen percent more per
person on health care than the national average. Moreover,
the growth in spending in the state is higher than the national average. These rising costs have contributed to fewer employers, particularly small employers, offering health insurance as a benefit of employment. This is an occurrence that may further drive up health care costs throughout the state.

(3) West Virginia is among the highest in such health care indicators as childhood and adult obesity which provides a direct connection to higher rates of diabetes, hypertension, hyperlipidemia, heart disease, pulmonary disorders and comorbid depression experienced in West Virginia. Nearly one third of the rise in health care costs can be attributed to the rise in obesity throughout the state and the nation. Additionally, high rates of chronic illness represents a substantial reduction in worker productivity.

(4) To address the concerns over rising costs, West Virginia must change the way it pays for care, shifting the focus to primary care and prevention. Seventy-five percent of health care spending is associated with treatment of chronic diseases requiring ongoing medical management over time. Patients with chronic diseases, however, only receive fifty-six percent of the clinically recommended preventive services. This lack of preventive services creates a seventy-five percent increase in health care spending.

(5) Health care delivery in West Virginia needs to be modernized. This will require substantial changes in how health care is delivered to the chronically ill, an increase in information technology tools used for patient management, a simplification of health care processing and a broad overhaul in our perceptions of wellness and prevention.

(6) West Virginians must be challenged to engage in a more healthy lifestyle, they must alter the focus of their perception of health care from one of episodic care to prevention and wellness efforts. Equally as important, is that
health care providers must be engaged with their patients and
in the process of delivery of health care and strive for
continuous improvement of the quality of care they provide.

(7) West Virginia must develop a health care system that
is sufficient to meet the needs of its citizens; equitable, fair
and sustainable, but that is also accountable for quality,
access, cost containment and service delivery.

§16-29H-2. Creation of the Governor's Office of Health
Enhancement and Lifestyle Planning; duties.

(a) There is created the Governor's Office of Health
Enhancement and Lifestyle Planning. The purpose of this
office is to coordinate all state health care system reform
initiatives among executive branch agencies, departments,
bureaus and offices. The office shall be under the direct
supervision of the director, who is responsible for the
exercise of the duties and powers assigned to the office under
the provisions of this article.

(b) All state agencies that have responsibility for the
development, improvement and implementation of any aspect
of West Virginia's health care system, including, but not
limited to, the Public Employees Insurance Agency, the
Bureau of Senior Services, the Children's Health Insurance
Program, Office of the Pharmaceutical Advocate, the Health
Care Authority, the West Virginia Health Information
Network, the Insurance Commission, the Department of
Health and Human Resources, state colleges and universities,
the Pharmaceutical Advocate, public hospitals, state or local
institutions such as nursing homes, veterans' homes, the
Division of Rehabilitation Services, public health
departments, shall cooperate with the Governor's Office of
Health Enhancement and Lifestyle Planning established for
the purpose of coordinating the health care delivery system
in West Virginia for any program over which they have
authority.
§16-29H-3. Director of the Governor's Office of Health Enhancement and Lifestyle Planning appointment; qualifications; oath; salary.

(a) The office is under the supervision of the director. The director is the executive and administrative head of the office and shall be appointed by the Governor with advice and consent of the Senate. The director shall be qualified by training and experience to direct the operations of the Governor's Office of Health Enhancement and Lifestyle Planning and serves at the will and pleasure of the Governor. The duties of the director include, but are not limited to, the management and administration of the Governor's Office of Health Enhancement and Lifestyle Planning.

(b) The director:

(1) Serves on a full-time basis and may not be engaged in any other profession or occupation;

(2) May not hold political office in the government of the state either by election or appointment while serving as the director;

(3) Shall be a citizen of the United States and West Virginia and become a resident of the state within ninety days of appointment;

(4) Is ineligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code. Any other employee hired by the director is also ineligible for civil service coverage; and

(5) Is entitled to receive an annual salary as provided by the Governor.

(c) Before entering upon the discharge of the duties as director, the director shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution.
of West Virginia. The executed oath shall be filed in the Office of the Secretary of State.

§16-29H-4. Director of the Governor’s Office of Health Enhancement and Lifestyle Planning; powers and duties, hiring of staff.

(a) The director has the power and authority to:

1. Purchase or enter into contracts or agreements as necessary to achieve the purposes of this article;

2. File suit;

3. At the request of a state agency that has responsibility for any aspect of West Virginia's health care system, evaluate and advise the agency on ways that can better achieve the purposes of this article. In addition, the director may determine in collaboration with the agencies responsible for health systems in the state to improve efficiencies and reduce costs through interagency agreements to enter into contracts. Contracts may only be renegotiated if there is a demonstrated and measurable cost savings for the state and the agencies are in agreement;

4. Enter into contracts with public or private entities in this state, governments of other states and jurisdictions and their individual departments, agencies, authorities, institutions, programs, quasi-public corporations and political subdivisions in the event that such contracts would be a collaboration between the health system agencies involved and agreed to by all parties.

5. Participate in regional or multistate purchasing alliances or consortia, formed for the purpose of pooling the combined purchasing power of the individual members and increasing purchasing power with agreement of all participating parties and financially advantageous to each party. This power does not affect individual state agencies
from participating in any purchasing alliance or consortium
as established in their own program. If the director
participates in any cooperative purchasing agreement,
alliance or consortium which is comprised of at least five
million covered lives, the cooperative purchasing agreement,
alliance or consortium may employ an agreed-upon pricing
schedule that, in the judgment of the director and the other
participating entities, will maximize savings to the broadest
percentage of the population of this state: Provided, That any
pharmaceutical manufacturer that deals with such cooperative
purchasing agreements, alliances or consortia may request a
waiver from such pricing schedule in West Virginia or any
other participating state for a particular drug that should be
granted if the director finds that the development, production,
distribution costs, other reasonable costs and reasonable
profits excluding marketing, advertising and promotional
costs not essential to bringing the product to market are more
than the schedule price of the pharmaceutical or in those
cases in which the pharmaceutical in question has a sole
source. The director shall determine fees to be paid by the
applicant at the time of the waiver application and proof
required to be submitted at the time of the waiver request to
support the validity of the request.

(6) Make recommendations to the Governor and the
Legislature regarding strategies that could more effectively
make the health care delivery system in West Virginia more
timely, more patient centered, provide greater patient access
and quality of service and control health care costs;

(7) Develop and implement other programs, projects and
initiatives to achieve the purposes of this article, including
initiating, evaluating and promoting primary-care medical
homes pursuant to section six of this article and other
strategies that result in greater access to health care, assure
greater quality of care and result in reduced costs for health
care delivery services to the citizens of West Virginia:
Provided, That interagency agreements shall be utilized for services that would be duplicative;

(8) Work with the Health Care Authority to ensure that the preventive health care pilots are implementing a primary-care medical home model as defined in this article;

(9) Develop a five-year strategic plan as set forth in section six of this article for implementation of West Virginia's health care system reform initiatives together with recommendations for administration, policy, legislative rules or legislation. This plan shall be reported to the Joint Committee on Government and Finance, the Legislative Oversight Commission on Health and Human Resources Accountability and the Governor on or before December 31, 2009;

(10) Provide professional development on emerging health care policies and contracting for health care services; and

(11) Evaluate and offer, if resources become available, a grant program for local communities to encourage healthy lifestyles in collaboration with the Healthy Lifestyles Coalition.

(b) The director shall employ such professional, clerical, technical and administrative personnel as may be necessary to carry out the provisions of this article and with consideration of the appropriation provided by the Legislature.

(c) The director shall prepare and submit to the Governor and the Legislature annual proposed appropriations for the next fiscal year which shall include sums necessary to support the activities of the Governor's Office of Health Enhancement and Lifestyle Planning.
(d) The director shall submit an annual report separate from the strategic plan by January 1 of each year to the Governor and the Legislative Oversight Commission on Health and Human Resources Accountability on the condition, operation and functioning of the Governor's Office of Health Enhancement and Lifestyle Planning.

(e) The director shall supervise the fiscal management and responsibilities of the Governor's Office of Health Enhancement and Lifestyle Planning.

(f) The director shall keep an accurate and complete record of all the Governor's Office of Health Enhancement and Lifestyle Planning proceedings, records and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and records of the office.

(g) The director may convene a series of focus groups, polls and any other available research tool to determine issues of importance to all stakeholders after a thorough review of available research currently in existence. The development of these survey tools shall be done in conjunction with employers, health care providers and consumers. Data received from this research should be easily available to the public and utilized in the development and design of health benefit programs. The data should also be accessible to providers to allow them to meet the needs of the health care market.

(h) The director may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to accomplish the goals and purposes of this article.

(a) The Health Enhancement and Lifestyle Planning Advisory Council is hereby created. The advisory council is an independent, self-sustaining council that has the powers and duties specified in this article.

(b) The advisory council is a part-time council whose members perform such duties as specified in this article. The ministerial duties of the advisory council shall be administered and carried out by the Governor's Office of Health Enhancement and Lifestyle Planning.

c) Each member of the advisory council shall devote the time necessary to carry out the duties and obligations of the office. Those members appointed by the Governor may pursue and engage in another business or occupation or gainful employment that is not in conflict with the duties of the advisory council.

d) The advisory council is self-sustaining and independent, however it, its members, the director and employees of the Governor's Office of Health Enhancement and Lifestyle Planning are subject to article nine-a, chapter six of this code and chapters six-b, twenty-nine-a and twenty-nine-b of this code.

e) The advisory council is comprised of the following governmental officials: The Secretary of the Department of Health and Human Resources, or his or her designee, the Director of the Public Employees Insurance Agency, or his or her designee, the Commissioner of the Office of the Insurance Commissioner, or his or her designee, the Chair of the West Virginia Health Care Authority, or his or her designee and the director of the West Virginia Children's Health Insurance Program or his or her designee. The council shall also consist of the following public members: One public member shall represent an organization of senior citizens with at least ten thousand members within the state,
one public member shall represent the West Virginia Academy of Family Physicians, one public member shall represent the West Virginia Chamber of Commerce, one public member shall represent a federally qualified health center, one public member shall represent the largest labor organization in the state, one public interest organization that represents the interests of consumers, one public member shall represent West Virginia Hospital Association, one public member shall represent the West Virginia Medical Association, one public member shall represent the West Virginia Nurse’s Association and two ex-officio nonvoting members shall be the Speaker of the House, or his or her designee, and the President of the Senate, or his or her designee.

(f) Public members shall be appointed by the Governor with advice and consent of the Senate. Each public member shall serve for a term of four years. Of the public members of the advisory council first appointed, one shall be appointed for a term ending June 30, 2010, and two each for terms of three and four years. The remainder shall be appointed for the full four-year terms as provided in this section. Each public member serves until his or her successor is appointed and has qualified. The Director of the Governor’s Office of Health Enhancement and Lifestyle Planning shall serve as chairperson of the advisory council.

(g) Advisory council members may not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(h) The advisory council shall meet within the state at such times as the chair may decide, but at least once annually. The advisory council shall also meet upon a call of seven or more members upon seventy-two hours’ written notice to each member.
(i) Eight members of the advisory council are a quorum for the transaction of business.

(j) A majority vote of the members present is required for any final determination by the advisory council. Voting by proxy is not allowed.

(k) The advisory council shall keep a complete and accurate record of all its meetings according to section five, article nine-a, chapter six of this code.

(l) Notwithstanding the provisions of section four, article six, chapter six of this code, the Governor may remove any advisory council member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.

(m) The advisory council has general responsibility to review and provide advice and comment to the Governor’s Office of Health Enhancement and Lifestyle Planning on its policies and procedures relating to the delivery of health care services or the purchase of prescription drugs. The advisory council shall offer advice to the director on matters over which the office has authority and oversight. This includes, but is not limited to:

(1) Hiring of professional, clerical, technical and administrative personnel as may be necessary to carry out the provisions of this article;

(2) Contracts or agreements;

(3) Rule-making authority; and

(4) Development of policy necessary to meet the duties and responsibilities of the Governor’s Office of Health

1 The director shall develop a five-year strategic plan for
2 implementation of any and all health care system reform
3 initiatives. These initiatives shall be included, but are not
4 limited to:

5 (1) Development of pilot projects for patient-centered
6 medical homes as set forth in section nine of this article;

7 (2) Prioritization of chronic conditions to be targeted for
8 purposes of resource allocation and for greater chronic care
9 management. This should include pilot projects for
10 community-based health teams for the development of care
11 plans for healthy children and adults to maintain good health
12 and for at risk populations to prevent development of
13 preventable chronic diseases;

14 (3) Development of standardized prior authorization
15 requirements and processes from insurers;

16 (4) Coordination with the State Board of Education as set
17 forth in article two, chapter eighteen of this code to provide
18 for:

19 (i) The preservation and allocation of recess time away
20 from instruction and separate from physical education classes
21 in the state schools;

22 (ii) Continuing education for school food personnel and
23 a career hierarchy for food personnel that offers rewards for
24 continuing education hours and credits;

25 (iii) School-based physical education coordinators; and
(iv) Placement of a dietician in each regional education service area throughout the state;

(5) Implementation of school-based initiatives to achieve greater dietary consistency in West Virginia's school system and to gain greater physical fitness from students;

(6) Development of community-based projects designed for the construction, development and maintenance of bicycle and pedestrian trails and sidewalks;

(7) Development and implementation of universal wellness and health promotion benefits;

(8) Continued promotion and support for efforts to decrease the number of West Virginians using tobacco products;

(9) Any necessary changes that will increase small businesses who offer available health insurance as a benefit of employment;

(10) Development of goals to further improve health care delivery in West Virginia. This should include a means to evaluate progress toward achieving these goals in a simple and timely manner;

(11) Measurement of progress of health care providers and physicians to the adoption and use of electronic medical records in their offices;

(12) Collaboration on health information technology with the West Virginia Health Information Network, the Bureau for Medical Services and other appropriate entities which shall include:
(i) Working through the West Virginia Health Information Network, the Bureau for Medical Services and other appropriate entities, to develop a collaborative approach for health information exchange;

(ii) Facilitating and encouraging of ongoing projects such as electronic medical record resources in community health clinics;

(iii) Encouragement of continued development of hospital systems and deployment of hospital-supported electronic medical records when available for hospital-based, hospital-employed and nonhospital-employed physicians;

(iv) Development of strategies to implement tax incentives, vendor discounts, enhanced reimbursement and other means to individual physician offices and clinics to encourage greater adoption and use of electronic medical records;

(v) Development of recommended electronic medical record best practices utilizing the Certification Commission for Health Care Information Technology as the minimum standard;

(vi) Development of funding mechanisms that provide initial start up funds and a mechanism for sustainability of electronic medical records; and

(vii) Exploration of federal funding to ensure the most efficient and cost-effective means of meeting the state’s health information technology objectives.

§16-29H-7. Coordination with higher education.

The director shall consult with all the colleges and universities in the state, both public and private, with the
state's three medical schools, with community and technical
colleges and with the Higher Education Policy Commission.
The purpose of this collaboration would be:

(1) The development of curricula focused on a chronic
care model to reflect the multidisciplinary team approach to
the delivery of health care services in West Virginia as
contemplated by the development of a patient-centered
medical home as that term is defined in section nine of this
article; and

(2) The development of technology-centered jobs that
would further the state's efforts in moving toward the broader
use of electronic health records.

§16-29H-8. Continuing efforts to reduce prescription drug
prices.

(a) The rule-making authority previously granted to the
Pharmaceutical Cost Management Council in article three-c,
chapter five-a of this code to require the reporting of
pharmaceutical advertising costs is here transferred to the
Governor's Office of Health Enhancement and Lifestyle
Planning.

(b) Advertising costs for prescription drugs, based on
aggregate national data, shall be reported to the Governor's
Office of Health Enhancement and Lifestyle Planning by all
manufacturers and labelers of prescription drugs dispensed in
this state that employs, directs or utilizes marketing
representatives. The reporting shall assist this state in its role
as a purchaser of prescription drugs and an administrator of
prescription drug programs, enabling this state to determine
the scope of prescription drug advertising costs and their
effect on the cost, utilization and delivery of health care
services and furthering the role of this state as guardian of the
public interest.
(c) The Governor's Office of Health Enhancement and Lifestyle Planning shall establish by legislative rule pursuant to the provisions of article three, chapter twenty-nine-a of this code the reporting requirements of information by labelers and manufacturers which shall include all national aggregate expenses associated with advertising and direct promotion of prescription drugs through radio, television, magazines, newspapers, direct mail and telephone communications as they pertain to residents of this state.

(d) The following are exempt from disclosure requirements:

(1) All free samples of prescription drugs intended to be distributed to patients;

(2) All marketing items of a value less than $100;

(3) All payments of reasonable compensation and reimbursement of expenses in connection with a bona fide clinical trial. As used in this subdivision, "clinical trial" means an approved clinical trial conducted in connection with a research study designed to answer specific questions about vaccines, new therapies or new ways of using known treatments;

(4) All scholarship or other support for medical students, residents and fellows to attend significant educational, scientific or policy making conference of national, regional or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association; and

(5) Any data that identifies specific prescription drugs or pharmaceuticals by individual name, any group of individuals or specific individual by name and any specific physician or pharmacy or group of physicians or pharmacies by name.
The Governor’s Office of Health Enhancement and Lifestyle Planning, with advice of the advisory council, is authorized to revise existing legislative rules that establish time lines, the documentation, form and manner of reporting required, and determine necessary changes to existing legislative rules to effectuate the purposes of this article. The director shall include in his or her annual report to the Legislature, in an aggregate form, the information provided in the required reporting.

Notwithstanding any provision of law to the contrary, information submitted to the director pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in chapter twenty-nine-b, article one of this code. Data compiled in aggregate form by the director for the purposes of reporting required by this section is a public record as defined in the West Virginia Freedom of Information Act as long as it does not reveal trade information that is protected by state or federal law or specific prescription drugs or pharmaceuticals by individual name, any group of individuals or specific individual by name and any specific physician or pharmacy or group of physicians or pharmacies by name.

The director is authorized to consider strategies by which West Virginia may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the state’s residents, including the authority to:

1. Explore discount prices or rebate programs for seniors and persons without drug coverage;

2. Explore and if in the best interest of the state and financially feasible, a counter-detailing program aimed at education health care practitioners about the relative costs
and benefits of various prescription drugs with an emphasis on generic drugs;

(3) Explore purchasing agreements with public or private sector entities that could be beneficial in the cost of pharmaceuticals; and

(4) Explore other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug cost and increasing access for citizens of the state and develop necessary legislation to implement such strategies.


(a) Legislative findings. --

The Legislature finds that:

(1) There is a need in the state to transform the health care services delivery model toward primary prevention and more proactive care management through the development of patient-centered medical homes;

(2) The concept of a patient-centered medical home would promote a partnership between the individual patient, the patient's various health care providers, the patient's family and, if necessary, the community. It integrates the patient as an active participant in their own health and well-being;

(3) The patient-centered medical home provides care through a multidisciplinary health team consisting of physicians, nurse practitioners, nurses, physicians assistants, behavioral health providers, pharmacists, social workers, physical therapists, dental and eye care providers and dieticians to meet the health care needs of a patient in all aspects of preventative, acute, chronic and end-of-life care using evidence-based medicine and technology;
(4) In a patient-centered medical home each patient has an ongoing relationship with a personal physician. The physician would lead a team of health care providers who take responsibility for the care of the patient or for arranging care with other qualified professionals;

(5) Transitioning health care delivery services to a patient-centered medical home would provide greater quality of care, increase patient safety and ensure greater access to health care;

(6) Currently there are medical home pilot projects underway at the Bureau for Medical Services and the Public Employees Insurance Agency that should be reviewed and evaluated for efficiency and a means to expand these to greater segments of the state's population, most importantly the uninsured.

(b) The patient-centered medical home is a health care setting that facilitates partnerships between individual patients and their personal physicians and, when appropriate, the patients' families and communities. A patient-centered medical home integrates patients as active participants in their own health and well-being. Patients are cared for by a physician or physician practice that leads a multidisciplinary health team, which may include, but is not limited to, nurse practitioners, nurses, physician's assistants, behavioral health providers, pharmacists, social workers, physical therapists, dental and eye care providers and dieticians to meet the needs of the patient in all aspects of preventive, acute, chronic care and end-of-life care using evidence-based medicine and technology. At the point in time that the Center for Medicare and Medicaid Services includes the nurse practitioner as a leader of the multidisciplinary health team, this state will automatically implement this change.

(c) The Governor's Office of Health Enhancement and Lifestyle Planning shall consult with the Bureau for Medical
Services and the Public Employees Insurance Agency on current medical home pilot projects which they are operating for their membership population. The director shall evaluate these programs in consultation with the Commissioner of the Bureau for Medical Services and the Director of the Public Employees Insurance Agency for a means to expand these beyond the populations currently being served by these pilots. Once data is available on these pilots that can be reviewed for planning purposes, the director shall utilize this as a means to develop and implement additional patient-centered medical home pilot programs beyond the limited populations served by the Bureau for Medical Services and the Public Employees Insurance Agency. The director shall develop four varying types of patient-centered medical home pilots based upon experience gained from the projects currently in operation at the Bureau for Medical Services and the Public Employees Insurance Agency. These patient-centered medical homes shall be based upon the individual practices of physicians.

(d) The four types of pilot programs shall be:

(1) Chronic Care Model Pilots. -- This model shall focus on smaller physician practices. Primary care providers shall work with payers and providers to identify various disease states. Through the collaborative effort of the primary care provider and the payers and providers, programs shall be developed to improve management of agreed upon conditions of the patient. Through this model, the primary care provider may utilize current practices of multipayer workgroups. These groups shall be comprised of the medical directors of the major health care payers and the state payers along with medical providers and others.

(2) Individual Medical Homes Pilots. -- These pilots shall focus on larger physician practices. They shall seek certification from the National Committee on Quality Assurance. That initial certification will be Level I
certification. This would be granted by virtue of certifying
the provider is in the process of attaining certification and
currently have met provisional standards as set by the
National Committee on Quality Assurance. This provisional
certification lasts only one year with no renewal.

(3) Community-Centered Medical Home Pilots. -- This
approach shall link primary care practices with community
health teams which would grow out of the current structure
in place for federally qualified health centers. The
community health teams shall include social and mental
health workers, nurse practitioners, care coordinators and
community health workers. These personnel largely exist in
community hospitals, home health agencies and other
settings. These pilots shall identify these resources as a
separate team to collaborate with the primary care practices.
The teams would focus on primary prevention such as
smoking cessation programs and wellness interventions as
well as working with the primary care practices to manage
patients with multiple chronic conditions. Within this pilot
all health care agencies are connected and share resources.
Citizens can enter the system of care from any point and
receive the most appropriate level of care or be directed to
the most appropriate care. Any financial incentives in this
model would involve all health care payers and could be used
to encourage collaboration between primary care practices
and the community health teams.

(4) Medical Homes for the Uninsured Pilots. -- These
pilots shall focus on medical homes to serve the uninsured.
They shall include various means of providing care to the
uninsured with primary and preventative care. Through this
mechanism, a variety of pilots may be developed that shall
include screening, treatment of chronic disease and other
aspects of primary care and prevention services. The pilots
will be chosen based on their design meeting the
requirements of this subsection and the resources available to
provide these services.
The Governor's Office of Health Enhancement and Lifestyle Planning may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code if they deem them necessary to implement this section.

1 The Governor's Office of Health Enhancement and Lifestyle Planning shall establish by guidelines, criteria to evaluate the pilot program and may require participating providers to submit such data and other information related to the pilot program as may be required by the Governor's Office of Health Enhancement and Lifestyle Planning. For purposes of this article, this information shall be exempt from disclosure under the Freedom of Information Act in article one, chapter twenty-nine-b of this code.

2 No later than December 1, 2009, and annually thereafter during the operation of the pilot program, the Governor's Office of Health Enhancement and Lifestyle Planning must submit a report to the Legislative Oversight Commission on Health and Human Resources Accountability as established in article twenty-nine-e of this chapter on progress made by the pilot project including suggested legislation, necessary changes to the pilot program and suggested expansion of the pilot program.

§16-29H-10. Exemption from Purchasing Division requirements.

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, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the Attorney General.
AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating to rule-making authority of the Secretary of the Department of Health and Human Resources; authorizing legislative and emergency rules to establish a funding mechanism for state aid for local health departments and to basic public health services funds.

Be it enacted by the Legislature of West Virginia:

That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and mental retardation centers and any other areas necessary to advise the secretary on rules.
The rules may include, but are not limited to, the regulation of:

(a) Land usage endangering the public health: Provided, that no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to: (1) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single-family dwelling unit; (2) propose or enforce rules applicable to single-family dwelling units for single-family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams or sources of water supply;

(b) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(c) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water
systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming pools in this state, whether publicly or privately owned;

(d) Safe drinking water, including:

(1) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(2) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and rules promulgated under this section; recordkeeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(3) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water;

(e) Food and drug standards, including cleanliness, proscription of additives, proscription of sale and other requirements in accordance with article seven of this chapter as are necessary to protect the health of the citizens of this state;
(f) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed and the availability, communications and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics: Provided, That any regulation of emergency medical service attendants and emergency medical care technician-paramedics may not exceed the provisions of article four-c of this chapter;

(g) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee: Provided, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility: Provided, however, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(h) Fees for services provided by the Bureau for Public Health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees and permit fees;

(i) The collection of data on health status, the health system and the costs of health care;
Opioid treatment programs duly licensed and operating under the requirements of chapter twenty-seven of this code. The Health Care Authority shall develop new certificate of need standards, pursuant to the provisions of article two-d of this chapter, that are specific for opioid treatment program facilities. No applications for a certificate of need for opioid treatment programs shall be approved by the Health Care Authority as of the effective date of the 2007 amendments to this subsection. The secretary shall promulgate revised emergency rules to govern licensed programs: *Provided*, That there is a moratorium on the licensure of new opioid treatment programs that do not have a certificate of need as of the effective date of the 2007 amendments to this subsection, which shall continue until the Legislature determines that there is a necessity for additional opioid treatment facilities in West Virginia. The secretary shall file revised emergency rules with the Secretary of State to regulate opioid programs in compliance with subsections (1) through (9), inclusive, of this section: *Provided, however,* That any opioid treatment program facility that has received a certificate of need pursuant to article two-d, of this chapter by the Health Care Authority shall be permitted to proceed to license and operate the facility. All existing opioid treatment programs shall be in compliance within one hundred eighty days of the effective date of the revised emergency rules as required herein. The revised emergency rules shall provide at a minimum:

(1) That the initial assessment prior to admission for entry into the opioid treatment program shall include an initial drug test to determine whether an individual is either opioid addicted or presently receiving methadone for an opioid addiction from another opioid treatment program. The patient may be admitted to the program if there is a positive test for either opioids or methadone or there are objective symptoms of withdrawal, or both, and all other criteria set forth in the rule for admission into an opioid treatment program are met: *Provided,* That admission
to the program may be allowed to the following groups with a high risk of relapse without the necessity of a positive test or the presence of objective symptoms: Pregnant women with a history of opioid abuse, prisoners or parolees recently released from correctional facilities, former clinic patients who have successfully completed treatment but who believe themselves to be at risk of imminent relapse and HIV patients with a history of intravenous drug use.

(2) That within seven days of the admission of a patient, the opioid treatment program shall complete an initial assessment and an initial plan of care. Subsequently, the opioid treatment program shall develop a treatment plan of care by the thirtieth day after admission and attach to the patient’s chart no later than five days after such plan is developed. The treatment plan is to reflect that detoxification is an option for treatment and supported by the program.

(3) That each opioid treatment program shall report and provide statistics to the Department of Health and Human Resources at least semiannually which includes the total number of patients; the number of patients who have been continually receiving methadone treatment in excess of two years, including the total number of months of treatment for each such patient; the state residency of each patient; the number of patients discharged from the program, including the total months in the treatment program prior to discharge and whether the discharge was for:

(A) Termination or disqualification;

(B) Completion of a program of detoxification;

(C) Voluntary withdrawal prior to completion of all requirements of detoxification as determined by the opioid treatment program; or
(D) An unexplained reason.

(4) That random drug testing of patients be conducted during the course of treatment. For purposes of these rules, random drug testing shall mean that each patient of an opioid treatment program facility has a statistically equal chance of being selected for testing at random and at unscheduled times. Any refusal to participate in a random drug test shall be considered a positive test: Provided, That nothing contained in this section or the legislative rules promulgated in conformity herewith will preclude any opioid treatment program from administering such additional drug tests as determined necessary by the opioid treatment program.

(5) That all random drug tests conducted by an opioid treatment program shall, at a minimum, test for the following:

(A) Opiates, including oxycodone at common levels of dosing;

(B) Methadone and any other medication used by the program as an intervention;

(C) Benzodiazepine including diazepam, lorazepam, clonazepam and alprazolam;

(D) Cocaine;

(E) Methamphetamine or amphetamine; and

(F) Other drugs determined by community standards, regional variation or clinical indication.

A positive test is a test that results in the presence of any drug or substance listed in this schedule and any other drug or substance prohibited by the opioid treatment program;
(6) That a positive drug test result after the first six months in an opioid treatment program shall result in the following:

(A) Upon the first positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling to the patient, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take home methadone privilege for a minimum of thirty days; and

(B) Upon a second positive drug test result within six months of a previous positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of sixty days; and

(3) Provide mandatory documented treatment team meetings with the patient.

(C) Upon a third positive drug test result within a period of six months the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a...
counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of one hundred twenty days; and

(3) Provide mandatory and documented treatment team meetings with the patient which will include, at a minimum:
The need for continuing treatment; a discussion of other treatment alternatives; and the execution of a contract with the patient advising the patient of discharge for continued positive drug tests.

(D) Upon a fourth positive drug test within a six-month period, the patient shall be immediately discharged from the opioid treatment program or, at the option of the patient, shall immediately be provided the opportunity to participate in a twenty-one day detoxification plan, followed by immediate discharge from the opioid treatment program.

(7) That the opioid treatment program must report and provide statistics to the Department of Health and Human Resources demonstrating compliance with the random drug test rules including confirmation that:

(A) The random drug tests were truly random in regard to both the patients tested and to the times random drug tests were administered by lottery or some other objective standard so as not to prejudice or protect any particular patient.

(B) The total number and the number of positive results; and

(C) The number of expulsions from the program.

(8) That all opioid treatment facilities be open for business seven days per week: Provided, That the opioid
treatment center may be closed for eight holidays and two training days per year.

(9) That the Office of Health Facility Licensure and Certification develop policies and procedures in conjunction with the Board of Pharmacy that will allow access to the Prescription Drug Registry maintained by the Board of Pharmacy before administration of methadone or other treatment in an opioid treatment program, after any positive drug test, and at each ninety-day treatment review to ensure the patient is not seeking prescription medication from multiple sources.

(k) The secretary shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a or this code for the distribution of state aid to local health departments and basic public health services funds.

(1) The rule shall include the following provisions:

(A) Base allocation amount for each county;

(B) Establishment and administration of an emergency fund of no more than two percent of the total annual funds of which unused amounts are to be distributed back to local boards of health at the end of each fiscal year;

(C) A calculation of funds utilized for state support of local health departments;

(D) Distribution of remaining funds on a per capita weighted population approach which factors coefficients for poverty, health status, population density and health department interventions for each county and a coefficient which encourages counties to merge in the provision of public health services;
(E) A hold-harmless provision to provide that each local health department receives no less in state support for a period of three years beginning in the 2009 budget year.

(2) The Legislature finds that an emergency exists and, therefore, the secretary shall file an emergency rule to implement the provisions of this section pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is subject to the prior approval of the Legislative Oversight Commission on Health and Human Resources Accountability prior to filing with the Secretary of State.

(1) Other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.

CHAPTER 110

(Com. Sub. for H.B. 2885 - By Delegates Perdue, Hatfield, Marshall, Michael, Moore, Rodighiero and Border)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §16-1A-1, §16-1A-3 and §16-1A-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-1A-5, all relating to uniform credentialing for health care providers; defining terms; establishing the composition of the advisory committee; requiring the advisory committee to develop proposed legislation to establish credentialing verification
organization or organizations, and the disposition of existing organizations; describing the duties of CVOs; describing the procedures for completion of verification; establishing time frames for credentialing; requiring all health care practitioners and insurers, hospitals, third party administrators and other health care entities to use the CVO and the credentialing form; developing credentialing requirements; developing privacy considerations; providing penalties; and requiring a report to the Legislature regarding proposed legislation on or before January 1, 2010.

Be it enacted by the Legislature of West Virginia:

That §16-IA-1, §16-IA-3 and §16-IA-4 of the Code of West Virginia, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-IA-5, all to read as follows:

ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.

§16-IA-1. Legislative findings; purpose.

(a) The Legislature finds:

(1) Credentialing, required by hospitals, insurance companies, prepaid health plans, third party administrators and other health care entities, is necessary to assess and verify the education, training and experience of health care practitioners to ensure that qualified professionals treat the citizens of this state.

(2) Currently, a credentialing application form has been created to reduce duplication and increase efficiency. Each health care entity performs primary source verification for the
11 practitioners who apply to that entity for affiliation. This
duplication of primary source verification is time consuming
and costly.

(3) The Secretary of the Department of Health and
Human Resources and the Insurance Commissioner share
regulatory authority over the entities requiring credentialing.

(b) The purpose of this article is to continue the advisory
committee to assist in developing a uniform credentialing
process and to develop legislation regarding the use of
uniform credentialing through one or more credentialing
verification organizations in this state.

§16-1A-3. Definitions.

1 (a) “Commissioner” is the Office of the Insurance
2 Commissioner.

3 (b) “CVO” is a Credentialing Verification Organization
4 which performs primary source verification of all health care
5 practitioners’ training, education and experience.

6 (c) “The department” is the Department of Health and
7 Human Resources;

8 (d) “Health care practitioners” means those established
9 pursuant to section two of this article in legislative rule.

10 (e) “Joint Commission” is an independent not-for-profit
11 organization that evaluates and accredits more than 15,000
12 health care organizations and programs in the United States.

13 (f) “NCQA” means the National Committee for Quality
14 Assurance, which is a private, 501(c)(3) not-for-profit
15 organization dedicated to improving health care quality.
(g) "Primary source verification procedure" means the procedure used by a credentialing organization to collect, verify and maintain the accuracy of documents and credentialing information submitted to it by a health care practitioner who is applying for affiliation with a health care entity.

(h) "URAC" means the American Accreditation Healthcare Commission.

(i) "Payor" means an insurer, prepaid health plan, hospital service corporation, third party administrator as defined in article forty-six, chapter thirty-three of this code, or any other entity that reimburses health care practitioners for medical services.

§16-1A-4. Advisory committee.

(a) The Secretary of the Department of Health and Human Resources and the Insurance Commissioner shall jointly establish an advisory committee to assist them in the development and implementation of the uniform credentialing process in this state. The advisory committee shall consist of thirteen appointed members. Six members shall be appointed by the Secretary of the Department of Health and Human Resources: One member shall represent a hospital with one hundred beds or less; one member shall represent a hospital with more than one hundred beds; one member shall represent another type of health care facility requiring credentialing; one member shall be a person currently credentialing on behalf of health care practitioners; and two of the members shall represent the health care practitioners subject to credentialing. Five members shall be representative of the entities regulated by the Insurance Commissioner that require credentialing and shall be appointed by the Insurance Commissioner: One member shall represent an indemnity health care insurer; one member
shall represent a preferred provider organization; one member shall represent a third party administrator; one member shall represent a health maintenance organization accredited by URAC; and one member shall represent a health maintenance organization accredited by the national committee on quality assurance. The Secretary of the Department of Health and Human Resources and the Insurance Commissioner, or the designee of either or both, shall be nonvoting ex officio members. Upon the effective date of this legislation, the state hospital association and state medical association shall each designate to the department one person to represent their respective associations and members and those designees shall be appointed to the advisory committee by the secretary of the department.

(b) At the expiration of the initial terms, successors will be appointed to terms of three years. Members may serve an unlimited number of terms. When a vacancy occurs as a result of the expiration of a term or otherwise, a successor of like qualifications shall be appointed. Representatives of the hospital and medical associations shall serve for three-year terms.

(c) The advisory committee shall meet at least annually to review the status of uniform credentialing in this state, and may make further recommendations to the Secretary of the Department of Health and Human Resources and the Insurance Commissioner as are necessary to carry out the purposes of this article. Any uniform forms and the list of health care practitioners required to use the uniform forms as set forth in legislative rule proposed pursuant to section two of this article may be amended as needed by procedural rule.

(a) On or before January 1, 2010, the advisory committee established pursuant to section four of this article shall develop legislation that considers the following:

1. The establishment of one or more CVOs within the state to provide primary source verification with electronic accessibility on a cost effective and operationally efficient basis;

2. The number of CVOs necessary to provide this access for the state;

3. The treatment of existing CVOs currently doing business within the state;

4. The duties of a CVO and the timelines for completion of its verification duties;

5. The procedures for maintaining healthcare practitioner files;

6. The payment system to cover the costs of the credentialing program;

7. The use and confidentiality of data generated, collected and maintained by a CVO;

8. Compliance by CVOs with certificate requirements including NCQA, URAC, Medicare and Medicaid and other state and federal requirements;

9. The required use by payors and hospitals of a CVO's primary source verification services;
(10) Credentialing recredentialing requirements as required by payors, hospitals and state and federal law and regulations;

(11) The use of site visits in credentialing;

(12) The maintenance, amounts and types of liability insurance to be obtained by a CVO;

(13) Consideration of existing statutory protections that should be extended to the CVO;

(14) Privacy considerations;

(15) If applicable, the terms and conditions of the contract under which a CVO operates in this state and the procedure and criteria upon which a CVO is selected;

(16) Penalties, if any, for noncompliance;

(17) Timelines for credentialing, recredentialing and other compliance obligation of payors;

(18) Reconciliation of the use of forms required by this article with other applicable state and federal laws and regulations.

(b) On or before January 1, 2010, the department and the commissioner shall jointly report to the Legislative Oversight Commission on Health and Human Resources Accountability proposed legislation to implement the provisions set forth in this article.
AN ACT to amend and reenact §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5 and §16-2D-7 of the Code of West Virginia, 1931, as amended, all relating generally to the certificate of need process; eliminating certain services of certificate of need review; defining terms; raising the expenditure minimum amount for a capital expenditure and major medical equipment threshold; eliminating archaic language; providing for legislative rule-making authority; setting forth standards for when certain ambulatory health care facilities are not subject to certificate of review; providing that electronic health records are not subject to certificate of review; providing that nonhealth-related projects are subject to certificate of review; and modifying the fee structure for certificate of review by setting forth a capitated amount for certificate of need fees.

Be it enacted by the Legislature of West Virginia:

That §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5 and §16-2D-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.
§16-2D-2. Definitions.

Definitions of words and terms defined in articles five-f and twenty-nine-b of this chapter are incorporated in this section unless this section has different definitions.

As used in this article, unless otherwise indicated by the context:

(a) "Affected person" means:

(1) The applicant;

(2) An agency or organization representing consumers;

(3) Any individual residing within the geographic area served or to be served by the applicant;

(4) Any individual who regularly uses the health care facilities within that geographic area;

(5) The health care facilities which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(6) The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

(7) Third-party payors who reimburse health care facilities similar to those proposed for services;
(8) Any agency that establishes rates for health care facilities similar to those proposed; or

(9) Organizations representing health care providers.

(b) "Ambulatory health care facility" means a free-standing facility that provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. For purposes of this definition, a free-standing facility is not located on the campus of an existing health care facility. This definition does not include any facility engaged solely in the provision of lithotripsy services or the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, that this exemption from review shall not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, that this exemption from review shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(c) "Ambulatory surgical facility" means a free-standing facility that provides surgical treatment to patients not requiring hospitalization. For purposes of this definition, a free-standing facility is not physically attached to a health care facility. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: Provided, that this exemption from review shall not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, that this exemption from review shall not be construed to include
health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(d) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located; and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide the new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(e) "Bed capacity" means the number of beds licensed to a health care facility or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility.

(f) "Campus" means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health care facility.

(g) "Capital expenditure" means:

(1) An expenditure made by or on behalf of a health care facility, which:

(A) (i) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and
(B) (i) Exceeds the expenditure minimum; or (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or (iii) is a substantial change to the services of such facility;

(2) The donation of equipment or facilities to a health care facility, which if acquired directly by that facility would be subject to review;

(3) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

(4) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the state agency to be a single capital expenditure subject to review. In making this determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility's long-range plan; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(h) "Expenditure minimum" means $2,700,000 for the calendar year 2009. The state agency shall adjust the expenditure minimum annually and publish an update of the amount on or before December 31 of each year. The expenditure minimum adjustment shall be based on the DRI inflation index published in the Global Insight DRI/WEFA Health Care Cost Review, or its successor or appropriate replacement index. This amount shall include the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting and other services essential to the acquisition,
(i) "Health", used as a term, includes physical and mental health.

(j) "Health care facility" means a publicly or privately owned facility, agency or entity that offers or provides health care services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part, and includes, but is not limited to, hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing hemodialysis units; intermediate care facilities; ambulatory health care facilities; ambulatory surgical facilities; home health agencies; hospice agencies; rehabilitation facilities; health maintenance organizations; and community mental health and mental retardation facilities. For purposes of this definition, "community mental health and mental retardation facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

(k) "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical, remedial or behavioral health care, treatment or confinement.

(l) "Health maintenance organization" means a public or private organization which:

(1) Is required to have a certificate of authority to operate in this state pursuant to section three, article twenty-five-a, chapter thirty-three of this code; or
(2)(A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services and out-of-area coverage;

(B) Is compensated except for copayments for the provision of the basic health care services listed in paragraph (A) of this subdivision to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent or kind of health service actually provided; and

(C) Provides physicians' services: (i) Directly through physicians who are either employees or partners of the organization; or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(m) "Health services" means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(n) "Home health agency" means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services: Home health aide services, other therapeutic services, physical therapy, speech therapy, occupational therapy, nutritional services or medical social services to persons in their place of residence on a part-time or intermittent basis.

(o) "Hospice agency" means a private or public agency or organization licensed in West Virginia for the administration or provision of hospice care services to terminally ill persons in the persons' temporary or permanent
residences by using an interdisciplinary team, including, at a minimum, persons qualified to perform nursing services; social work services; the general practice of medicine or osteopathy; and pastoral or spiritual counseling.

(p) "Hospital" means a facility licensed as such pursuant to the provisions of article five-b of this chapter, and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians and includes psychiatric and tuberculosis hospitals.

(q) "Intermediate care facility" means an institution that provides health-related services to individuals with mental or physical conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(r) "Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a new institutional health service which contains the information required by the state agency in rules adopted pursuant to section eight of this article.

(s) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of $2,700,000 in the calendar year 2009. The state agency shall adjust the dollar amount specified in this subsection annually and publish an update of the amount on or before December 31 of each year. The adjustment of the dollar amount shall be based on the DRI inflation index published in the Global Insight DRI/WEFA Health Care Cost Review or its successor or appropriate replacement index. This term does not include
medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U. S. C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(t) "Medically underserved population" means the population of an area designated by the state agency as having a shortage of personal health services. The state agency may consider unusual local conditions that are a barrier to accessibility or availability of health services. The designation shall be in rules adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state's medically underserved population designated by the federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 U. S. C. §254.

(u) "New institutional health service" means any service as described in section three of this article.

(v) "Nonhealth-related project" means a capital expenditure for the benefit of patients, visitors, staff or employees of a health care facility and not directly related to preventive, diagnostic, treatment or rehabilitative services offered by the health care facility. This includes, but is not limited to, chapels, gift shops, news stands, computer and information technology systems, educational, conference and meeting facilities, but excluding medical school facilities, student housing, dining areas, administration and volunteer
offices, modernization of structural components, boiler repair
or replacement, vehicle maintenance and storage facilities,
parking facilities, mechanical systems for heating, ventilation
systems, air conditioning systems and loading docks.

(w) "Offer", when used in connection with health
services, means that the health care facility or health
maintenance organization holds itself out as capable of
providing, or as having the means to provide, specified health
services.

(x) "Person" means an individual, trust, estate,
partnership, committee, corporation, association and other
organizations such as joint-stock companies and insurance
companies, a state or a political subdivision or
instrumentality thereof or any legal entity recognized by the
state.

(y) "Physician" means a doctor of medicine or osteopathy
legally authorized to practice by the state.

(z) "Proposed new institutional health service" means any
service as described in section three of this article.

(aa) "Psychiatric hospital" means an institution that
primarily provides to inpatients, by or under the supervision
of a physician, specialized services for the diagnosis,
treatment and rehabilitation of mentally ill and emotionally
disturbed persons.

(bb) "Rehabilitation facility" means an inpatient facility
operated for the primary purpose of assisting in the
rehabilitation of disabled persons through an integrated
program of medical and other services which are provided
under competent professional supervision.
(cc) "Review agency" means an agency of the state, designated by the Governor as the agency for the review of state agency decisions.

(dd) "Skilled nursing facility" means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled or sick persons.

(ee) "State agency" means the Health Care Authority created, established and continued pursuant to article twenty-nine-b of this chapter.

(ff) "State health plan" means the document approved by the Governor after preparation by the former statewide health coordinating council or that document as approved by the Governor after amendment by the former health care planning council or the state agency.

(gg) "Substantial change to the bed capacity" of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds as swing beds between acute care and long-term care categories: Provided, That a decrease in bed capacity in response to federal rural health initiatives is excluded from this definition.

(hh) "Substantial change to the health services" of a health care facility means: (1) The addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered; or (2) the termination of a health service offered by or on behalf of the facility: Provided, That "substantial change to the health services" does not include
the providing of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(ii) "To develop", when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

§16-2D-3. Certificate of need; new institutional health services defined.

(a) Except as provided in section four of this article, any new institutional health service may not be acquired, offered or developed within this state except upon application for and receipt of a certificate of need as provided by this article. Whenever a new institutional health service for which a certificate of need is required by this article is proposed for a health care facility for which, pursuant to section four of this article, no certificate of need is or was required, a certificate of need shall be issued before the new institutional health service is offered or developed. A person may not knowingly charge or bill for any health services associated with any new institutional health service that is knowingly acquired, offered or developed in violation of this article and any bill made in violation of this section is legally unenforceable.

(b) For purposes of this article, a proposed "new institutional health service" includes:

(1) The construction, development, acquisition or other establishment of a new health care facility or health maintenance organization;
(2) The partial or total closure of a health care facility or health maintenance organization with which a capital expenditure is associated;

(3) Any obligation for a capital expenditure incurred by or on behalf of a health care facility, except as exempted in section four of this article, or health maintenance organization in excess of the expenditure minimum or any obligation for a capital expenditure incurred by any person to acquire a health care facility. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(A) When a contract, enforceable under state law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

(B) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor, or

(C) In the case of donated property, on the date on which the gift is completed under state law;

(4) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(5) The addition of health services as specified by the state agency which are offered by or on behalf of a health care facility or health maintenance organization and which were not offered on a regular basis by or on behalf of the health care facility or health maintenance organization within the twelve-month period prior to the time the services would be offered: Provided, That lithotripsy services are not subject to certificate of need review. The state agency shall specify
by rule those health services subject to certificate of need review.

(6) The addition of ventilator services for any nursing facility bed by any health care facility or health maintenance organization;

(7) The deletion of one or more health services previously offered on a regular basis by or on behalf of a health care facility or health maintenance organization which is associated with a capital expenditure;

(8) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure, if the change is associated with a previous capital expenditure for which a certificate of need was issued and if the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken;

(9) The acquisition of major medical equipment;

(10) A substantial change in an approved new institutional health service for which a certificate of need is in effect. For purposes of this subsection, "substantial change" shall be defined by the state agency in rules adopted pursuant to section eight of this article; or

(11) An expansion of the service area for hospice or home health service, regardless of the time period in which the expansion is contemplated or made.

(c) Notwithstanding any other provisions of this article to the contrary, the construction, development, acquisition or other establishment of an institutional health service outside of this state and within a county contiguous to the border of
this state by or on behalf of a person that would otherwise be subject to review under the provisions of this section is not subject to certificate of need review. A hospital subject to review of the West Virginia Health Care Authority that constructs, develops or acquires any health care service or facility outside of West Virginia may not use the financial condition or performance of the newly constructed, developed, acquired or established health care service or facility as a basis or justification for obtaining a rate adjustment pursuant to article twenty-nine-b of this chapter.

§16-2D-4. Exemptions from certificate of need program.

(a) Except as provided in subdivision (9), subsection (b), section three of this article, nothing in this article or the rules adopted pursuant to the provisions of this article may be construed to authorize the licensure, supervision, regulation or control in any manner of the following:

(i) Private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That such exemption from review of private office practice shall not be construed to include the acquisition, offering or development of one or more health services, including ambulatory surgical facilities or centers, lithotripsy, magnetic resonance imaging and radiation therapy by one or more health professionals. The state agency shall adopt rules pursuant to section eight of this article which specify the health services acquired, offered or developed by health professionals which are subject to certificate of need review;
(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours;

(3) Establishments, such as motels, hotels and boardinghouses, which provide medical, nursing personnel and health-related services;

(4) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;

(5) The creation of new primary care services located in communities that are underserved with respect to primary care services: Provided, That to qualify for this exemption, an applicant must be a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay: Provided, however, That the exemption from certificate of need review of new primary care services provided by this subdivision shall not include the acquisition, offering or development of major medical equipment otherwise subject to review under the provisions of this article or to include the acquisition, offering or development of ambulatory surgical facilities, lithotripsy, magnetic resonance imaging or radiation therapy. The Office of Community and Rural Health Services shall define which services constitute primary care services for purposes of this subdivision and shall, to prevent duplication of primary care services, determine whether a community is underserved with respect to certain primary care services within the meaning of this subdivision. Any organization planning to
(6) The creation of birthing centers by nonprofit primary care centers that have a community board and provide primary care services to people in their community without regard to ability to pay or by nonprofit hospitals with less than one hundred licensed acute care beds: Provided, That to qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services: Provided, however, That if a primary care center attempting to qualify for this exemption is located in the same county as a hospital that is also eligible for this exemption, or if a hospital attempting to qualify for this exemption is located in the same county as a primary care center that is also eligible for this exemption, then at least one primary care center and at least one hospital from said county shall collaborate for the provision of services at a birthing center in order to qualify for this exemption: Provided further, That for purposes of this subsection, a "birthing center" is a short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy. Any primary care center or hospital planning to qualify for an exemption pursuant to this subdivision shall submit to the state agency a letter of intent describing the proposed birthing center and area of service.

(b) (1) A health care facility is not required to obtain a certificate of need for the acquisition of major medical equipment to be used solely for research, the addition of health services to be offered solely for research or the obligation of a capital expenditure to be made solely for research if the health care facility provides the notice required in subdivision (2) of this subsection and the state
agency does not find, within sixty days after it receives such
notice, that the acquisition, offering or obligation will or will
have the effect to:

(A) Affect the charges of the facility for the provision of
medical or other patient care services other than the services
which are included in the research;

(B) Result in a substantial change to the bed capacity of
the facility; or

(C) Result in a substantial change to the health services
of the facility.

(2) Before a health care facility acquires major medical
equipment to be used solely for research, offers a health
service solely for research or obligates a capital expenditure
solely for research, such health care facility shall notify in
writing the state agency of such facility's intent and the use
to be made of such medical equipment, health service or
capital expenditure.

(3) If major medical equipment is acquired, a health
service is offered or a capital expenditure is obligated and a
certificate of need is not required for such acquisition,
offering or obligation as provided in subdivision (1) of this
subsection, such equipment or service or equipment or
facilities acquired through the obligation of such capital
expenditure may not be used in such a manner as to have the
effect or to make a change described in paragraphs (A), (B)
and (C) of said subdivision unless the state agency issues a
certificate of need approving such use.

(4) For purposes of this subsection, the term "solely for
research" includes patient care provided on an occasional and
irregular basis and not as part of a research program.
(c) (1) The state agency may adopt rules pursuant to section eight of this article to specify the circumstances under which a certificate of need may not be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility: Provided, That a certificate of need is required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility if:

(A) The notice required by subdivision (2) of this subsection is not filed in accordance with said subdivision with respect to such acquisition; or

(B) The state agency finds, within thirty days after the date it receives a notice in accordance with subdivision (2) of this subsection, with respect to such acquisition, that the services or bed capacity of the facility will be changed by reason of said acquisition.

(2) Before any person enters into a contractual arrangement to acquire an existing health care facility, such person shall notify the state agency of his or her intent to acquire the facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given. The notice shall contain all information the state agency requires.

(d) The state agency shall adopt rules pursuant to section eight of this article to specify the circumstances under which and the procedures by which a certificate of need may not be required for shared services between two or more acute care facilities providing services made available through existing technology that can reasonably be mobile. The state agency shall specify the types of items in the rules and under what
153 circumstances mobile MRI and mobile lithotripsy may be so
154 exempted from review. In no case, however, will mobile
155 cardiac catheterization be exempted from certificate of need
156 review. In addition, if the shared services mobile unit proves
157 less cost effective than a fixed unit, the acute care facility
158 will not be exempted from certificate of need review.

159 On a yearly basis, the state agency shall review existing
160 technologies to determine if other shared services should be
161 included under this exemption.

162 (e) The state agency shall promulgate rules for legislative
163 approval in accordance with the provisions of article three,
164 chapter twenty-nine-a of this code to specify the
165 circumstances under which, and the procedures by which, a
166 certificate of need may not be required for the construction,
167 development, acquisition or other establishment by a hospital
168 of an ambulatory health care facility. Certificate of need may
169 not be required if:

170 (1) The ambulatory health care facility is located in the
171 same county as the hospital;

172 (2) Employs five or less physicians licensed to practice
173 in this state pursuant to either article three or article fourteen,
174 chapter thirty of this code;

175 (3) The total capital expenditure does not exceed the
176 expenditure minimum set forth in subsection two of this
177 section; and

178 (4) The construction, development, acquisition or other
179 establishment of an ambulatory health care facility is not
180 opposed by an affected person after substantive public notice
181 pursuant to the provisions of article three, chapter fifty-nine
182 of this code has been given by the Health Care Authority.
(f) The Health Care Authority shall provide at least thirty days' notice to the public of the intent of a health care facility to construct, acquire or develop an ambulatory health care facility. The Health Care Authority shall cause a Class II legal advertisement to be published in a qualified newspaper of general circulation where the construction, acquisition or development of the ambulatory health care facility is or will be geographically located. The thirty-day notice shall commence with the first date of publication. Additionally, if the county in which the ambulatory health care facility is or will be geographically located contains a daily newspaper, a legal advertisement shall also be placed at least once in the daily newspaper. Any public notice shall include the name of the hospital seeking to develop, acquire or construct an ambulatory health care facility, the kind of practice to be developed, acquired or constructed, the geographic location of the ambulatory health care facility and the address where protests may be submitted or filed.

(g) The state agency shall promulgate emergency rules pursuant to the provision of chapter twenty-nine-a of this code by July 1, 2009, to establish an exemption process for such projects.

(h) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system is not subject to certificate of need review.

(i) A health care facility is not required to obtain a certificate of need for any nonhealth-related project that does not exceed:

1. Five million dollars for a hospital with less than one hundred licensed acute care beds;

2. Ten million dollars for a hospital with one hundred or more licensed acute care beds; or
(3) Five million dollars for any other project.

(j) A certificate of need is not required for a psychiatric hospital operated by state government for the purpose of constructing forensic beds.

(k) Any behavioral health care service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need.

§16-2D-5. Powers and duties of state agency.

(a) The state agency shall administer the certificate of need program as provided by this article.

(b) The state agency is responsible for coordinating and developing the health planning research efforts of the state and for amending and modifying the state health plan which includes the certificate of need standards. The state agency shall review the state health plan, including the certificate of need standards and make any necessary amendments and modifications. The state agency shall also review the cost effectiveness of the certificate of need program. The state agency may form task forces to assist it in addressing these issues. The task forces shall be composed of representatives of consumers, business, providers, payers and state agencies.

(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency's responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health
plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of the services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of the services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved: Provided, That any fee charged pursuant to this subsection may not exceed a dollar amount to be established by procedural rule. The state agency shall evaluate and amend any procedural rule promulgated prior to the amendments to this subsection made during the 2009 regular session of the Legislature. The fees charged shall be deposited into a special fund known as the Certificate of Need Program Fund to be expended for the purposes of this article.

(g) A hospital, nursing home or other health care facility may not add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a of
this article and subsection (i) of this section may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, a certificate of need may not be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section shall incur an obligation for a capital expenditure within twelve months of the date of issuance of the certificate of need. Extensions may not be granted beyond the twelve-month period. The state agency shall establish a task force or utilize an existing task force to study the need for additional nursing facility beds in this state. The study shall include a review of the current moratorium on the development of nursing facility beds; the exemption for the conversion of acute care beds to skilled nursing facility beds; the development of a methodology to assess the need for additional nursing facility beds; and certification of new beds both by Medicare and Medicaid. The task force shall be composed of representatives of consumers, business, providers, payers and government agencies.

(h) An additional intermediate care facility for the mentally retarded (ICF/MR) beds may not be granted a certificate of need, except that prohibition does not apply to ICF/MR beds approved under the Kanawha County Circuit Court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E. H. v. Matin, 168 W. V. 248, 284 S. E. 2d 232 (1981).

(i) Notwithstanding the provisions of subsection (g) of this section and further notwithstanding the provisions of subsection (b), section three of this article, an existing acute care hospital may apply to the Health Care Authority for a
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Provided, That the proposed skilled nursing beds are Medicare-certified only: Provided, however, That any hospital which converts acute care beds to Medicare-certified only skilled nursing beds shall not bill for any Medicaid reimbursement for any converted beds. In converting beds, the hospital shall convert a minimum of one acute care bed into one Medicare-certified only skilled nursing bed. The Health Care Authority may require a hospital to convert up to and including three acute care beds for each Medicare-certified only skilled nursing bed: Provided further, That a hospital designated or provisionally designated by the state agency as a rural primary care hospital may convert up to thirty beds to a distinct-part nursing facility, including skilled nursing beds and intermediate care beds, on a one-for-one basis if the rural primary care hospital is located in a county without a certified freestanding nursing facility and the hospital may bill for Medicaid reimbursement for the converted beds: And provided further, That if the hospital rejects the designation as a rural primary care hospital, then the hospital may not bill for Medicaid reimbursement. The Health Care Authority shall adopt rules to implement this subsection which require that:

(1) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (b), section three of this article for which purposes an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ff), section two of this article.
(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital shall demonstrate a need for the project.

(4) The hospital shall use existing space for the Medicare-certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this section.

(5) The hospital shall notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient's county of residence. Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the Health Care Authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are Medicare-certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are Medicare-certified only may be developed pursuant to this subsection. The state health plan is not applicable to projects submitted under this subsection. The Health Care Authority shall adopt rules to implement this subsection which shall include a requirement that:

(A) The one hundred eighty beds are to be distributed on a statewide basis;

(B) There be a minimum of twenty beds and a maximum of sixty beds in each approved unit;
(C) The unit developed by the retirement life care center meets all federal and state licensing certification and operational requirements applicable to nursing homes;

(D) The retirement center demonstrates a need for the project;

(E) The retirement center offers personal care, home health services and other lower levels of care to its residents; and

(F) The retirement center demonstrates both short- and long-term financial feasibility.

(2) Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(k) The state agency may order a moratorium upon the offering or development of a new institutional health service when criteria and guidelines for evaluating the need for the new institutional health service have not yet been adopted or are obsolete. The state agency may also order a moratorium on the offering or development of a health service, notwithstanding the provisions of subdivision (5), subsection (b), section three of this article, when it determines that the proliferation of the service may cause an adverse impact on the cost of health care or the health status of the public. A moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and applications for certificates of need are processed pursuant to section six of this article.
(1) The state agency shall coordinate the collection of information needed to allow the state agency to develop recommended modifications to certificate of need standards as required in this article. When the state agency proposes amendments or modifications to the certificate of need standards, it shall file with the Secretary of State, for publication in the State Register, a notice of proposed action, including the text of all proposed amendments and modifications, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the state agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.

(2) When amending and modifying the certificate of need standards, the state agency shall identify relevant criteria contained in section six of this article or rules adopted pursuant to section eight of this article and apply those relevant criteria to the proposed new institutional health service in a manner that promotes the public policy goals and legislative findings contained in section one of this article. In doing so, the state agency may consult with or rely upon learned treatises in health planning, recommendations and practices of other health planning agencies and organizations, recommendations from consumers, recommendations from health care providers, recommendations from third-party payors, materials reflecting the standard of care, the state agency’s own developed expertise in health planning, data accumulated by the state agency or other local, state or federal agency or organization and any other source deemed relevant to the certificate of need standards proposed for amendment or modification.

(3) All proposed amendments and modifications to the certificate of need standards, with a record of the public hearing or written statements and documents received pursuant to a public comment period, shall be presented to
the Governor. Within thirty days of receiving the proposed amendments or modifications, the Governor shall either approve or disapprove all or part of the amendments and modifications and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the Governor may be revised and resubmitted.

(4) The certificate of need standards adopted pursuant to this section which are applicable to the provisions of this article are not subject to article three, chapter twenty-nine-a of this code. The state agency shall follow the provisions set forth in this subsection for giving notice to the public of its actions, holding hearings or receiving comments on the certificate of need standards. The certificate of need standards in effect on November 29, 2005, and all prior versions promulgated and adopted in accordance with the provisions of this section are and have been in full force and effect from each of their respective dates of approval by the Governor.

(m) The state agency may exempt from or expedite rate review, certificate of need and annual assessment requirements and issue grants and loans to financially vulnerable health care facilities located in underserved areas that the state agency and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health care services.

§16-2D-7. Procedures for certificate of need reviews.

(a) Prior to submission of an application for a certificate of need, the state agency shall require the submission of long-range plans by health care facilities with respect to the development of proposals subject to review under this article.
The plans shall be in such form and contain such information as the state agency requires.

(b) An application for a certificate of need shall be submitted to the state agency prior to the offering or development of all new institutional services within this state. Persons proposing new institutional health services shall submit letters of intent not less than fifteen days prior to submitting an application. The letters of intent shall be of such detail as specified by the state agency.

(c) The state agency may adopt rules pursuant to section eight of this article for:

(1) Provision for applications to be submitted in accordance with a timetable established by the state agency;

(2) Provision for such reviews to be undertaken in a timely fashion; and

(3) Except for proposed new institutional health services which meet the requirements for consideration under subsection (f), section nine of this article with regard to the elimination or prevention of certain imminent safety hazards or to comply with certain licensure or accreditation standards, provision for all completed applications pertaining to similar types of services, facilities or equipment to be considered in relation to each other at least three times a year.

(d) An application for a certificate of need shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure.

(e) The application shall be in such form and contain such information as the state agency establishes by rule, but
requests for information shall be limited to only that information which is necessary for the state agency to perform the review.

(f) Within fifteen days of receipt of application, the state agency shall determine if the application is complete. The state agency may request additional information from the applicant.

(g) The state agency shall provide timely written notice to the applicant and to all affected persons of the beginning of the review and to any person who has asked the state agency to place the person's name on a mailing list maintained by the state agency. Notification shall include the proposed schedule for review, the period within which a public hearing during the course of the review may be requested by affected persons, which period may not be less than thirty days from the date of the written notification of the beginning of the review required by this section, and the manner in which notification will be provided of the time and place of any public hearing so requested. For the purposes of this subsection, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(h) Written notification to members of the public and third-party payers may be provided through newspapers of general circulation in the applicable health service area and public information channels; notification to all other affected persons shall be by mail which may be as part of a newsletter.

(i) If, after a review has begun, the state agency requires the person subject to the review to submit additional information respecting the subject of the review, such person shall be provided at least fifteen days to submit the information and the state agency shall, at the request of such
person, extend the review period by fifteen days. This extension applies to all other applications which have been considered in relation to the application for which additional information is required.

(j) The state agency shall adopt schedules for reviews which provide that no review may, to the extent practicable, take longer than ninety days from the date that notification, as described under subsection (g) of this section, is sent to the applicant to the date of the final decision of the state agency and in the case of expedited applications, may, by rules adopted pursuant to section eight of this article, provide for a shortened review period.

(k) The state agency shall adopt criteria for determining when it would not be practicable to complete a review within ninety days.

(l) The state agency shall provide a public hearing in the course of agency review if requested by any affected person and the state agency may on its own initiate such a public hearing:

(1) The state agency shall, prior to such hearing, provide notice of such hearing and shall conduct such hearing in accordance with administrative hearing requirements in article five, chapter twenty-nine-a of this code and its procedure adopted pursuant to this section.

(2) In a hearing any person has the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter.
(3) The state agency shall maintain a verbatim record of the hearing.

(4) After the commencement of a hearing on the applicant's application and before a decision is made with respect to it, there may be no ex parte contacts between: (A) The applicant for the certificate of need, any person acting on behalf of the applicant or holder of a certificate of need or any person opposed to the issuance of a certificate for the applicant; and (B) any person in the state agency who exercises any responsibility respecting the application.

(5) The state agency may not impose fees for such a public hearing.

(m) If a public hearing is not conducted during the review of a new institutional health service, the state agency may, by rules adopted pursuant to section eight of this article, provide for a file closing date during the review period after which date no other factual information or evidence may be considered in the determination of the application for the certificate of need. A detailed itemization of documents in the state agency file on a proposed new institutional health service shall, on request, be made available by the state agency at any time before the file closing date.

(n) The extent of additional information received by the state agency from the applicant for a certificate of need after a review has begun on the applicant's proposed new institutional health service, with respect to the impact on such new institutional health service and additional information which is received by the state agency from the applicant, may be cause for the state agency to determine the application to be a new proposal, subject to a new review cycle.

(o) The state agency shall in timely fashion notify, upon request, providers of health services and other persons
130 subject to review under this article of the status of the state
131 agency review of new institutional health services subject to
132 review, findings made in the course of such review and other
133 appropriate information respecting such review.

134 (p) The state agency shall prepare and publish, at least
135 annually, reports of reviews completed and being conducted
136 with general statements about the status of each review still
137 in progress and the findings and rationale for each completed
138 review since the publication of the last report.

139 (q) The state agency shall provide for access by the
140 general public to all applications reviewed by the state
141 agency and to all other pertinent written materials essential
142 to agency review.

143 (r) (1) Any person may request in writing a public
144 hearing for purposes of reconsideration of a state agency
145 decision. No fees may be imposed by the state agency for the
146 hearing. For purposes of this section, a request for a public
147 hearing for purposes of reconsideration shall be considered
148 to have shown good cause if, in a detailed statement, it:

149 (A) Presents significant, relevant information not
150 previously considered by the state agency and demonstrates
151 that with reasonable diligence the information could not have
152 been presented before the state agency made its decision;

153 (B) Demonstrates that there have been significant
154 changes in factors or circumstances relied upon by the state
155 agency in reaching its decision;

156 (C) Demonstrates that the state agency has materially
157 failed to follow its adopted procedures in reaching its
158 decision; or

159 (D) Provides such other bases for a public hearing as the
160 state agency determines constitutes good cause.
(2) To be effective, a request for such a hearing shall be received within thirty days after the date of the state agency decision and the hearing shall commence within thirty days of receipt of the request.

(3) Notification of such public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service and to others upon request.

(4) The state agency shall hold public reconsideration hearings in accordance with the provisions for administrative hearings contained in:

(A) Its adopted procedures;

(B) Ex parte contact provisions of subdivision (4), subsection (1) of this section; and

(C) The administrative procedures for contested cases contained in article five, chapter twenty-nine-a of this code.

(5) The state agency shall make written findings which state the basis for its decision within forty-five days after the conclusion of such hearing.

(6) A decision of the state agency following a reconsideration hearing shall be considered a decision of the state agency for purposes of sections nine and ten of this article and for purposes of the notification of the status of review, findings and annual report provisions of subsections (o) and (p) of this section.

(s) The state agency may adopt rules pursuant to section eight of this article for reviews and such rules may vary according to the purpose for which a particular review is being conducted or the type of health services being reviewed.
(t) Notwithstanding other provisions of this article, the state agency shall adopt rules for determining when there is an application which warrants expedited review.

CHAPTER 112

(S.B. 669 - By Senators Kessler, Yost, Stollings, Unger and Wells)

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §16-2J-3 and §16-2J-7 of the Code of West Virginia, 1931, as amended, all relating to extending the Preventative Care Pilot Program (PCPP) for two years under certain conditions; increasing the number of parties the Health Care Authority and the Insurance Commissioner could permit to participate in the PCPP; and allowing sales to those with high deductible health benefit plans in certain circumstances and providing notice to the parties that prepaid services under the program may not count towards applicable health insurance deductibles.

Be it enacted by the Legislature of West Virginia:

That §16-2J-3 and §16-2J-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2J. PREVENTATIVE CARE PILOT PROGRAM.
§16-2J-3. Authorization of preventive care pilot program; number of participants and sites; Health Care Authority considerations in selection of participating providers; funding.

§16-2J-7. Participating provider plan requirements; primary care services; prior coverage restrictions; notice of discontinuance or reduction of benefits.

§16-2J-3. Authorization of preventive care pilot program; number of participants and sites; Health Care Authority considerations in selection of participating providers; funding.

(a) The Health Care Authority shall, in consultation with the Insurance Commissioner, develop and implement during the fiscal year beginning July 1, 2006, a pilot program that permits providers to market and sell prepaid memberships entitling subscribers to obtain preventive and primary health care from the participating providers. Participating providers shall not be allowed to offer their qualifying services at more than six separate sites. The pilot program shall expire on June 30, 2011.

(b) Subject to this article, the Health Care Authority is vested with discretion to select providers using diversity in practice organization, geographical diversity and other criteria it deems appropriate. The Health Care Authority also shall give consideration to providers located in rural areas or serving a high percentage or large numbers of uninsured.

(c) In furtherance of the objectives of this article, the Health Care Authority is authorized to accept any and all gifts, grants and matching funds whether in the form of money or services. However, no gifts, grants and matching funds shall be provided to the Health Care Authority by the State of West Virginia to further the objectives of this article.

§16-2J-7. Participating provider plan requirements; primary care services; prior coverage restrictions; notice of discontinuance or reduction of benefits.
In addition to this article and any guidelines established by the Health Care Authority and Insurance Commissioner, the plans offered pursuant to this article shall be subject to the following:

(1) Each participating provider and site must offer a minimum set of preventive and primary care services as established by the Health Care Authority.

(2) No participating provider may offer: (i) An individual plan to any individual who currently has a health benefit plan or who was covered by a health benefit plan within the preceding twelve months unless said coverage was lost due to a qualifying event; (ii) a family plan to any family that includes an adult to be covered who currently has a health benefit plan or who was covered by a health benefit plan within the preceding twelve months unless said coverage was lost due to a qualifying event; or (iii) an employee group plan to any employer that currently has a group health benefit plan or had a group health benefit plan covering its employees within the preceding twelve months; (iv) Notwithstanding the provisions of (i),(ii) or (iii) of this subsection, a participating provider may offer a plan to an individual if the individual is covered by a high deductible health benefit plan or policy and a participating provider may offer a plan to an employer group if the employer group is covered by a high deductible health benefit plan or policy. The participating provider shall give the perspective individual or employer a notice that indicates that the payment for the prepaid services may not count towards a health benefit plan deductible and that credit towards the deductible will depend on the health benefit policy or certificate language. The Insurance Commissioner shall approve the form of the notice to be used by the provider. For the purpose of this section, “high deductible health benefit plan” means a health benefit plan with a minimum individual annual deductible of $3,000 or, if
applicable, a family annual deductible of $3,000. Any employer who has converted its health benefit plan from a low deductible plan to a high deductible health benefits plan may not purchase a plan from a participating provider for six months from the date of conversion. Any individual who has converted his or her health benefit policy from a low deductible health policy to a high deductible plan may not purchase a plan from a participating provider for three months from date of conversion.

(3) On or before July 1, 2009, the Health Care Authority and the Insurance Commissioner shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to permit participation by a subscriber or employer with a comprehensive high deductible plan if the subscriber or employer is able to demonstrate that the participation will not negatively impact the coverage that is currently offered or will be offered by the employer. The rule shall provide for notice to the subscriber or employer that the payment for the prepaid services may or may not count towards the health insurance deductible, the determination of which will depend on the health insurance policy language.

(4) A participating provider must provide subscribers and, where applicable, subscribers' employers with a minimum of thirty days' notice of discontinuance or reduction of subscriber benefits.
AN ACT to amend and reenact §16-4C-6, §16-4C-6b and §16-4C-8 of the Code of West Virginia, 1931, as amended, all relating to the Emergency Medical Services Act; providing rule-making authority for fees for certification and recertification of emergency services personnel; providing for fees for certification and recertification of emergency services personnel to be deposited in the Emergency Medical Services Agency Licensure Fund; requiring applicants for certification to submit to a criminal history background check; prohibiting the release of results of criminal history background check to or by private entities; and establishing fees for certification and recertification of emergency services personnel.

Be it enacted by the Legislature of West Virginia:

That §16-4C-6, §16-4C-6b and §16-4C-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6. Power and duties of commissioner.
§16-4C-6b. Establishment of emergency medical services agency licensure fund; authorized expenditures; annual report.
§16-4C-8. Standards for emergency medical service personnel.
§16-4C-6. Powers and duties of commissioner.

The commissioner shall have the following powers and duties:

(a) In accordance with chapter twenty-nine-a of this code, to propose rules regarding the age, training, retraining, testing, certification and recertification, and fees for the certification and recertification, of emergency medical service personnel. However, the commissioner may not propose any rule required by this article until it has been submitted for review to the emergency medical services advisory council and this council has had at least thirty days to review such proposed rule. The council may take no action unless a quorum is present;

(b) To apply for, receive and expend advances, grants, contributions and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article;

(c) To design, develop and annually review a statewide emergency medical services implementation plan. The plan shall recommend aid and assistance and all other acts necessary to carry out the purposes of this article:

(1) To encourage local participation by area, county and community officials and regional emergency medical services boards of directors; and

(2) To develop a system for monitoring and evaluating emergency medical services programs throughout the state;

(d) To provide professional and technical assistance and to make information available to regional emergency medical services boards of directors and other potential applicants or program sponsors of emergency medical services for
purposes of developing and maintaining a statewide system
of services;

(e) To assist local government agencies, regional
emergency medical services boards of directors and other
public or private entities in obtaining federal, state or other
available funds and services;

(f) To cooperate and work with federal, state and local
governmental agencies, private organizations and other
entities as may be necessary to carry out the purposes of this
article;

(g) To acquire in the name of the state by grant, purchase,
gift, devise or any other methods appropriate real and
personal property as may be reasonable and necessary to
carry out the purposes of this article;

(h) To make grants and allocations of funds and property
so acquired or which may have been appropriated to the
agency to other agencies of state and local government as
may be appropriate to carry out the purposes of this article;

(i) To expend and distribute by grant or bailment funds
and property to all state and local agencies for the purpose of
performing the duties and responsibilities of the agency all
funds which it may have so acquired or which may have been
appropriated by the Legislature of this state;

(j) To develop a program to inform the public concerning
emergency medical services;

(k) To review and disseminate information regarding
federal grant assistance relating to emergency medical
services;

(l) To prepare and submit to the Governor and
Legislature recommendations for legislation in the area of
emergency medical services;
(m) To review, make recommendations for and assist in
all projects and programs that provide for emergency medical
services whether or not the projects or programs are funded
through the Office of Emergency Medical Services. A
review and approval shall be required for all emergency
medical services projects, programs or services for which
application is made to receive state or federal funds for their
operation after the effective date of this act; and

(n) To take all necessary and appropriate action to
courage and foster the cooperation of all emergency
medical service providers and facilities within this state.

(o) Nothing in this article may be construed to allow the
commissioner to dissolve, invalidate or eliminate any
existing emergency medical service program or ambulance
providers in service at the time of adoption of the amendment
to this article in the regular session of the Legislature in the
year 1984, or to deny them fair access to federal and state
funding, medical facilities and training programs.

§16-4C-6b. Establishment of emergency medical services
agency licensure fund; authorized expenditures; annual report.

(a) There is established in the State Treasury a special
revenue fund designated the “Emergency Medical Services
Agency Licensure Fund”, which shall be administered by the
Commissioner of the Bureau of Public Health.

(b) All application, personnel certification and
recertification and agency licensing fees collected pursuant
to the provisions of sections six, six-a and eight of this article
shall be deposited into the fund and expended in accordance
with the agency licensure and personnel certification and
recertification duties imposed in this article.
(c) Any remaining balance, including accrued interest, in the fund at the end of the fiscal year shall not revert to the General Revenue Fund, but shall remain in the account.

(d) On or before January 1 of each year, the commissioner shall provide the Legislature with an annual fiscal year report on the emergency medical services agency licensure account including, but not limited to, the previous fiscal year’s expenditures; projected expenditures for the current and next fiscal years; the number of agency licenses and personnel certifications and recertifications issued, denied, suspended or revoked; and, the status of licensure and certification hearings and court actions.

§16-4C-8. Standards for emergency medical service personnel.

(a) Every ambulance operated by an emergency medical service agency shall carry at least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first aid and the person in the patient compartment shall be certified as an emergency medical technician-basic at a minimum, except that in the case of a specialized multipatient medical transport, only one staff person is required and that person shall be certified, at a minimum, at the level of an emergency medical technician-basic.

(b) As a minimum the training for each class of emergency medical service personnel shall include:

(1) Emergency medical service attendant: Shall have earned and possess valid certificates from the department or by authorities recognized and approved by the commissioner;

(2) Emergency medical technician-basic: Shall have successfully completed the course for certification as an emergency medical technician-basic as established by the commissioner or authorities recognized and approved by the commissioner; and
(3) Emergency medical technician-paramedic: Shall have successfully completed the course for certification as an emergency medical technician-paramedic established by the commissioner or authorities recognized and approved by the commissioner.

(c) Subsection (b) of this section may not be considered to limit the power of the commissioner to prescribe training, certification and recertification standards.

(d) Any person desiring emergency medical service personnel certification shall apply to the commissioner using forms and procedures prescribed by the commissioner. Upon receipt of the application, the commissioner shall determine whether the applicant meets the certification requirements and may examine the applicant, if necessary to make that determination.

(e) The applicant shall submit to a national criminal background check, the requirement of which is declared to be not against public policy.

(1) The applicant shall meet all requirements necessary to accomplish the national criminal background check, including submitting fingerprints, and authorizing the West Virginia Office of Emergency Services and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for certification.

(2) The results of the national criminal background check may not be released to or by a private entity.

(3) The applicant shall submit a fee of $75 for initial certification and a fee of $50 for recertification. The fees set forth in this subsection remain in effect until modified by legislative rule.
(f) If the Commissioner determines that the applicant meets all of the requirements, he or she shall issue an appropriate emergency medical service personnel certificate which shall be valid for a period as determined by the commissioner.

(g) State and county continuing education and recertification programs for all levels of emergency medical service providers shall be available to emergency medical service providers at a convenient site within one hundred miles of the provider's primary place of operation at sites determined by the regional emergency medical services offices. The continuing education program shall be provided at a cost specified in a fee schedule to be promulgated by legislative rule in accordance with article three, chapter twenty-nine-a of this code by the Secretary of the Department of Health and Human Resources to all nonprofit emergency medical service personnel.

(h) The commissioner may issue a temporary emergency medical service personnel certificate to an applicant, with or without examination of the applicant, when he or she finds that issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and may not be renewed unless the commissioner finds the renewal to be in the public interest. The expiration date of a temporary certificate shall be extended until the holder is afforded at least one opportunity to take an emergency medical service personnel training course within the general area where he or she serves as an emergency medical service personnel, but the expiration date may not be extended for any longer period of time or for any other reason.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-4E-1, §16-4E-2, §16-4E-3, §16-4E-4, §16-4E-5 and §16-4E-6, all relating to development of a maternal risk assessment advisory council; providing for legislative findings; setting forth responsibilities of the advisory council; providing for legislative rule-making authority within the Department of Health and Human Resources to develop a uniform maternal risk screening tool; providing for applicability of the screening tool once developed; and providing confidentiality of the tool.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-4E-1, §16-4E-2, §16-4E-3, §16-4E-4, §16-4E-5 and §16-4E-6, all to read as follows:

ARTICLE 4E. UNIFORM MATERNAL SCREENING ACT.

§16-4E-1. Legislative findings.
§16-4E-2. Establishment of an advisory council on maternal risk assessment.
§16-4E-3. Responsibilities of the advisory council on maternal risk assessment.
§16-4E-4. Legislative rule-making authority.
§16-4E-5. Applicability of the screening tool.
§16-4E-6. Confidentiality of screening tool.
§16-4E-1. Legislative findings.

The Legislature finds that there is a need for a more comprehensive and uniform approach to any screening conducted by physicians and midwives to discover at-risk and high-risk pregnancies. A uniform approach would simplify the process, standardize the procedure and better identify those pregnancies that need more in-depth care and monitoring. Additionally, a uniform application would provide better and more measurable data regarding at-risk and high-risk pregnancies. This would allow public health officials to gain a better understanding of those conditions that are most frequently observed and to develop methodology to address those concerns.

§16-4E-2. Establishment of an advisory council on maternal risk assessment.

(a) There is hereby created within the Department of Health and Human Resources, Bureau for Public Health, Office of Maternal, Child and Family Health the advisory council on maternal risk assessment to provide assistance in the development of a uniform maternal risk screening tool.

(b) The Office of Maternal, Child and Family Health is charged with convening the advisory council at least annually and providing administrative and technical assistance to the advisory council as needed. The members of the advisory council shall be appointed by the Commissioner of the Bureau for Public Health.

(c) The advisory council shall be comprised of:

(1) At least one private provider of maternity services;

(2) At least one public provider of maternity services;
§16-4E-3. Responsibilities of the advisory council on maternal risk assessment.

This advisory council shall:

(a) Advise the Bureau for Public Health, Office of Maternal, Child and Family Health with respect to the implementation of this article;

(b) Offer expert advice to the Office of Maternal, Child and Family Health on the development of a uniform risk screening tool and review the tool at least annually to offer suggested updates based upon current medical knowledge;

(c) Provide comments to the Office of Maternal, Child and Family Health on any legislative rules necessary for the accomplishment of any requirements of this article; and
(d) Develop in conjunction with the Office of Maternal, Child and Family Health a statistical matrix to measure incidents of high-risk and at-risk pregnancies for planning purposes by public health officials.

§16-4E-4. Legislative rule-making authority.

The Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The legislative rules shall include a uniform maternal risk screening tool to identify women at risk for a preterm birth or other high-risk condition.

§16-4E-5. Applicability of the screening tool.

Once developed, all health care providers offering maternity services shall be required to utilize the uniform maternal risk screening tool in their examinations of any pregnant woman. Additionally they shall notify the woman of any high-risk condition which they identify along with any necessary referral and report the results to the Bureau for Public Health, Office of Maternal, Child and Family Health in the manner provided in the legislative rule.

§16-4E-6. Confidentiality of screening tool.

(a) The uniform maternal screening tool shall be confidential and shall not be released or disclosed to anyone including any state or federal agency for any reason other than data analysis of high-risk and at-risk pregnancies for planning purposes by public health officials.

(b) Proceedings, records and opinions of the advisory council are confidential and are not subject to discovery, subpoena or introduction into evidence in any civil or criminal proceeding. Nothing in this subsection is to be
construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the proceedings of the advisory council.

(c) Members of the advisory council may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the panel. Nothing in this subsection may be construed to prevent a member of the advisory council from testifying to information obtained independently of the panel or which is public information.

CHAPTER 115

(Com. Sub. for H.B. 3336 - By Delegate Perdue)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §16-5K-2 and §16-5K-6 of the Code of West Virginia, 1931, as amended, relating to authorizing the Bureau for Public Health to continue providing early intervention services to families with developmentally delayed infants and toddlers; authorizes the ability to charge fees on a sliding scale and to bill third party payers; and established that any fees or payments by third party payers will go into the Birth-to-Three Fund.

Be it enacted by the Legislature of West Virginia:
That §16-5K-2 and §16-5K-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.


Unless the context clearly otherwise indicates, as used in this article:

(a) “Bureau” means the Bureau for Children and Families Public Health within the Department of Health and Human Resources.

(b) “Council” means the Governor’s Early Intervention Interagency Coordinating Council.

(c) “Department” means the Department of Health and Human Resources.

(d) “Early intervention services” means developmental services which:

(1) Are designed to meet the developmental needs of developmentally delayed infants and toddlers and the needs of the family related to enhancing the child’s development;

(2) Are selected in collaboration with the parents;

(3) Are provided under public supervision in conformity with an individualized family service plan;

(4) Are provided either at no charge, fees based on a sliding scale, or charges to third party payers and do not
restrict access or services because of a client's financial limitations;

(5) Meet the state’s early intervention standards, as established by the Department of Health and Human Resources with the assistance of the Governor’s Early Intervention Interagency Coordinating Council;

(6) Include assistive technology, audiology, audiology case management, family training, counseling and home visits, health services necessary to enable a child to benefit from other early intervention services, medical services only for diagnostic or evaluation purposes, nursing services, nutrition services, occupational therapy, physical therapy, psychological services, social work services, special instruction, speech-language pathology, vision and transportation; and

(7) Are provided by licensed or otherwise qualified personnel, including audiologists, family therapists, nurses, nutritionists, occupational therapists, orientation and mobility specialists, physical therapists, physicians, psychologists, social workers, special educators, speech-language pathologists and paraprofessionals appropriately trained and supervised.

(e) “Infants and toddlers with developmental delay” means children from birth to thirty-six months of age who need early intervention services for any of the following reasons:

(1) They are experiencing developmental delays, as measured by appropriate methods and procedures, in one or more of the following areas: Cognitive, physical, including visual and hearing, communicative, adaptive, social, language and speech, or psycho-social development or self-help skills; or
(2) They have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or

(3) They are at risk of having substantial developmental delays if early intervention services are not provided.


(a) There is hereby created in the state treasury a fund to be known as the "West Virginia Birth-to-Three Fund" that shall be an interest-bearing account established and maintained to pay costs, fees and expenses incurred, or to be incurred, for early intervention services for children who are developmentally delayed.

(b) Funds deposited into this account shall be derived from the following sources:

(1) Any appropriations by the Legislature;

(2) Fund transfers from any fund of the divisions of the department of health and human resources that, in whole or in part, supports early intervention services;

(3) All public funds transferred by any public agency as permitted by applicable law;

(4) Any private funds contributed, donated or bequeathed by corporations, individuals or other entities; and

(5) All proceeds from fees paid by the client or third party payers; and

(6) All interest or return on investments accruing to the fund.
(c) Moneys deposited in this fund shall be used exclusively to provide early intervention services to accomplish the purposes of this article. Expenditures of moneys deposited in this fund are to be made in accordance with appropriation by the Legislature and in accordance with article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand three, expenditures are authorized from deposits rather than pursuant to appropriation by the Legislature.

(d) Any balance remaining in this fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

CHAPTER 116

(Com. Sub. for H.B. 2360 - By Delegates Schoen and Perdue)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-9A-10, relating to the sale of cigarettes; prohibiting the sale of cigarettes in anything other than original factory-wrapped packaging; prohibiting the sale or distribution of cigarettes in any form other than its original factory packaging; requiring warning on all cigarette packages; prohibiting the sale of individual cigarettes; prohibiting the sale of any cigarettes in a
packaging that does not reflect the required warning labels; and providing misdemeanor penalty.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-9A-10, to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-10. The sale of cigarettes in a container other than its original factory-wrapped packaging prohibited; sale of individual cigarettes prohibited; and warnings required.

1 (a) A person or business entity may not sell or offer for sale cigarettes in any form other than an original factory-wrapped package.

2 (b) No person or business entity may sell or offer for sale cigarettes in a package that contains fewer than twenty cigarettes.

3 (c) No person or business entity may sell or offer for sale single cigarettes.

4 (d) A person or business entity may not sell or offer for sale cigarettes in any form that does not display the warnings with the display characteristics required by the provisions of 15 U.S.C. §1333(b)(3), as amended.

5 (e) Any person or business entity who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $250.
CHAPTER 117

(Com. Sub. for S.B. 687 - By Senators Prezioso, Stollings, Foster, Plymale, Unger and Kessler)

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §16-42-3, §16-42-5, §16-42-6 and §16-42-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-17-1 of said code, all relating to health; defining terms; reestablishing the Comprehensive Behavioral Health Commission and Advisory Board; reporting requirements; and terminating the Comprehensive Behavioral Health Commission and Advisory Board.

Be it enacted by the Legislature of West Virginia:

That §16-42-3, §16-42-5, §16-42-6 and §16-42-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-17-1 of said code be amended and reenacted, all to read as follows:

Chapter
27. Mentally Ill Persons.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 42. COMPREHENSIVE BEHAVIORAL HEALTH COMMISSION.

(a) Effective May 1, 2009, the Comprehensive Behavioral Health Commission is reestablished within the Department of Health and Human Resources to continue the study of the current behavioral health system, including substance abuse and domestic violence when those conditions have an effect upon or are impacted by the system.

(b) The commission consists of:

(1) A representative of the circuit and family court system, appointed by the Chief Justice of the West Virginia Supreme Court of Appeals;

(2) A representative of the Commissioner of the Division of Corrections;

(3) The Commissioner of the Bureau of Senior Services or a designee;

(4) The Secretary of the Department of Health and Human Resources or a designee;

(5) The Commissioner of the Bureau for Behavioral Health and Health Facilities or a designee;

(6) The Commissioner of the Bureau for Children and Families or a designee;

(7) The Executive Director of the West Virginia Chapter of the National Alliance on Mental Illness or a designee;

(8) The Chancellor for Higher Education or a designee;
(9) One physician with a speciality in psychiatry appointed by the Governor from a list provided by the West Virginia Medical Association;

(10) One member of the House of Delegates, who is a nonvoting member, appointed by the Speaker; and

(11) One member of the Senate, who is a nonvoting member, appointed by the President.

(c) The commission shall meet at times and places as it finds necessary and shall be staffed by the Bureau for Behavioral Health and Health Facilities and the Health Care Authority.

(d) Effective May 1, 2009, the advisory board is reestablished to serve in a consulting role to the commission with the following members appointed by the Governor:

(1) One member from a list provided by the West Virginia Chapter of the National Association of Social Workers;

(2) One member from a list provided by the West Virginia Hospital Association;

(3) One member who is a psychologist from a list provided by the West Virginia Psychological Association;

(4) One citizen member from a list of two nominees from each medical school;

(5) One member from a list of five nominees provided by the Primary Care Association;

(6) One member from a list provided by the West Virginia Behavioral Healthcare Providers Association;
One member from a list provided by the West Virginia Child Care Association; and

One member from a list provided by the Council of Churches.

Those persons serving on the commission and the advisory board on January 1, 2009, may continue serving on the reestablished commission and advisory board and the person so designated as chairperson of the commission shall remain as chairperson.

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


The commission shall submit a report on its study, including recommendations, to the Governor and the Legislature by January 1, 2011.


Pursuant to the provisions of article two-d of this chapter, the West Virginia Health Care Authority shall provide the commission with information needed to complete the study required in this article. The staff of the authority shall work jointly with the staff of the Bureau for Behavioral Health and Health Facilities in providing services to the commission.
The commission shall make recommendations in its report relating to the certificate of need standards.


The commission and advisory board terminate on June 30, 2011.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

(a) "Developmental disability" means a chronic disability of a person which: (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency; and (4) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

(b) "Behavioral disability" means a disability of a person which: (1) Is attributable to severe or persistent mental illness, emotional disorder or chemical dependency; and (2) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency.

(c) "Group residential facility" means a facility which is owned, leased or operated by a behavioral health service provider and which: (1) Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally
22 disabled and not more than three supervisors or is occupied
23 as a residence by not more than twelve individuals who are
24 behaviorally disabled and not more than three supervisors;
25 (3) is licensed by the Department of Health and Human
26 Resources; and (4) complies with the State Fire Commission
27 for residential facilities.

28 (d) "Group residential home" means a building owned or
29 leased by developmentally disabled or behaviorally disabled
30 persons for purposes of establishing a personal residence. A
31 behavioral health service provider may not lease a building
32 to such persons if the provider is providing services to the
33 persons without a license as provided for in this article.

CHAPTER 118

(Com. Sub. for S.B. 262 - By Senator Snyder)

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §29-1-8 of the Code of West
Virginia, 1931, as amended, relating to removing language that
prohibits the state from using a county's General Revenue
Fund for historic preservation.

Be it enacted by the Legislature of West Virginia:

That §29-1-8 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.
§29-1-8. Historic preservation section; director.

(a) The purposes and duties of the historic preservation section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures and objects worthy of preservation, including human skeletal remains, graves, grave artifacts and grave markers, relating to the State of West Virginia and the territory included therein from the earliest times to the present upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of the sites, structures and objects; to direct, protect, excavate, preserve, study or develop the sites and structures; to review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties of the section; to carry out the duties and responsibilities enumerated in the National Historic Preservation Act of 1966, as amended, as they pertain to the duties of the section; to develop and maintain a West Virginia State Register of Historic Places for use as a planning tool for state and local government; to cooperate with state and federal agencies in archaeological work; to issue permits for the excavation or removal of human skeletal remains, grave artifacts and grave markers, archaeological and prehistoric and historic features under the provisions of section eight-a of this article; and to perform any other duties as may be assigned to the section by the commissioner.

(b) With the advice and consent of the Archives and History Commission, the commissioner shall appoint a director of the historic preservation section who shall have:

(1) A graduate degree in one of the social sciences or
equivalent training and experience in the field of historic preservation, archaeology, West Virginia history or history; and (2) three years' experience in administration in the field of West Virginia history, history, historic preservation or archaeology. The director of the historic preservation section shall serve as the deputy state historic preservation officer.

(c) With the approval of the commissioner, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended. At the minimum, the following professions shall be represented within the section staff: Historian, architectural historian, a structural historian who specializes in historical preservation, an archaeologist specializing in historic and prehistoric archaeology and such technical and clerical positions as are required.

(d) The director shall promulgate rules with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the historic preservation section; (2) the review of and, when required, issuance of permits for all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state as indicated in subsection (a) of this section in order to carry out the duties and responsibilities of the section; (3) the establishment and maintenance of a West Virginia State Register of Historic Places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the State Register and procedures for nominations to the State Register and protection of nominated and listed properties; (4) the review of historic structures in accordance
with compliance alternatives and other provisions in any state fire regulation and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes and shall coordinate standards with the appropriate regulatory officials for their application; and (6) any other rules as may be considered necessary to effectuate the purposes of this article.

CHAPTER 119

(H.B. 2950 - By Delegates Webster, Moore, Marshall, Hutchins, Morgan, White, Caputo, Hatfield, Brown, Frazier and Mahan)

[Passed April 9, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-15-6c, relating to the Neighborhood Housing and Economic Stabilization Program for low-income minority neighborhoods; creating the Neighborhood Housing and Economic Stabilization Program; authorizing the Economic Development Authority to contract with the Housing Development Fund to administer the program and distribute funding to program participants; establishing general guidelines and priorities for funding; establishing funding for the program; and 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 section, designated §31-15-6c, to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6c. Neighborhood Housing and Economic Development Stabilization Program; authority to contract with Housing Development Fund; funding.

(a) It is hereby determined and declared, as a matter of legislative finding:

(1) Local housing initiatives offer a unique opportunity to revitalize and stimulate economic development in low income neighborhoods with high minority populations, which typically have high levels of unemployment and include a large number of distressed properties.

(2) Local housing initiatives may include, but are not limited to, demolition, rehabilitation, new construction, land purchases for development, affordable mortgage initiatives and related job training and community service activities.

(3) In order to promote a positive long-term economic impact on the community, an effective local housing initiative should include a job training component that is designed to provide additional educational and vocational job opportunities and foster the development of marketable skills among the people living within the targeted neighborhoods served by the program.

(4) If done as a part of a focused and coordinated effort, the rehabilitation or replacement of deteriorating residential properties or structures would enhance the value of other properties in the community and improve the overall quality of their neighborhood.
A successful neighborhood revitalization and recovery program can attract new businesses and spur additional investment in the community.

(6) Using locally based or community based not-for-profit entities to spearhead local housing initiatives encourages the development of additional resources, leadership and administrative skills at a local level which, once in place, would continue to focus on the needs and revitalization of the targeted community, after the initial project is complete.

(7) It is reasonable and appropriate to establish a funding mechanism for selected qualifying entities to implement projects that are designed to revitalize and stimulate economic development in low income neighborhoods with relatively high minority populations.

(8) The effectiveness of the initial programs can best be assessed if significant funding is awarded to a limited number of qualifying programs serving targeted communities.

(9) The state would benefit from the development of a working model for stimulating economic development and neighborhood revitalization through local housing initiatives, so that it may be replicated in other parts of the state which have similar demographic and economic conditions.

(10) Substantial federal funds have been earmarked for housing stabilization and stimulating economic recovery, including but not limited to, housing rehabilitation, construction, upgrades and weatherization programs.

(b) There is hereby established within the Economic Development Authority the Neighborhood Housing and Economic Development Stabilization Program. The purpose of the program is to provide loans, grants and forgivable loans to support and carry out local economic development initiatives and locally designed housing initiatives in minority
neighborhoods with low-income demographics in this state. Housing initiatives funded by this program may include, but are not limited to, demolition, rehabilitation, new construction, land purchases for development, affordable mortgage initiatives and related job training and community service activities.

(c) To accomplish these objectives and to administer and distribute the funds provided by the Legislature for this purpose, the Economic Development Authority is authorized to contract with the Housing Development Fund to administer the Neighborhood Housing and Economic Stabilization Program.

(d) Upon the effective date of this section, the Economic Development Authority shall, upon appropriation by the Legislature, transfer $2.4 million from the Economic Development Project Bridge Loan Fund established in section eighteen-a, article twenty-two, chapter twenty-nine of this code to the Housing Development Fund. The fund will administer the program and distribute the funds to locally based West Virginia not-for-profit entities to operate local economic development initiatives and locally designed housing initiatives as described in this section. The project's funds shall be awarded through a statewide request for proposal solicitation issued by the Housing Development Fund, after requests for proposals have been reviewed and accepted by the authority.

(e) In awarding the funds, the Housing Development Fund shall give priority to proposals received from local not-for-profit organizations for low-income housing initiatives which include a job training component and promote the employment or utilization of people and businesses who reside within the targeted neighborhoods. A recipient organization must have written established guidelines to promote investment from within and outside the community where the neighborhood is located.
CHAPTER 120

(S.B. 767 - By Senators Snyder, Browning, Foster, Minard, Palumbo, Sypolt, White and Williams)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9b; and to amend and reenact §9-4-3 of said code, all relating to State Medicaid Agency; exempting certain contracts for the Medicaid program from the competitive bid process of the Division of Purchasing; establishing procedures and requirements for competitive bidding and the awarding of such contracts by the Secretary of the Department of Health and Human Resources; and adding two members to the advisory council of the State Medicaid Agency.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §9-2-9b; and that §9-4-3 of said code be amended and reenacted, all to read as follows:

Article
2. Department of Health and Human Resources, and Office of Commissioner of Human Services; Powers, Duties and Responsibilities Generally.
4. State Advisory Board; Medical Services Fund; Advisory Council; General Relief Fund.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.
§9-2-9b. Contract procedure for the Medicaid program.

(a) The secretary is authorized to execute a contract to implement professional health care, managed care, actuarial and health care-related monitoring, quality review/utilization, claims processing and independent professional consultant contracts for the Medicaid program.

(b) The provisions of article three, chapter five-a of this code do not apply to contracts set out in subsection (a) of this section: Provided, That the secretary shall comply with the requirements set forth in this section.

(c) The secretary shall develop procedures and requirements for competitive bidding and the awarding of contracts set out in subsection (a) of this section, which procedures and requirements shall include, but are not limited to, the following:

(1) Submitting public notice bids;

(2) The general terms and conditions for the contract;

(3) Awarding contracts;

(4) The description of the commodities and services required for the contract, stated with sufficient clarity to assure that there is a comprehensive understanding of the contract's scope and requirements; and

(5) Contract management procedures which will ensure the assessment of contractor performance and compliance with contract requirements on a regular basis as appropriate for the specific contract and no less frequently than on an annual basis for any contract awarded pursuant to the provisions of this section.

(d) The awarding of the contract may be based on:
(1) Best value;

(2) Low bid;

(3) Sole source; or

(4) Any other basis the secretary chooses to award or reject the bid: Provided, That the secretary shall document the basis of any decision made pursuant to the provisions of this subsection.

(e) The secretary may employ the services of independent professional consultants to assist in preparing solicitations or for the evaluation of any responses to such solicitations: Provided, That the independent professional consultant, or member of his or her immediate family, or business with which he or she is associated may not have any interest in the profits or benefits of the contract for which he or she may participate in the preparation of the solicitation or in the evaluation of the response.

(f) The secretary may terminate any contract with thirty days’ prior written notice.

ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES FUND; ADVISORY COUNCIL; GENERAL RELIEF FUND.

§9-4-3. Advisory council.

(a) The advisory council, created by chapter one hundred forty-three, Acts of the Legislature, regular session, 1953, as an advisory body to the State Medicaid Agency with respect to the medical services fund and disbursements therefrom and to advise about health and medical services, is continued so long as the medical services fund remains in existence, and thereafter so long as the State Medicaid Agency
considers the advisory council to be necessary or desirable, and it is organized as provided by this section and applicable federal law and has those advisory powers and duties as are granted and imposed by this section and elsewhere by law.

(b) The advisory council shall consist of not less than nine members, nor more than 15 members, all but four of whom shall be appointed by the State Medicaid Agency and serve until replaced or reappointed on a rotating basis.

(c)(1) The heads of the Bureau of Public Health and Bureau for Medical Services are members ex officio.

(2) The cochairs of the Legislative Oversight Commission on Health and Human Resources Accountability, or their designees, are nonvoting ex officio members.

(3) The remaining members comprising the council consist of:

(A) One member of recognized ability in the field of medicine and surgery with respect to whose appointment the State Medical Association shall be afforded the opportunity of making nomination of three qualified persons;

(B) One member of recognized ability in the field of dentistry with respect to whose appointment the State Dental Association shall be afforded the opportunity of nominating three qualified persons;

(C) One member chosen from a list of three persons nominated by the West Virginia Primary Care Association;
(D) One member chosen from a list of three persons nominated by the Behavioral Health Providers Association of West Virginia; and

(E) The remaining members chosen from persons of recognized ability in the fields of hospital administration, nursing and allied professions and from consumers groups, including medicaid recipients, members of the West Virginia Directors of Senior and Community Services, labor unions, cooperatives and consumer-sponsored prepaid group practices plans.

(d) The council shall meet on call of the state Medicaid Agency.

(e) Each member of the advisory council shall receive reimbursement for reasonable and necessary travel expenses for each day actually served in attendance at meetings of the council in accordance with the state's travel regulations. Requisitions for the expenses shall be accompanied by an itemized statement, which shall be filed with the Auditor and preserved as a public record.

(f) The advisory council shall assist the State Medicaid Agency in the establishment of rules, standards and bylaws necessary to carry out the provisions of this section and shall serve as consultants to the State Medicaid Agency in carrying out the provisions of this section.