FOREWORD

These volumes contain the Acts of the Second Regular Session of the 80th Legislature, 2012; the First Extraordinary Session, 2012; and the Fourth Extraordinary Session, 2011.

Second Regular Session, 2012

The Second Regular Session of the 80th Legislature convened on January 11, 2012. The Constitutional sixty-day limit on the duration of the session was midnight, March 10, 2012. The Governor issued a proclamation on March 7, 2012, extending the session for a period not to exceed three days for the purpose of considering the Budget and supplementary appropriation bills. A subsequent proclamation was issued on March 13, 2012, and the Legislature adjourned sine die on March 16, 2012.

Bills totaling 2,026 were introduced in the two houses during the session (1,348 House, of which 690 were carryover bills from the 2011 Regular Session, and 678 Senate). The Legislature passed 214 bills, 101 House and 113 Senate.

The Governor vetoed 8 bills (Com. Sub. for H. B. 2278, Authorizing the use of additional medium for use in archiving government records; Com. Sub. for H. B. 4068, Providing that antique motor vehicles be valued at their salvage value for personal property tax purposes; Com. Sub. for H. B. 4239, Increasing the membership of the West Virginia Board of Osteopathy, Com. Sub. for H. B. 4279, Permitting municipalities to stagger the terms of elected officers, Com. Sub. for H. B. 4489, Strengthening authority of the West Virginia Municipal Pensions Oversight Board, Com. Sub. for S. B. 212, Creating criminal offense for disrupting communications and public utility services; Com. Sub. for S. B. 371, Providing school system under declared state of emergency participate as collaborative innovation zone; and Com. Sub. for S. B. 379, Authorizing Board of Examiners for Registered Professional Nurses designate certain treatment and recovery programs for licensees and applicants). Of the vetoed bills, the

There were 256 Concurrent Resolutions introduced during the session, 151 House and 105 Senate, of which 71 House and 34 Senate were adopted. Fifty-one House Joint Resolutions and 11 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 44 House Resolutions, and the Senate introduced 64 Senate Resolutions, of which 33 House and 62 Senate were adopted.

The Senate failed to pass 66 House bills passed by the House, and 72 Senate bills failed passage by the House. Four bills died in conference, 2 House and 2 Senate: Com. Sub. for H. B. 4078, Extending certain deadlines for mandated actions regarding higher education personnel; Com. Sub. for H. B. 4310, Prohibiting sex offenders from living or working within one thousand feet of the outer perimeter of a school, child care facility, playground or a victim’s home; Com. Sub. for S. B. 340, Relating to interscholastic athletics concussions and head injuries; and Com. Sub. for S. B. 501, Requiring health insurance coverage of certain hearing aids.

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

First Extraordinary Session, 2012

The Proclamation calling the Legislature into Extraordinary Session immediately upon sine die adjournment of the Second Regular Session on March 16, 2012, contained three items for consideration.

Of the three bills introduced during the Extraordinary Session, 1 House Bill (H. B. 101, Creating the Energy Intensive Industrial Consumers Revitalization Tax Credit Act) and 1 Senate Bill (S. B.
1002, Making supplementary appropriation from State Fund, General Revenue, to Governor’s Office, Civil Contingent Fund) was passed by the Legislature. The Senate also adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned sine die 5:02 P.M. that same day.

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

Fourth Extraordinary Session, 2011

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M. on December 11, 2011, contained 3 items for consideration.

The Legislature passed H. B. 401, Establishing the Natural Gas Horizontal Wells Control Act, and the Senate adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned sine die on December 14, 2011.

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

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.
## TABLE OF CONTENTS

### ACTS

#### Regular Session, 2012

---

### GENERAL LAWS

---

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>(*SB185)</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Relating to the Employee Suggestion Award Program.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>(*SB564)</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Creating the Aviation Fund and the Fleet Management Office Fund.</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>(*SB563)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Clarifying the Chief Technology Officer’s Responsibility Prior to Transfer or Retirement of Certain Equipment.</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>(SB500)</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Allowing IS&amp;C to Bill Certain Spending Units for Telecommunication Services Annually.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>(*HB4376)</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Licensing Wine Sales at Certain Professional Baseball Stadiums.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>(HB4652)</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>Making a Supplementary Appropriation to Various Agencies.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bill Number/Description</td>
<td>Page</td>
</tr>
<tr>
<td>----</td>
<td>----------------------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>7</td>
<td>(HB4656) Making a Supplementary Appropriation to the Division of Human Services - Temporary Assistance for Needy Families</td>
<td>32</td>
</tr>
<tr>
<td>8</td>
<td>(HB4657) Making a Supplementary Appropriation to the Department of Administration - Office of the Secretary - Employee Pension and Health Care Benefit Fund, Division of Purchasing, Department of Environmental Protection, Etc.</td>
<td>33</td>
</tr>
<tr>
<td>9</td>
<td>(HB4658) Supplementing, Amending, Decreasing And Increasing Items of the Existing Appropriations from the State Road Fund to the Department of Transportation - Division of Highways</td>
<td>42</td>
</tr>
<tr>
<td>10</td>
<td>(*SB160) Budget Bill, Making Appropriation of Public Money out of the Treasury in Accordance with Section Fifty-one, Article Six of the Constitution</td>
<td>45</td>
</tr>
<tr>
<td>11</td>
<td>(SB650) Making a Supplementary Appropriation from General Revenue to DHHR, Division of Human Services</td>
<td>280</td>
</tr>
<tr>
<td>12</td>
<td>(SB673) Expiring Funds from MAPS, Office of the Secretary, and Making a Supplementary Appropriation to MAPS, Division of Corrections, Correctional Units</td>
<td>285</td>
</tr>
<tr>
<td>13</td>
<td>(SB677) Expiring Funds from Dhhr, Medicaid Fraud Control Fund, and Making a Supplementary Appropriation to Dhhr, Division of Human Services</td>
<td>287</td>
</tr>
<tr>
<td>14</td>
<td>(SB678) Making Supplementary Appropriations From State Fund, General Revenue, To Various Accounts</td>
<td>290</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

AUDITOR’S OFFICE

15. (*SB536) Authorizing the Auditor’s Land Department to Accept Credit, Debit Or Charge Card Payments. 304

BANKS AND BANKING

16. (SB224) Renaming the Division or Department of Banking as the Division of Financial Institutions. 305
17. (SB337) Relating to the Powers and Duties of the Commissioner of Banking. 307
18. (HB4274) Expanding the Authority of the Commissioner of Banking over Regulated Consumer Lender Licensees, and Providing a Penalty for Violations. 317

BOARDS AND COMMISSIONS

19. (*HB4012) Removing the Commissioner of the Bureau for Public Health from Certain Boards. 320

BROADBAND DEPLOYMENT COUNCIL

20. (*SB110) Relating to the Broadband Deployment Council. 330

BUY AMERICAN TASK FORCE


CARBON MONOXIDE DETECTORS

TABLE OF CONTENTS

CHESAPEAKE BAY WATERSHED

23. (SB676) Extending Grant Funding Application Date for Chesapeake Bay Watershed Compliance Projects. ................. 343

CHILD SUPPORT


25. (HB4523) Relating to the Bureau for Child Support Enforcement and Reporting Employment And Income of an Independent Contractor. ................. 349

CHILD WELFARE


27. (*SB161) Relating to Mandatory Reporting of Child Abuse and Neglect. ................. 412

CIVIL SERVICE COMMISSIONS

28. (*HB4063) OMITTED. ......................... 416

CLAIMS

29. (*HB4398) Declaring Certain Claims Against the State and its Agencies to Be Moral Obligations of the State. ................. 417

CLEAN WATER ACT

30. (*SB615) Conforming the West Virginia Water Pollution Control Act with the Federal Clean Water Act. ......................... 440

[IX]
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TABLE OF CONTENTS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>COAL MINE SAFETY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31. <em>(HB4351)</em></td>
<td>Relating to Mine Safety.</td>
<td>442</td>
</tr>
<tr>
<td><strong>CODE REPEALED</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32. <em>(SB575)</em></td>
<td>Repealing Code Related to Prior Disability under the Emergency Medical Services Retirement System</td>
<td>495</td>
</tr>
<tr>
<td><strong>COMPUTER CRIME</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33. <em>(SB385)</em></td>
<td>Expanding the Definition of “Computer” In Commission of Certain Crimes</td>
<td>496</td>
</tr>
<tr>
<td><strong>CORRECTIONS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>34. <em>(SB566)</em></td>
<td>Authorizing the Corrections Commissioner To Contract with Nonprofit or Charitable Entities for Placement of Persons under Custody</td>
<td>503</td>
</tr>
<tr>
<td>35. <em>(SB156)</em></td>
<td>Allowing the Corrections Commissioner To Use Excess Funds to Offset Operational Costs</td>
<td>507</td>
</tr>
<tr>
<td><strong>COURTS AND THEIR OFFICERS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36. <em>(HB4522)</em></td>
<td>Providing Additional Contempt Powers for Family Court Judges</td>
<td>509</td>
</tr>
<tr>
<td>37. <em>(HB4291)</em></td>
<td>Relating to County Law Libraries Established by the Supreme Court of Appeals</td>
<td>511</td>
</tr>
<tr>
<td>38. <em>(SB100)</em></td>
<td>Relating to Fees Collected by Circuit Court Clerks</td>
<td>512</td>
</tr>
<tr>
<td><strong>CRANE OPERATOR CERTIFICATION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39. <em>(HB4422)</em></td>
<td>Relating to Crane Operator Certification</td>
<td>516</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>TABLE OF CONTENTS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CRIMES AND THEIR PUNISHMENT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40.</td>
<td>(SB606)</td>
<td>Relating to Property Forfeiture Related To Child Pornography Arrests and Computer Crimes. 524</td>
</tr>
<tr>
<td>41.</td>
<td>(*SB411)</td>
<td>Making Use or Possession of Electronic Cash Register Automated Sales Suppression Devices Unlawful. 540</td>
</tr>
<tr>
<td>42.</td>
<td>(*SB212)</td>
<td>Creating a Criminal Offense for Disrupting Communications and Public Utility Services. 543</td>
</tr>
<tr>
<td>43.</td>
<td>(SB166)</td>
<td>Making Disarming or Attempting to to Disarm a Correctional Officer a Felony. 545</td>
</tr>
<tr>
<td>44.</td>
<td>(*SB165)</td>
<td>Creating a Criminal Offense of Sexual Contact on Incarcerated Persons by Correctional Employees. 549</td>
</tr>
<tr>
<td>45.</td>
<td>(SB596)</td>
<td>Prohibiting Child Erotica. 552</td>
</tr>
<tr>
<td>46.</td>
<td>(SB331)</td>
<td>Providing Certain Persons Residing with Crime Victims Prosecutorial Notification and Right to Be Heard at Sentencing and Parole Proceedings. 553</td>
</tr>
<tr>
<td><strong>CRIMINAL PROCEDURE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47.</td>
<td>(*SB517)</td>
<td>Including Community Beautification and Reclamation Programs in Authorized Community Corrections Programs. 560</td>
</tr>
<tr>
<td><strong>DEPUTY SHERIFF RETIREMENT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>48.</td>
<td>(*SB369)</td>
<td>Permitting Deputy Sheriff Retirement System Retirants to Modify Benefit Options under Certain Circumstances. 563</td>
</tr>
</tbody>
</table>
## Table of Contents

### Domestic Relations

49. (*HB4605) Providing a Premarital Education Option to Applicants for Marriage Licenses. ....... 567

50. (*SB51) Relating to Spousal Support Based upon Genetic Testing Results. .................... 576

51. (*HB4130) Creating the Felony Criminal Offense of Sale or Purchase of a Child. ............ 579

### Domestic Violence

52. (HB4648) Implementing a domestic violence court pilot project................................. 585

53. (*HB2521) Eliminating the Requirement of Serving Domestic Violence Orders by Certified Mail............................................. 591

54. (*HB4307) Clarifying That the Practice and Procedure For Domestic Violence Civil Proceedings Are Governed by Court Rule. ............ 593

### Driver’s Licenses

55. (*HB4330) Providing That Drivers Licenses May Contain Information Designating the Licensee as a Person Who Is an Honorably Discharged Veteran. ............ 595

### DUI Administrative Procedures

56. (*SB512) Updating the Statute Relating to DMV Office of Administrative Hearing’s Procedures. ........................................ 601

### Education

57. (HB4119) OMITTED. .......................................................... 615

58. (SB646) Requiring the State Board of Education to Study GED Issues. ............ 616

[XII]
<table>
<thead>
<tr>
<th></th>
<th>Bill Number</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>59.</td>
<td>(SB436)</td>
<td>Facilitating Collaboration Between Public School and Higher Education Systems to Promote Seamless Curricula.</td>
<td>619</td>
</tr>
<tr>
<td>60.</td>
<td>(*HB4433)</td>
<td>Modifying the Criteria for Awarding High School Diplomas to Certain Veterans.</td>
<td>646</td>
</tr>
<tr>
<td>61.</td>
<td>(HB4072)</td>
<td>Eliminating Requirement for County Boards of Education to Meet on the First Monday of July.</td>
<td>648</td>
</tr>
<tr>
<td>62.</td>
<td>(HB4299)</td>
<td>Authorizing a County Board of Education to Use the Services of a Bus Operator From Another County in Certain Circumstances.</td>
<td>650</td>
</tr>
<tr>
<td>63.</td>
<td>(*SB371)</td>
<td>Providing School System under Declared State of Emergency Participate as Collaborative Innovation Zone.</td>
<td>660</td>
</tr>
<tr>
<td>64.</td>
<td>(*HB4125)</td>
<td>Correcting Date for Schools to Send Notice To Parents Alerting Them to the Existence of the School’s Crisis Response Plan.</td>
<td>675</td>
</tr>
<tr>
<td>65.</td>
<td>(*HB4070)</td>
<td>Changing the Basis for Paying the County Salary Supplement Equivalent Pay Rate for Division of Rehabilitation Teachers.</td>
<td>679</td>
</tr>
<tr>
<td>66.</td>
<td>(*SB611)</td>
<td>Developing Special Community-based Pilot Demonstration Project to Improve At-risk Youth Outcomes.</td>
<td>681</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

ELECTIONS

67. (*HB4451) Ensuring That County Executive Committees Have Control of Designating the Persons Who Serve as Ballot Commissioner. ............................. 687

68. (*HB4257) Providing Late Voter Registration Opportunities to Individuals Covered By the Uniformed and Overseas Citizens Act of 1986. ................................. 689

69. (*HB4238) Establishing Procedures for Address Confidentiality Program Participants On the Special Absentee Voting List. ......... 691

70. (HB4403) Changing the Filing Deadline for Certified Write-in Candidates. ............ 698

71. (*SB628) Allowing Fund-raising for State Executive Party Headquarters. ............. 701

ELEVATOR SAFETY

72. (*HB4006) Relating to Elevator Workers’ Licensure Exemptions. ....................... 705

EMERGENCY MEDICAL SERVICES

73. (*HB4028) Authorizing the Temporary Suspension Of Certification of Emergency Medical Service Personnel Without a Hearing Or Prior Notice If There Is Probable Cause. ........................................ 716

ENVIRONMENTAL PROTECTION

74. (SB496) Modifying DEP Requirement of Greenhouse Gas Emissions’ Inventory. .... 724
# Table of Contents

## Equine Rescue Facilities Act

| 75. | (SB75) | Creating the Equine Rescue Facilities Act | 725 |

## Expungement of Records

| 76. | (*HB3128) | Relating to Filing a Civil Petition for Expungement of Records Relating to An Arrest | 726 |

## Firearms

| 77. | (*SB149) | Relating to Disposition of Forfeited Or Abandoned Firearms in State Custody | 730 |
| 78. | (*SB353) | Relating Generally to Possession of Firearms | 735 |

## Firefighters

| 79. | (*HB4107) | Relating to Volunteer Firefighter Training | 749 |

## Forestry

| 80. | (SB202) | Permitting Division of Forestry to Enter into Stewardship Contracts with U. S. Forest Service | 754 |

## Funeral Services

| 81. | (*HB4118) | Including the Surviving Spouse and a Designated Individual Previously Chosen by the Deceased as a Person Who May Designate The Manner of Disposition of a Deceased Person’s Body | 756 |
# Table of Contents

## Hazardous Waste

82. (HB4320) Relating to the Settlement of Violations Of the Hazardous Waste Management Act by Consent Agreements. ............. 769

## Health

83. (*SB437) Relating Generally to Substance Abuse. .... 773

84. (*SB109) Permitting Unlicensed Personnel To Administer Medications or Assist In Certain Circumstances. ............ 836

85. (HB4481) Relating to the Comprehensive Behavioral Health Commission. .......... 841

86. (*HB4327) Requiring Pulse Oximetry Testing For Newborns. ...................... 846

## Health Insurance

87. (*HB4438) Provider Sponsored Network Act. ............ 849

## Higher Education

88. (HB4126) Authorizing Legislative Rules for the Higher Education Policy Commission And Council for Community and Technical College Education. .............. 858

## Human Services

89. (*SB498) Relating to Records of Abuse, Neglect or Exploitation of Vulnerable Adults. .... 862

## Human Trafficking

90. (*HB4053) Relating to Abduction, Kidnapping And Human Trafficking. ................. 867
## Table of Contents

### Hunting and Fishing

91. (HB4322) Adding Coyote and Fox to the List of Species in Which Any Color Artificial Light Is Permitted for Hunting at Night. 876

92. (HB4328) Removing Bobcats from the List of Species Requiring a Field Tag. 884

93. (*SB478) Creating Apprentice Hunting and Trapping License. 886

### Insurance

94. (*HB4260) Relating to Insurance Coverage for Autism Spectrum Disorders. 891

95. (HB4486) Relating to the Disclosure of Insurance Coverage. 912

96. (HB4256) Relating to Captive Insurance. 915

### Land Use Planning

97. (*SB621) Requiring the Division of Highways Concur Major Subdivisions Or Land Developments Provide Sufficient Access. 920

### Leases

98. (*HB3177) Permitting an Owner Who Sells Real Property Pursuant to a Deed of Trust to Terminate a Preexisting Tenancy. 923

### Legislative Audits

99. (HB4634) Removing the Requirement for the Legislative Auditor to Conduct Certain Fiscal Audits of the Alcohol Beverage Control Commission and the Children’s Trust Fund. 925

[XVII]
TABLE OF CONTENTS

LEGISLATIVE RULES

100. (*HB4142) Authorizing the Department of Administration to Promulgate Legislative Rules. ................. 928

101. (*SB253) Authorizing the Department of Environmental Protection to Promulgate Legislative Rules. ....... 932

102. (*SB245) Authorizing the Department of Health and Human Resources to Promulgate Legislative Rules. ........ 938

103. (*SB321) Authorizing the Department of Military Affairs and Public Safety Promulgate Legislative Rules. ......... 951

104. (*SB287) Authorizing the Department of Revenue To Promulgate Legislative Rules. ............... 954

105. (*HB4206) Authorizing the Department of Transportation to Promulgate Legislative Rules. ................... 967

106. (*HB4139) Authorizing Miscellaneous Agencies and Boards to Promulgate Legislative Rules. ................. 970

107. (*HB4220) Authorizing the Department of Commerce to Promulgate Legislative Rules. ....................... 982

LIENS

108. (*SB434) Providing Suggestion and Suggestee Execution Contain Certain Information. .... 996

[XVIII]
# Table of Contents

## Limited Liability Companies

109. (SB 619) Relating to Annual Business Fees
   And Reports Due Secretary of State........ 999

## Liquor Sampling

110. (*HB 3174) Relating to Liquor and Beer Sampling
     Events........................................ 1007

## Magistrates

111. (HB 4314) Relating to the Appointment
     of Magistrates......................... 1018

## Mental Health

112. (*SB 507) Relating to Voluntary and
     Involuntary Hospitalization of
     Mentally Ill Persons.................. 1019

## Mental Hygiene

113. (*SB 471) Authorizing the Supreme Court to
     Establish Mental Hygiene
     Commissioners’ Compensation......... 1038

114. (*HB 4424) Relating to Modified Mental Hygiene
     Procedures................................. 1042

## Military Personnel

115. (SB 603) Establishing Entity for Operation
     of Morale, Welfare and
     Recreation Military Facilities........ 1051

116. (SB 605) Limiting Landowner’s Liability for
     Military, Law-enforcement or
     Homeland-defense Training Purposes.... 1053

## Minority Affairs

117. (*HB 4015) Creating the Herbert Henderson Office
     of Minority Affairs.................... 1058

[XIX]
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>118. (*HB4046)</td>
<td>Repealing Obsolete Code Provisions</td>
<td>1062</td>
</tr>
<tr>
<td>119. (SB336)</td>
<td>Eliminating Mortgage Lender License Exemption Available to Bank Subsidiaries</td>
<td>1075</td>
</tr>
<tr>
<td>120. (*SB551)</td>
<td>Providing Limitation Exception for Certain Mortgage Modification or Refinancing Loans</td>
<td>1078</td>
</tr>
<tr>
<td>121. (HB4271)</td>
<td>Reporting Requirements for Residential Mortgage Lenders and Broker Licensees</td>
<td>1085</td>
</tr>
<tr>
<td>122. (HB4103)</td>
<td>Consolidating of Government Services and Enforcement of Laws Pertaining To the Motor Carrier Industry</td>
<td>1087</td>
</tr>
<tr>
<td>123. (*HB4338)</td>
<td>Raising the Maximum Value Amount Of an Abandoned Motor Vehicle</td>
<td>1091</td>
</tr>
<tr>
<td>124. (SB428)</td>
<td>Relating to registration plates for governmental vehicles</td>
<td>1096</td>
</tr>
<tr>
<td>125. (SB30)</td>
<td>Providing Additional Means to Notify the DMV of the Purchase of a Junked Vehicle</td>
<td>1101</td>
</tr>
<tr>
<td>126. (*SB429)</td>
<td>Relating to Motor Vehicle Registration Classifications</td>
<td>1108</td>
</tr>
<tr>
<td>127. (SB544)</td>
<td>Removing the Expiration Date for Certain Diesel-powered Motor Vehicle Idling Restrictions</td>
<td>1113</td>
</tr>
</tbody>
</table>

[XX]
### TABLE OF CONTENTS

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>128.</td>
<td>(SB493) Exempting Certain Unmarked Law-enforcement Vehicles from Sun-screening Restrictions.</td>
<td>1117</td>
</tr>
<tr>
<td></td>
<td>MUNICIPALITIES</td>
<td></td>
</tr>
<tr>
<td>129.</td>
<td>(*SB618) Relating to certain payments to governmental units.</td>
<td>1122</td>
</tr>
<tr>
<td>130.</td>
<td>(HB4315) Permitting a New Class IV Town or Village to Select a Form of Government.</td>
<td>1136</td>
</tr>
<tr>
<td>131.</td>
<td>(*HB4279) Permitting Municipalities to Stagger The Terms of Elected Officers.</td>
<td>1143</td>
</tr>
<tr>
<td>132.</td>
<td>(*SB343) Providing Volunteer and Part-volunteer Fire Departments’ Grace Period to Meet Eligibility for Certain Funds Allocation.</td>
<td>1146</td>
</tr>
<tr>
<td></td>
<td>NATIONAL GUARD</td>
<td></td>
</tr>
<tr>
<td>133.</td>
<td>(*HB4601) Authorizing the West Virginia National Guard to Participate in a Federal Asset Forfeiture or Sharing Program.</td>
<td>1148</td>
</tr>
<tr>
<td></td>
<td>NURSING HOMES</td>
<td></td>
</tr>
<tr>
<td>134.</td>
<td>(*HB4504) Relating to Development and Operation of a Nursing Home on the Grounds of a Nonprofit Community Health Care Organization.</td>
<td>1150</td>
</tr>
<tr>
<td>135.</td>
<td>(*SB435) Relating to Nursing Home Residents’ Personal Funds Conveyance upon Death.</td>
<td>1152</td>
</tr>
</tbody>
</table>
# Table of Contents

## Personal Property

136. (*SB360) Creating Procedure for Deeming Personal Property Abandoned Following Real Property Transfer. 1154

## Personal Safety Orders

137. (*SB191) Relating to Personal Safety Orders 1158

## Probation and Parole

138. (*SB418) Relating to Qualifications of Parole Board Members. 1179

## Professions and Occupations

139. (HB4002) Relating to Annual Seminar Requirements for Professional Licensing Boards. 1180

140. (*HB4001) Authorizing Boards to Establish Fees By Legislative Rule. 1183

141. (*HB4037) Relating to the Professional and Occupational Licensure and Registration of Former and Current Members of the Armed Forces of the United States. 1185

142. (SB214) Clarifying Sunrise Review Requirement For Establishment, Revision or Expansion of Professional Scope of Practice. 1190

143. (*SB535) Expanding Certain Prescriptive Authority of Medications for Chronic Diseases. 1195

144. (*HB4077) Relating to Activities That May Be Performed by a Dental Hygienist Without a Prior Exam by a Dentist. 1215

[XXII]
<table>
<thead>
<tr>
<th>No.</th>
<th>Bill Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>145</td>
<td>(*SB572)</td>
<td>Replacing “Advanced Nurse Practitioner” with “Advanced Practice Registered Nurse”</td>
<td>1217</td>
</tr>
<tr>
<td>146</td>
<td>(*SB379)</td>
<td>Authorizing Board of Examiners for Registered Professional Nurses Designate Certain Treatment and Recovery Programs for Licensees And Applicants</td>
<td>1221</td>
</tr>
<tr>
<td>147</td>
<td>(*HB4239)</td>
<td>Increasing the Membership of the West Virginia Board of Osteopathy</td>
<td>1227</td>
</tr>
<tr>
<td>148</td>
<td>(HB4097)</td>
<td>Creating a License to Practice Hair Styling</td>
<td>1234</td>
</tr>
<tr>
<td>149</td>
<td>(SB424)</td>
<td>Exempting Certain Barbers from Continuing Education Requirement</td>
<td>1241</td>
</tr>
</tbody>
</table>

**PUBLIC CONSTRUCTION CONTRACTS**

<table>
<thead>
<tr>
<th>No.</th>
<th>Bill Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>150</td>
<td>(*SB36)</td>
<td>Relating to Disclosure Requirements for Certain Public Construction Contracts</td>
<td>1243</td>
</tr>
<tr>
<td>151</td>
<td>(*SB76)</td>
<td>Creating the Green Buildings Act</td>
<td>1248</td>
</tr>
</tbody>
</table>

**PUBLIC EMPLOYEES**

<table>
<thead>
<tr>
<th>No.</th>
<th>Bill Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>152</td>
<td>(SB469)</td>
<td>Relating Generally to Other Post-employment Benefits</td>
<td>1250</td>
</tr>
</tbody>
</table>

**PUBLIC EMPLOYEES INSURANCE**

<table>
<thead>
<tr>
<th>No.</th>
<th>Bill Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>153</td>
<td>(SB365)</td>
<td>Increasing Membership of PEIA Finance Board</td>
<td>1260</td>
</tr>
</tbody>
</table>

**PUBLIC SAFETY**

<table>
<thead>
<tr>
<th>No.</th>
<th>Bill Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>154</td>
<td>(*SB659)</td>
<td>Requiring Criminal Background Checks for Certain Employees Of State Service Providers</td>
<td>1263</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

155. (*SB387) Requiring Training of Floodplain Managers. .......................... 1267

PUBLIC SERVICE COMMISSION

156. (*HB4530) Authorizing the Public Service Commission to Consider and Issue a Financing Order to Certain Regulated Electric Utilities to Permit the Recovery of Expanded Net Energy Costs.......................... 1270

RAILROAD SCRAP METAL

157. (*HB4345) Prohibiting the Unauthorized Sale of Railroad Scrap Metal. ................. 1299

REAL PROPERTY

158. (*SB118) Terminating Residential Lease upon Tenant Death. .......................... 1303

RETIREMENT

159. (HB4654) Relating to the Provision of Mailing Services by the CPRB to Certain Retiree Organizations.......................... 1305

160. (*HB4332) Relating to Transfer of Service Credit From Public Employees Retirement System to Emergency Medical Services Retirement System.................. 1307

ROADS AND TRANSPORTATION

161. (SB215) Specifying Unobligated Moneys in Industrial Access Road Fund Revert To State Road Fund.......................... 1312

162. (SB205) Relating to Construction Zone Signage........... 1313

[XXIV]
<table>
<thead>
<tr>
<th>Number</th>
<th>Bill</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>163</td>
<td>(SB204)</td>
<td>Relating to Removal of Vehicles from the Highway in Emergency Situations</td>
<td>1314</td>
</tr>
<tr>
<td>164</td>
<td>(HB4583)</td>
<td>Changing Certain Deadlines Associated With the Termination, Resignation and Transfer of School Personnel</td>
<td>1316</td>
</tr>
<tr>
<td>165</td>
<td>(*HB4236)</td>
<td>Relating to Exclusions from the Definition of Professional Personnel for Evaluation Purposes</td>
<td>1333</td>
</tr>
<tr>
<td>166</td>
<td>(*HB4101)</td>
<td>Authorizing Teacher-in-residence Programs For Certain Prospective Teachers in Lieu of Student Teaching</td>
<td>1350</td>
</tr>
<tr>
<td>167</td>
<td>(*HB4122)</td>
<td>Relating to Alternative Programs for Teacher Education</td>
<td>1365</td>
</tr>
<tr>
<td>168</td>
<td>(*SB221)</td>
<td>Creating the Jason Flatt Act of 2012</td>
<td>1377</td>
</tr>
<tr>
<td>169</td>
<td>(*SB186)</td>
<td>Providing Salary Equity Supplement Payments to Teachers and Service Personnel</td>
<td>1380</td>
</tr>
<tr>
<td>170</td>
<td>(HB4655)</td>
<td>Relating to school service personnel certification</td>
<td>1396</td>
</tr>
<tr>
<td>171</td>
<td>(*SB528)</td>
<td>Relating to Scrap Metal Dealers and Scrap Metal</td>
<td>1402</td>
</tr>
<tr>
<td>172</td>
<td>(*HB4062)</td>
<td>Creating an In-home Direct Care Workforce Registry</td>
<td>1409</td>
</tr>
<tr>
<td>Bill Number</td>
<td>Description</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>-------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>SB382</td>
<td>Relating to Sex Offender Registration</td>
<td>1411</td>
<td></td>
</tr>
<tr>
<td>HB2740</td>
<td>Making Covenants That Restrict the Installation or Use of Solar Energy Systems Unenforceable</td>
<td>1423</td>
<td></td>
</tr>
<tr>
<td>SB362</td>
<td>Authorizing Bond Issuance for Cacapon Resort State Park and Beech Fork State Park Capital Improvements</td>
<td>1425</td>
<td></td>
</tr>
<tr>
<td>SB373</td>
<td>Providing State Police Collect Fee For Advanced Training</td>
<td>1430</td>
<td></td>
</tr>
<tr>
<td>HB4626</td>
<td>Increasing State Police Principal Supervisors to Nineteen</td>
<td>1432</td>
<td></td>
</tr>
<tr>
<td>HB4281</td>
<td>Increasing the Supplemental Pay of Members of the West Virginia State Police</td>
<td>1434</td>
<td></td>
</tr>
<tr>
<td>SB497</td>
<td>Awarding Attorney Fees and Costs For Administrative Proceedings Under Wv Surface Coal Mining And Reclamation Act</td>
<td>1442</td>
<td></td>
</tr>
<tr>
<td>SB579</td>
<td>Increasing the Special Reclamation Tax On Clean Coal Mined</td>
<td>1443</td>
<td></td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

## SURVIVOR BENEFITS

181. (*HB4396) West Virginia Fire, EMS and Law-Enforcement Officer Survivor Benefit Act. 1450

## TAXATION

182. (*HB4086) Designating Certain Property as a Qualified Capital Addition to a Manufacturing Facility. 1454

183. (*HB4088) Repealing the West Virginia Telecommunications Tax. 1459

184. (HB4087) Continuing the discontinuance of the severance and business privilege tax on the privilege of severing timber. 1461

185. (*SB487) Creating the Coalbed Methane Gas Distribution Fund. 1462

186. (*SB153) Increasing tax credits for apprenticeship training in construction trades. 1470

187. (*SB555) Providing Contractor Exception to Sales And Use Tax Exemption for Certain Nonprofit Youth Organizations. 1473

188. (SB430) Conforming Code Provisions to Streamlined Sales and Use Tax Agreement. 1476

189. (SB209) Updating Terms in the Personal Income Tax Act. 1513

190. (SB410) Requiring Backup Withholding on Certain Gambling Winnings. 1515

[XXVII]
# Table of Contents


192. (SB386) Clarifying Entities Included in Water's-edge Group for Income Tax Purposes. ................. 1519

## Texting

193. (*SB211) Creating Traffic Offenses for Texting or Using a Handheld Wireless Communication Device While Driving. ................. 1524

## Unemployment Compensation

194. (HB4542) Relating to Unemployment Compensation Benefits. ................. 1529

195. (HB4007) Relating to Unemployment Benefits for Certain Spouses of Military Personnel. ................. 1534

196. (HB4549) Imposing a Monetary Penalty on Unemployment Compensation Recipients For Obtaining Benefits Through the Use Of Fraudulent Statements. ................. 1541

197. (*SB661) Authorizing Workforce WV Provide Data to Certain Governmental Entities. ................. 1543

## Uniform Commercial Code

198. (HB4521) Relating Generally to Amendments To the Uniform Commercial Code. ................. 1547

## Uniform Power of Attorney Act

199. (*HB4390) Uniform Power of Attorney Act. ................. 1619

[XXVIII]
# Table of Contents

## Veterans

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(*HB4493)</td>
<td></td>
<td>Establishing Special Memorial Days for Certain Military Veterans</td>
<td>1675</td>
</tr>
</tbody>
</table>

## Volunteer for Nonprofit Youth Organizations Act

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(SB414)</td>
<td></td>
<td>Expanding the Definition of “Medical Services Applicant” under the Volunteer For Nonprofit Youth Organizations Act</td>
<td>1677</td>
</tr>
</tbody>
</table>

## Water Quality

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(*SB562)</td>
<td></td>
<td>Establishing DEP Procedure for Biologic Component Compliance of Narrative Water Quality Standard</td>
<td>1681</td>
</tr>
</tbody>
</table>

## Wholesale Drug Distributors

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
</table>

## Local – Braxton County

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(*HB4630)</td>
<td></td>
<td>Modifying the Membership of the Braxton County Recreational Development Authority</td>
<td>1701</td>
</tr>
</tbody>
</table>

## Local – Harrison County

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(HB4567)</td>
<td></td>
<td>Permitting the Harrison County Commission to Levy a Special District Tax</td>
<td>1711</td>
</tr>
</tbody>
</table>

## Local – Prince Railroad Station Authority

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Sponsor</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(HB4415)</td>
<td></td>
<td>Authorize a Prince Railroad Station Authority to Acquire and Maintain the Railroad Station Building</td>
<td>1713</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

ACTS

First Extraordinary Session, 2012

GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>(SB1002)</td>
<td>Making a Supplementary Appropriation From State Fund, General Revenue, To the Governor’s Office, Civil Contingent Fund.</td>
</tr>
<tr>
<td>2.</td>
<td>(HB101)</td>
<td>Creating the Energy Intensive Industrial Consumers Revitalization Tax Credit Act.</td>
</tr>
</tbody>
</table>
### Table of Contents

**Acts**

*Fourth Extraordinary Session, 2011*

---

**General Laws**

---

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>(HB401)</td>
<td>Establishing the Natural Gas Horizontal Wells Control Act.</td>
<td>1736</td>
</tr>
</tbody>
</table>

[*XXXI*]
**REGULAR AND EXTRAORDINARY SESSIONS, 2012**

**OFFICERS**

*Speaker - Richard Thompson, Wayne*

*Clerk - Gregory M. Gray, Charleston*

*Sergeant at Arms - Oce Smith, Fairmont*

*Doorkeeper - John Roberts, Hedgesville*

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>First.</td>
<td>Ronnie D. Jones (D)</td>
<td>Weirton</td>
<td>80^*</td>
</tr>
<tr>
<td>Second.</td>
<td>Randy Swartzmiller (D)</td>
<td>New Cumberland</td>
<td>75 - 80^*</td>
</tr>
<tr>
<td></td>
<td>*Phil DiSiero (D), Follansbee</td>
<td></td>
<td>80^*</td>
</tr>
<tr>
<td>Third.</td>
<td>Roy Givens (D), Ryan Fems (D), Ericka Storch (R)</td>
<td>Wheeling</td>
<td>80^*</td>
</tr>
<tr>
<td>Fourth.</td>
<td>Michael T. Ferro (D), Scott G. Varmer (D)</td>
<td>McMechen</td>
<td>79^* - 80^*</td>
</tr>
<tr>
<td></td>
<td>Lynwood “Woody” Ireland (R), Dave Pettit (D)</td>
<td>Hundred</td>
<td>69^* - 71^<em>; 74^</em> - 80^*</td>
</tr>
<tr>
<td>Fifth.</td>
<td>William Roger Romine (R)</td>
<td>Sistersville</td>
<td>75^* - 80^*</td>
</tr>
<tr>
<td>Sixth.</td>
<td>Erika Storch (R), Daniel Poling (D)</td>
<td>Parkersburg</td>
<td>78^* - 80^*</td>
</tr>
<tr>
<td>Seventh.</td>
<td>Tom Azinger (R), John Ellem (R)</td>
<td>Vienna</td>
<td>72^* - 80^*</td>
</tr>
<tr>
<td>Eighth.</td>
<td>Lynwood “Woody” Ireland (R), Daniel Poling (D)</td>
<td>Parkersburg</td>
<td>78^* - 80^*</td>
</tr>
<tr>
<td>Ninth.</td>
<td>Anna Border (R), Bob Ashley (R)</td>
<td>Spencer</td>
<td>67^* - 73^<em>; 75^</em> - 80^*</td>
</tr>
<tr>
<td>Tenth.</td>
<td>Mitch Carmichael (R), Tom Azinger (R)</td>
<td>Ripley</td>
<td>75^* - 80^*</td>
</tr>
<tr>
<td>Twelfth.</td>
<td>Helen Martin (D), Chad Frederick (D)</td>
<td>Poca</td>
<td>78^* - 80^*</td>
</tr>
<tr>
<td>Thirteenth.</td>
<td>Brady Paxton (D)</td>
<td>Liberty</td>
<td>71^<em>; Appt. 6/22/1999, 74^</em>; 75^* - 80^*</td>
</tr>
<tr>
<td>Fourteenth.</td>
<td>Troy Andes (R), Brian Savilla (R)</td>
<td>Hurricane</td>
<td>78^* - 80^*</td>
</tr>
<tr>
<td>Fifteenth.</td>
<td>Kevin J. Craig (D), Jim Morgan (D)</td>
<td>Huntington</td>
<td>75^* - 80^<em>; 69^</em>; 70^<em>; 75^</em> - 80^*; 2/23/2001</td>
</tr>
<tr>
<td>Sixteenth.</td>
<td>Carol Miller (R), Kelli Sohonya (R), Jim Morgan (D)</td>
<td>Huntington</td>
<td>75^* - 80^<em>; 69^</em>; 70^<em>; 75^</em> - 80^*</td>
</tr>
<tr>
<td>Seventeenth.</td>
<td>Doug Reynolds (D), Dale Stephens (D), Mitch Carmichael (R)</td>
<td>Huntington</td>
<td>78^* - 80^*</td>
</tr>
<tr>
<td>Eighteenth.</td>
<td>Richard Thompson (D), Don C. Perdue (D)</td>
<td>Lavelette</td>
<td>65^<em>; Resigned 6/1981, 76^</em> - 80^*</td>
</tr>
<tr>
<td>Nineteenth.</td>
<td>Larry W. Barker (D), Rupert Phillips, Jr., (D)</td>
<td>Madison, Logan</td>
<td>77^* - 80^<em>; 73^</em> - 77^<em>; 79^</em> - 80^*</td>
</tr>
<tr>
<td>Twentieth.</td>
<td>Gary Baker (D), Joe Ellington (R), Ralph Rodighiero (D), Josh Stowers (D)</td>
<td>Alum Creek</td>
<td>79^* - 80^*</td>
</tr>
<tr>
<td>Twenty-first.</td>
<td><strong>Justin J. Marcum (D), Linda Goode Phillips (D)</strong></td>
<td>Williamson</td>
<td>80^*</td>
</tr>
<tr>
<td>Twenty-second.</td>
<td>Harry Keith White (D), Linga Good Phillips (D), Linda Goode Phillips (D)</td>
<td>Gilbert</td>
<td>80^*</td>
</tr>
<tr>
<td>Twenty-third.</td>
<td>Clif Moore (D), Joe Ellington (R), Gerald Crosier (D)</td>
<td>Thorpe</td>
<td>77^* - 80^*</td>
</tr>
<tr>
<td>Twenty-fourth.</td>
<td>Marty Gearheart (R), John R. Frazier (D)</td>
<td>Bluefield</td>
<td>80^*</td>
</tr>
<tr>
<td>Twenty-fifth.</td>
<td>Joe Ellington (R), Joe Ellington (R), Gerald Crosier (D)</td>
<td>Princeton</td>
<td>80^<em>; 65^</em>; 79^* - 80^*</td>
</tr>
<tr>
<td>Twenty-sixth.</td>
<td>Virginia Mahan (D), Virginia Mahan (D)</td>
<td>Union</td>
<td>76^* - 80^*</td>
</tr>
<tr>
<td>Twenty-seventh.</td>
<td>Larry Snuffer (R)</td>
<td>Beckley</td>
<td>80^*</td>
</tr>
</tbody>
</table>

* Appointed January 28, 2012, to fill the vacancy created by the resignation of the Honorable Timothy Ennis.
** Appointed January 16, 2012, to fill the vacancy created by the resignation of the Honorable Steven Kominar.
MEMBERS OF THE HOUSE OF DELEGATES, Continued

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Twenty-eighth.</td>
<td>Thomas W. Campbell (D).</td>
<td>Lewisburg.</td>
<td>73° - 80°</td>
</tr>
<tr>
<td></td>
<td>Ray Canterbury (R).</td>
<td></td>
<td>75° - 80°</td>
</tr>
<tr>
<td>Twenty-ninth.</td>
<td>David G. Perry (D).</td>
<td>Oak Hill.</td>
<td>75° - 80°</td>
</tr>
<tr>
<td></td>
<td>John Pino (D).</td>
<td>Oak Hill.</td>
<td>67°; 71° - 78°; 80°</td>
</tr>
<tr>
<td></td>
<td>Margaret Anne Staggers (D).</td>
<td>Fayetteville.</td>
<td>78° - 80°</td>
</tr>
<tr>
<td>Thirtieth.</td>
<td>Bonnie Brown (D).</td>
<td>South Charleston.</td>
<td>66° - 68°, 70°, 75° - 80°</td>
</tr>
<tr>
<td></td>
<td>Nancy Peoples Guthrie (D).</td>
<td>Charleston.</td>
<td>78° - 80°</td>
</tr>
<tr>
<td></td>
<td>Barbara Hatfield (D).</td>
<td>South Charleston.</td>
<td>67° - 69°; 74° - 80°</td>
</tr>
<tr>
<td></td>
<td>Mark Hunt (D).</td>
<td>Charleston.</td>
<td>72° - 74°; 77° - 80°</td>
</tr>
<tr>
<td></td>
<td>Eric Nelson (R).</td>
<td>Charleston.</td>
<td>80°</td>
</tr>
<tr>
<td></td>
<td>Doug Skaff, Jr. (D).</td>
<td>South Charleston.</td>
<td>79° - 80°</td>
</tr>
<tr>
<td></td>
<td>Danny Wells (D).</td>
<td>Charleston.</td>
<td>77° - 80°</td>
</tr>
<tr>
<td></td>
<td>Patrick Lane (R).</td>
<td>Cross Lanes.</td>
<td>77° - 80°</td>
</tr>
<tr>
<td></td>
<td>Ron Walters (R).</td>
<td>Charleston.</td>
<td>71° - 73°; 75° - 80°</td>
</tr>
<tr>
<td>Thirty-third.</td>
<td>David L. Walker (D).</td>
<td>Clendenin.</td>
<td>79° - 80°</td>
</tr>
<tr>
<td>Thirty-fourth.</td>
<td>Brent Boggs (D).</td>
<td>Gassaway.</td>
<td>73° - 80°</td>
</tr>
<tr>
<td>Thirty-fifth.</td>
<td>Harold Sigler (R).</td>
<td>Summersville.</td>
<td>80°</td>
</tr>
<tr>
<td>Thirty-sixth.</td>
<td>Joe Talbott (D).</td>
<td>Webster Springs.</td>
<td>71° - 72°; 76° - 80°</td>
</tr>
<tr>
<td>Thirty-seventh.</td>
<td>Denise L. Campbell (D).</td>
<td>Elkins.</td>
<td>80°</td>
</tr>
<tr>
<td></td>
<td>William G. Hartman (D).</td>
<td>Elkins.</td>
<td>76° - 80°</td>
</tr>
<tr>
<td>Thirty-eighth.</td>
<td>Peggy Donaldson Smith (D).</td>
<td>Weston.</td>
<td>79° - 80°</td>
</tr>
<tr>
<td>Thirty-ninth.</td>
<td>Bill Hamilton (R).</td>
<td>Buckhannon.</td>
<td>76° - 80°</td>
</tr>
<tr>
<td>Fortieth.</td>
<td>Mary M. Poling (D).</td>
<td>Moatsville.</td>
<td>75° - 80°</td>
</tr>
<tr>
<td>Forty-first.</td>
<td>Samuel J. Cann, Sr. (D).</td>
<td>Bridgeport.</td>
<td>72° - 80°</td>
</tr>
<tr>
<td></td>
<td>Ron Fragale (D).</td>
<td>Clarksburg.</td>
<td>70° - 73°; 75° - 80°</td>
</tr>
<tr>
<td></td>
<td>Richard J. Isaquinta (D).</td>
<td>Clarksburg.</td>
<td>76° - 80°</td>
</tr>
<tr>
<td></td>
<td>Tim Miley (D).</td>
<td>Bridgeport.</td>
<td>77° - 80°</td>
</tr>
<tr>
<td>Forty-second.</td>
<td>Mike Manyenny (D).</td>
<td>Grafton.</td>
<td>79° - 80°</td>
</tr>
<tr>
<td>Forty-third.</td>
<td>Michael Capato (D).</td>
<td>Fairmont.</td>
<td>73° - 80°</td>
</tr>
<tr>
<td></td>
<td>Linda Longstreth (D).</td>
<td>Fairmont.</td>
<td>77° - 80°</td>
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<tr>
<td></td>
<td>Tim Manchin (D).</td>
<td>Fairmont.</td>
<td>76° - 80°</td>
</tr>
<tr>
<td>Forty-fourth.</td>
<td>Anthony Barill (D).</td>
<td>Morgantown.</td>
<td>80°</td>
</tr>
<tr>
<td></td>
<td>Barbara Evans Fleischauer (D).</td>
<td>Morgantown.</td>
<td>72° - 75°; 78° - 80°</td>
</tr>
<tr>
<td></td>
<td>Charlene Marshall (D).</td>
<td>Morgantown.</td>
<td>74° - 80°</td>
</tr>
<tr>
<td></td>
<td>Amanda Pasdon (R).</td>
<td>Morgantown.</td>
<td>80°</td>
</tr>
<tr>
<td>Forty-sixth.</td>
<td>Stan Shaver (D).</td>
<td>Tunnelton.</td>
<td>74° - 80°</td>
</tr>
<tr>
<td>Forty-eighth.</td>
<td>Allen V. Evans (R).</td>
<td>Dorcas.</td>
<td>70° - 80°</td>
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<tr>
<td>Forty-ninth.</td>
<td>Gary G. Howell (R).</td>
<td>Keyser.</td>
<td>80°</td>
</tr>
<tr>
<td>Fifteenth.</td>
<td>Ruth Rowan (R).</td>
<td>Points.</td>
<td>77° - 80°</td>
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<tr>
<td>Fifty-first.</td>
<td>Daryl E. Cowles (R).</td>
<td>Berkeley Springs.</td>
<td>78° - 80°</td>
</tr>
<tr>
<td>Fifty-second.</td>
<td>Larry D. Kump (R).</td>
<td>Falling Waters.</td>
<td>80°</td>
</tr>
<tr>
<td>Fifty-fourth.</td>
<td>Walter E. Duke (R).</td>
<td>Martinsburg.</td>
<td>76° - 80°</td>
</tr>
<tr>
<td>Fifty-fifth.</td>
<td>John Overington (R).</td>
<td>Martinsburg.</td>
<td>67° - 80°</td>
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<tr>
<td>Fifty-sixth.</td>
<td>Eric L. Housholder (R).</td>
<td>Martinsburg.</td>
<td>80°</td>
</tr>
<tr>
<td>Fifty-seventh.</td>
<td>John Doyle (D).</td>
<td>Shepherdstown.</td>
<td>66°; 71° - 80°</td>
</tr>
<tr>
<td>Fifty-eighth.</td>
<td>Tiffany Elizabeth Lawrence (D).</td>
<td>Charlestown.</td>
<td>79° - 80°</td>
</tr>
</tbody>
</table>

(D) Democrats. ................................ 65
(R) Republicans. ................................ 35
TOTAL. .......................................... 100
# MEMBERS OF THE SENATE

## REGULAR AND EXTRAORDINARY SESSIONS, 2012

### OFFICERS

- **President** - Jeffrey V. Kessler, Glen Dale
- **Clerk** - Darrell E. Holmes, Charleston
- **Sergeant at Arms** - Howard Wellman, Bluefield
- **Doorkeeper** - Tony Gallo, Charleston

### Districts and Members

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>First.</td>
<td>Orphy Klempa (D).</td>
<td>Wheeling.</td>
<td>(House 78° - 79°); 80°</td>
</tr>
<tr>
<td></td>
<td>Jack Yost (D).</td>
<td>Wellsburg.</td>
<td>(House 76° - 78°); 79° - 80°</td>
</tr>
<tr>
<td>Second.</td>
<td>Larry J. Edgell (D).</td>
<td>New Martinsburg.</td>
<td>Appt. 11/1997, 73°; 74° - 80°</td>
</tr>
<tr>
<td></td>
<td>Jeffrey V. Kessler (D)</td>
<td>Glen Dale.</td>
<td>74° - 80°</td>
</tr>
<tr>
<td></td>
<td>David C. Nohe (R).</td>
<td>Vienna.</td>
<td>80°</td>
</tr>
<tr>
<td>Fourth.</td>
<td>Karen L. Facemyer (R).</td>
<td>Ripleys.</td>
<td>(House 71° - 74°); 75° - 80°</td>
</tr>
<tr>
<td></td>
<td>Mike Hall (R).</td>
<td>Hurricane.</td>
<td>(House 72° - 74°); 78° - 80°</td>
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<tr>
<td>Fifth.</td>
<td>Robert H. Plymale (D).</td>
<td>Ceredo.</td>
<td>71° - 80°</td>
</tr>
<tr>
<td></td>
<td>Evan H. Jenkins (D).</td>
<td>Huntington.</td>
<td>76° - 80°</td>
</tr>
<tr>
<td>Sixth.</td>
<td>H. Truman Chafin (D).</td>
<td>Williamson.</td>
<td>66° - 80°</td>
</tr>
<tr>
<td></td>
<td>John Pat Fanning (D).</td>
<td>Jaeger.</td>
<td>58° - 64°; 67° - 68°; 73° - 80°</td>
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<tr>
<td>Seventh.</td>
<td>Earl Ray Tomblin (D).</td>
<td>Chapmanville.</td>
<td>(House 62° - 64°); 65° - 80°</td>
</tr>
<tr>
<td></td>
<td>Ron Stollings (D).</td>
<td>Madison.</td>
<td>78° - 80°</td>
</tr>
<tr>
<td>Eighth.</td>
<td>Corey Palumbo (D).</td>
<td>Charleston.</td>
<td>(House 76° - 78°); 79° - 80°</td>
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<td></td>
<td>Erik P. Wells (D).</td>
<td>Charleston.</td>
<td>78° - 80°</td>
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<tr>
<td>Ninth.</td>
<td>Richard Browning (D).</td>
<td>Oceana.</td>
<td>(House 69° - 72°); 75° - 78°; 79° - 80°</td>
</tr>
<tr>
<td></td>
<td>Mike Green (D).</td>
<td>Daniels.</td>
<td>78° - 80°</td>
</tr>
<tr>
<td>Tenth.</td>
<td>Ronald F. Miller (D).</td>
<td>Lewisburg.</td>
<td>80°</td>
</tr>
<tr>
<td></td>
<td>Mark Wills (D).</td>
<td>Princeton.</td>
<td>(House 74° - 75°); 80°</td>
</tr>
<tr>
<td>Eleventh.</td>
<td>William Laird IV (D)</td>
<td>Oak Hill.</td>
<td>(House 73° - 75°); 79° - 80°</td>
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<tr>
<td></td>
<td>Gregory A. Tucker (D).</td>
<td>Summersville.</td>
<td>80°</td>
</tr>
<tr>
<td>Twelfth.</td>
<td>Douglas Facemire (D).</td>
<td>Sutton.</td>
<td>79° - 80°</td>
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<tr>
<td></td>
<td>Joseph M. Minard (D).</td>
<td>Clarksburg.</td>
<td>(House Appt. 1/1983; 66°; 67° - 69°; 70° - 71°; 75° - 80°</td>
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<tr>
<td>Thirteenth.</td>
<td>Robert D. Beach (D)</td>
<td>Morgantown.</td>
<td>(House Appt. 5/1998, 73°; 74° - 79°; 80°</td>
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<tr>
<td>Fourteenth.</td>
<td>Roman W. Prezioso, Jr. (D)</td>
<td>Fairmont.</td>
<td>(House 69° - 72°); 73° - 80°</td>
</tr>
<tr>
<td></td>
<td>Bob Williams (D).</td>
<td>Grafton.</td>
<td>79° - 80°</td>
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<td></td>
<td>Dave Sypolt (R).</td>
<td>Kingwood.</td>
<td>78° - 80°</td>
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<tr>
<td>Fifteenth.</td>
<td>Clark Barns (R).</td>
<td>Randolph.</td>
<td>77° - 80°</td>
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<tr>
<td></td>
<td>Walt Helmick (D).</td>
<td>Marlinton.</td>
<td>(House 1 yr. 69°); App. 9/1989</td>
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<td></td>
<td>Herb Snyder (D).</td>
<td>Shenandoah Junction.</td>
<td>73° - 76°; 79° - 80°</td>
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<td>Sixteenth.</td>
<td>John R. Unger II (D).</td>
<td>Martinsburg.</td>
<td>74° - 80°</td>
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<tr>
<td>Seventeenth.</td>
<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston.</td>
<td>74° - 80°</td>
</tr>
<tr>
<td></td>
<td>Dan Foster (D).</td>
<td>Charleston.</td>
<td>(House 76°); 77° - 80°</td>
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</tbody>
</table>

(D) Democrats. ........................................... 28
(R) Republicans. ......................................... 6

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

[XXXIV]
HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2012

STANDING

AGRICULTURE

Butcher (Chair), Walker (Vice Chair), Boggs, Guthrie, Hall, Manypenny, Martin, Morgan, L. Phillips, R. Phillips, M. Poling, Reynolds, Rodighiero, Swartzmiller, Wells, Williams, Evans (Minority Chair), Canterbury (Minority Vice Chair), Anderson, Border, Ireland, C. Miller, Overington, Romine and Storch.

BANKING AND INSURANCE

Moore (Chair of Banking), Reynolds (Vice Chair of Banking), Perry (Chair of Insurance), Hall (Vice Chair of Insurance), Cann, Ferns, Fragale, Frazier, Hartman, Hunt, Iaquinta, Mahan, Manchin, Michael, Morgan, Shaver, Walker, Azinger (Minority Chair of Banking), J. Miller, (Minority Vice Chair of Banking), Ashley (Minority Chair of Insurance), Walters (Minority Vice Chair of Insurance), Carmichael, Nelson, O’Neal and Savilla.

CONSTITUTIONAL REVISION

Fleischauer (Chair), Guthrie (Vice Chair), Brown, Caputo, Doyle, Ferro, Fragale, Frazier, Hatfield, Hunt, Marshall, Moore, Morgan, Perdue, Poore, Varner, Wells, Overington (Minority Chair), Romine (Minority Vice Chair), Armstead, Ellem, Householder, Kump, Lane and Sobonya.

EDUCATION

M. Poling (Chair), Paxton (Vice Chair), Barill, D. Campbell, Caputo, Craig, Crosier, Fragale, Lawrence, Marcum, Moye, Perry, Pethel, Rodighiero, Shaver, Smith, Duke (Minority Chair), Sumner

[XXXV]
(Minority Vice Chair), Armstead, Ellington, Gearheart, Pasdon, Rowan, Savilla and Sigler.

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

Barker (Chair of Energy, Industry and Labor), Shaver (Vice Chair of Energy, Industry and Labor), Skaff (Chair of Economic Development and Small Business), Pino (Vice Chair of Economic Development and Small Business), Barill, Butcher, Caputo, Diserio, Fleischauer, Mahan, Manyppenny, Marshall, Martin, Moye, Paxton, D. Poling, Walker, Sobonya (Minority Chair of Energy, Industry and Labor), C. Miller (Minority Vice Chair of Energy, Industry and Labor), Andes (Minority Chair of Economic Development and Small Business), Carmichael (Vice Chair of Economic Development and Small Business), Savilla, Sigler, Snuffer and Storch.

FINANCE

White (Chair), T. Campbell (Vice Chair), Cann, Guthrie, Iaquinta, Mahan, Marshall, Perdue, L. Phillips, D. Poling, M. Poling, Reynolds, Skaff, Stowers, Varner, Williams, Anderson (Minority Chair), Carmichael (Minority Vice Chair), Andes, Ashley, Canterbury, Cowles, Evans, C. Miller and Walters.

GOVERNMENT ORGANIZATION

Morgan (Chair), Stephens (Vice Chair), Boggs, Butcher, Diserio, Ferns, Givens, Hall, Hartman, Hatfield, Jones, Martin, R. Phillips, Staggers, Swartzmiller, Talbott, Romine (Minority Chair), Azinger (Minority Vice Chair), Border, Householder, Howell, Kump, Nelson, Snuffer and Storch.
HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Perdue (Chair), Hatfield (Vice Chair), Barill, D. Campbell, T. Campbell, Ferns, Fleischauer, Lawrence, Marshall, Moore, Moye, Perry, L. Phillips, Poore, Rodighiero, Staggers, Ellington (Minority Chair), J. Miller (Minority Vice Chair), Andes, Border, Householder, Lane, C. Miller, Pasdon and Rowan.

INTERSTATE COOPERATION COMMITTEE

Doyle (Chair), Rodighiero (Vice Chair), Ferro, Frazier, Reynolds, Storch and Walters.

JUDICIARY

Miley (Chair), Hunt (Vice Chair), Barker, Brown, Doyle, Ferro, Fleischauer, Frazier, Longstreth, Manchin, Manypenny, Michael, Moore, Pino, Poore, Walker, Wells, Ellem (Minority Chair), Lane (Minority Vice Chair), Hamilton, Ireland, J. Miller, O’Neal, Overington and Sobonya.

NATURAL RESOURCES

Talbott (Chair), Crosier (Vice Chair), Fragale, Guthrie, Hall, Manypenny, Martin, L. Phillips, R. Phillips, Pino, Reynolds, Rodighiero, Shaver, Swartzmiller, Varner, Wells, Hamilton (Minority Chair), Ireland (Minority Vice Chair), Anderson, Canterbury, Duke, Ellem, Evans, Romine and Sigler.

PENSIONS AND RETIREMENT

Pethtel (Chair), Stowers (Vice Chair), Givens, Guthrie, D. Poling, Canterbury and Duke.
HOUSE OF DELEGATES COMMITTEES

POLITICAL SUBDIVISIONS

Manchin (Chair), Lawrence (Vice Chair), Cann, Doyle, Frazier, Hartman, Jones, Longstreth, Marcum, Morgan, R. Phillips, Poore, Smith, Stephens, Varner, Williams, Sumner (Minority Chair), Cowles (Minority Vice Chair), Duke, Ellington, Gearheart, Householder, Kump, O’Neal and Overington.

ROADS AND TRANSPORTATION

Staggers (Chair), L. Phillips (Vice Chair), Barker, Boggs, Butcher, T. Campbell, Crosier, Hall, Michael, D. Poling, Skaff, Smith, Stephens, Stowers, Walker, Wells, Cowles (Minority Chair), Evans (Minority Vice Chair), Ellington, Gearheart, Howell, Nelson, Pasdon, Savilla and Snuffer.

RULES

Thompson (Chair), Boggs, Caputo, Fragale, Hatfield, Marshall, Miley, Morgan, Paxton, M. Poling, Talbott, Varner, White, Anderson, Armstead, Ashley, Carmichael, Duke, Overington and Sumner.

SENIOR CITIZEN ISSUES

Williams (Chair), Moye (Vice Chair), Butcher, D. Campbell, Craig, Ferro, Hatfield, Longstreth, Manchin, Manypenny, Marshall, Moore, Pethtel, Pino, D. Poling, Stephens, Rowan (Minority Chair), Duke (Minority Vice Chair), Gearheart, Hamilton, Howell, Kump, Sigler, Snuffer and Sumner.

VETERANS’ AFFAIRS AND HOMELAND SECURITY

Iaquinta (Chair of Veterans’ Affairs), Longstreth (Vice Chair of Veterans’ Affairs), Swartzmiller (Chair of Homeland Security), Smith (Vice Chair of Homeland Security), Barill, Cann, Craig,

[XXXVIII]
HOUSE OF DELEGATES COMMITTEES

Ferro, Fleischauer, Givens, Hatfield, Jones, Paxton, Pethel, Staggers, Stephens, Azinger (Minority Chair of Veterans’ Affairs), Rowan (Minority Vice Chair of Veterans’ Affairs), Walters (Minority Chair of Homeland Security), Ashley (Minority Vice Chair of Homeland Security), Armstead, Howell, Nelson, O’Neal and Pasdon.

[XXXIX]
HOUSE OF DELEGATES COMMITTEES

JOINT COMMITTEES

EDUCATION

M. Poling (Cochair), Paxton (Vice Cochair), Armstead, Barill, D. Campbell, Caputo, Craig, Crosier, Duke, Ellington, Fragale, Gearheart, Lawrence, Marcum, Moye, Pasdon, Perry, Pethtel, Rodighiero, Rowan, Savilla, Shaver, Sigler, Smith and Sumner.

ENROLLED BILLS

Poore (Cochair), Ferro (Vice Cochair), Fragale and Overington.

FINANCE


GOVERNMENT AND FINANCE

Thompson (Cochair), Armstead, Boggs, Caputo, Carmichael, Miley and White.

GOVERNMENT OPERATIONS

Morgan (Cochair), Stephens, Fragale, Nelson, Rowan and Varner (nonvoting).

GOVERNMENT ORGANIZATION

Morgan (Cochair), Stephens (Vice Cochair), Azinger, Boggs, Border, Butcher, Diserio, Ferns, Givens, Hall, Hartman, Hatfield,
HOUSE OF DELEGATES COMMITTEES


THE JUDICIARY

Miley (Cochair), Hunt (Vice Cochair), Barker, Brown, Doyle Ellem, Ferro, Fleischauer, Frazier, Hamilton, Ireland, Lane, Longstreth, Manchin, Manypenny, Michael, J. Miller, Moore, O’Neal, Overington, Pino, Poore, Sobonya, Walker and Wells.

LEGISLATIVE RULE-MAKING REVIEW

Brown (Cochair), D. Poling (Vice Cochair), Fleischauer, Overington, Sobonya and Talbott.

PENSIONS AND RETIREMENT

Pethtel (Cochair), Stowers (Vice Cochair), Canterbury, Duke, Givens, Guthrie and D. Poling.

RULES

Thompson (Cochair), Boggs and Armstead.

RULE-MAKING REVIEW

Brown (Cochair), D. Poling (Vice Cochair), Fleischauer, Overington, Sobonya and Talbott.

TECHNOLOGY

Varner (Cochair), Cann (Vice Cochair), Andes, Barker, T. Campbell, Canterbury, Guthrie, Hall, Mahan and Swartzmiller.
COMMITTEES OF THE SENATE
Regular Session, 2012

STANDING

AGRICULTURE

Miller (Chair), Williams (Vice Chair), Beach, Fanning, Helmick, Laird, Minard, Snyder, K. Facemyer, Nohe and Sypolt.

BANKING AND INSURANCE

Minard (Chair), Wills (Vice Chair), Chafin, Fanning, Green, Helmick, McCabe, Palumbo, Prezioso, Tucker, K. Facemyer, Hall and Nohe.

CONFIRMATIONS

Edgell (Chair), Chafin (Vice Chair), Browning, D. Facemire, Miller, Plymale, Snyder, Hall and Sypolt.

ECONOMIC DEVELOPMENT

Browning (Chair), Klempa (Vice Chair), Chafin, D. Facemire, Helmick, Kirkendoll, McCabe, Prezioso, Snyder, Stollings, Wells, K. Facemyer, Hall and Sypolt.

EDUCATION

Plymale (Chair), Wells (Vice Chair), Beach, Browning, Chafin, Edgell, Foster, Laird, Stollings, Tucker, Unger, Wills, Barnes and Boley.

[XLII]
SENATE COMMITTEES

ENERGY, INDUSTRY AND MINING

D. Facemire (Chair), Kirkendoll (Vice Chair), Beach, Helmick, Jenkins, Klempa, Minard, Snyder, Stollings, Yost, K. Facemyer, Nohe and Sypolt.

FINANCE

Prezioso (Chair), D. Facemire (Vice Chair), Chafin, Edgell, Green, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Unger, Wells, Yost, Boley, Hall and Sypolt.

GOVERNMENT ORGANIZATION

Snyder (Chair), Miller (Vice Chair), Browning, Foster, Green, Jenkins, Kirkendoll, Klempa, McCabe, Minard, Williams, Yost, Boley and Sypolt.

HEALTH AND HUMAN RESOURCES

Stollings (Chair), Laird (Vice Chair), Foster, Kirkendoll, Miller, Palumbo, Plymale, Prezioso, Tucker, Wills, Yost, Boley and Hall.

INTERSTATE COOPERATION

Klempa (Chair), Tucker (Vice Chair), Chafin, Palumbo, Wells, Nohe, Sypolt and Kessler (ex officio).

THE JUDICIARY

Palumbo (Chair), Wills (Vice Chair), Beach, Browning, Fanning, Foster, Jenkins, Kirkendoll, Klempa, Minard, Snyder, Tucker, Unger, Williams, Barnes, K. Facemyer and Nohe.
SENATE COMMITTEES

LABOR

Yost (Chair), Miller (Vice Chair), Edgell, Fanning, Foster, Green, Klempa, Williams, Wills, Barnes and Nohe.

MILITARY

Wells (Chair), Yost (Vice Chair), Edgell, Green, Jenkins, Laird, Williams, Barnes and Boley.

NATURAL RESOURCES

Laird (Chair), Fanning (Vice Chair), Beach, Edgell, D. Facemire, Green, Helmick, Prezioso, Williams, Wills, Barnes, Boley and K. Facemyer.

PENSIONS

Foster (Chair), Edgell (Vice Chair), Jenkins, McCabe, Plymale, Hall and Nohe.

RULES

Kessler (Chair), Browning, Minard, Palumbo, Plymale, Prezioso, Snyder, Stollings, Unger, Boley and Hall.

TRANSPORTATION AND INFRASTRUCTURE

Beach (Chair), Klempa (Vice Chair), D. Facemire, Fanning, Kirkendoll, Plymale, Tucker, Barnes and K. Facemyer.
SENATE COMMITTEES

JOINT COMMITTEES

EDUCATION

Plymale (Cochair), Wells (Vice Cochair), Barnes, Beach, Boley, Browning, Chafin, Edgell, Foster, Laird, Stollings, Tucker, Unger and Wills.

ENROLLED BILLS

Tucker (Cochair), Jenkins (Vice Cochair), McCabe, Wells and Barnes.

FINANCE

Prezioso (Chair), D. Facemire (Vice Cochair), Boley, Chafin, Edgell, Green, Hall, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Sypolt, Unger, Wells and Yost.

GOVERNMENT AND FINANCE

Kessler (Cochair), Facemyer, Hall, Palumbo, Plymale, Prezioso and Unger.

GOVERNMENT OPERATIONS

Snyder (Cochair), Barnes, Facemire, Klempa and McCabe.

GOVERNMENT ORGANIZATION

Snyder (Cochair), Green (Vice Cochair), Boley, Browning, Chafin, Foster, Klempa, McCabe, Miller, Minard, Palumbo, Sypolt Williams and Yost.

[XLV]
SENATE COMMITTEES

THE JUDICIARY

Palumbo (Chair), Wills (Vice Cochair), Barnes, Beach, Browning, Facemyer, Fanning, Foster, Jenkins, Klempa, McCabe, Minard, Nohe, Snyder, Tucker, Unger and Williams.

LEGISLATIVE RULE-MAKING REVIEW

Minard (Cochair), Snyder (Vice Cochair), Boley, Facemyer, Laird and Under.

PENSIONS AND RETIREMENT

Foster (Cochair), Edgell (Vice Cochair), Hall, Jenkins, McCabe, Nohe and Plymale.

RULES

Kessler (Cochair), Unger and Hall.

RULE-MAKING REVIEW

Minard (Cochair), Snyder (Vice Cochair), Boley, Facemyer, Laird and Unger.

TECHNOLOGY

Green (Cochair), Chafin, Facemire, Fanning, Jenkins and Sypolt.

[XLVI]
AN ACT and reenact §5A-1A-4 of the Code of West Virginia, 1931, as amended, relating to the Employee Suggestion Award Program; increasing the maximum cash award; requiring the board to report to the Legislature every five years; and allowing the Governor to make a secondary award.

Be it enacted by the Legislature of West Virginia:

That §5A-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD PROGRAM.

§5A-1A-4. Awards.

(a) The maximum cash award approved is limited to twenty percent of the first year’s estimated savings, as established by the head of the affected spending unit, or $16,000, whichever is less. A cash award approved by the board shall be charged by the head of the affected spending unit against the appropriation item or items to which the estimated savings apply.
(b) Commencing December 2015, and every five years thereafter, the board shall submit a report to the Joint Committee on Government and Finance, including:

1. Recommendations for the maximum award amount adjusted for inflation; and
2. Any other information concerning the maximum award amount.

(c) After the board has made an award, the Governor may make one secondary award of up to twenty percent of the additional savings realized by implementing the suggestion in other state agencies, not to exceed $5,000. The Governor shall pay the secondary awards from funds appropriated by the Legislature for secondary awards.

CHAPTER 2

(Com. Sub. for S. B. 564 - By Senators Prezioso, Snyder, Chafin, Plymale, Barnes and Beach)

[Passed March 1, 2012; in effect July 1, 2012.]
[Approved by the Governor on March 12, 2012.]

AN ACT to amend and reenact §5A-3-52 of the Code of West Virginia, 1931, as amended, relating to special funds for travel management; creating the Aviation Fund and the Fleet Management Office Fund; providing the moneys in these funds do not expire; providing the funds are to be used for aviation and fleet management purposes; and requiring costs and expenses will be borne by the agency or department using the aviation or fleet services.

Be it enacted by the Legislature of West Virginia:
That §5A-3-52 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-52. Special funds for travel management created.

(a) The travel management special fund is terminated. All deposits currently in this special fund from aviation fees shall be transferred into the Aviation Fund created in subsection c of this section. All funds in this special fund from the monthly fee for vehicles shall be transferred into the Fleet Management Office Fund created in subsection (b) of this section.

(b) There is created in the State Treasury a special revenue account, to be known as the Fleet Management Office Fund. Expenditures are authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. All costs and expenses incurred pursuant to this section, including administrative, shall be paid from those funds. Charges for operating, repairing and servicing motor vehicles made against any institution, agency or department shall be paid into the Fleet Management Office Fund by that institution, department or agency.

(c) There is created in the State Treasury a special revenue account, to be known as the Aviation Fund.
27 Expenditures from this fund are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.
28 Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article.
29 All costs and expenses incurred pursuant to this section, including administrative, shall be paid from those funds.
30 Charges for operating, repairing and servicing aircraft made against any institution, agency or department shall be paid into the Aviation Fund by that institution, department or agency.

CHAPTER 3

(Com. Sub. for S. B. 563 - By Senators Prezioso, Beach and Snyder)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §5A-6-4 of the Code of West Virginia, 1931, as amended, relating to clarifying that the Chief Technology Officer is responsible for the cleansing of information technology equipment prior to retirement or transfer.

Be it enacted by the Legislature of West Virginia:

That §5A-6-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4. Powers and duties of the Chief Technology Officer generally.

(a) With respect to all state spending units the Chief Technology Officer may:

1. Develop an organized approach to information resource management for this state;

2. Provide technical assistance to the administrators of the various state spending units in the design and management of information systems;

3. Evaluate the economic justification, system design and suitability of information equipment and related services, and review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services by the state spending units;

4. Develop a mechanism for identifying those instances where systems of paper forms should be replaced by direct use of information equipment and those instances where applicable state or federal standards of accountability demand retention of some paper processes;

5. Develop a mechanism for identifying those instances where information systems should be linked and information shared, while providing for appropriate limitations on access and the security of information;

6. Create new technologies to be used in government, convene conferences and develop incentive packages to encourage the utilization of technology;

7. Engage in any other activities as directed by the Governor;
(8) Charge a fee to the state spending units for evaluations performed and technical assistance provided under the provisions of this section. All fees collected by the Chief Technology Officer shall be deposited in a special account in the State Treasury to be known as the Chief Technology Officer Administration Fund. Expenditures from the fund shall be made by the Chief Technology Officer for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That the provisions of section eighteen, article two, chapter eleven-b of this code do not operate to permit expenditures in excess of the spending authority authorized by the Legislature. Amounts collected which are found to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(9) Monitor trends and advances in information technology and technical infrastructure;

(10) Direct the formulation and promulgation of policies, guidelines, standards and specifications for the development and maintenance of information technology and technical infrastructure, including, but not limited to:

(A) Standards to support state and local government exchange, acquisition, storage, use, sharing and distribution of electronic information;

(B) Standards concerning the development of electronic transactions, including the use of electronic signatures;

(C) Standards necessary to support a unified approach to information technology across the totality of state
government, thereby assuring that the citizens and businesses of the state receive the greatest possible security, value and convenience from investments made in technology;

(D) Guidelines directing the establishment of statewide standards for the efficient exchange of electronic information and technology, including technical infrastructure, between the public and private sectors;

(E) Technical and data standards for information technology and related systems to promote efficiency and uniformity;

(F) Technical and data standards for the connectivity, priorities and interoperability of technical infrastructure used for homeland security, public safety and health and systems reliability necessary to provide continuity of government operations in times of disaster or emergency for all state, county and local governmental units; and

(G) Technical and data standards for the coordinated development of infrastructure related to deployment of electronic government services among state, county and local governmental units;

(11) Periodically evaluate the feasibility of subcontracting information technology resources and services, and to subcontract only those resources that are feasible and beneficial to the state;

(12) Direct the compilation and maintenance of an inventory of information technology and technical infrastructure of the state, including infrastructure and technology of all state, county and local governmental units, which may include personnel, facilities, equipment, goods and contracts for service, wireless tower facilities, geographic information systems and any technical infrastructure or technology that is used for law enforcement, homeland security or emergency services;
(13) Develop job descriptions and qualifications necessary to perform duties related to information technology as outlined in this article; and

(14) Promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, as may be necessary to standardize and make effective the administration of the provisions of article six of this chapter.

(b) With respect to executive agencies, the Chief Technology Officer may:

(1) Develop a unified and integrated structure for information systems for all executive agencies;

(2) Establish, based on need and opportunity, priorities and time lines for addressing the information technology requirements of the various executive agencies of state government;

(3) Exercise authority delegated by the Governor by executive order to overrule and supersede decisions made by the administrators of the various executive agencies of government with respect to the design and management of information systems and the purchase, lease or acquisition of information equipment and contracts for related services;

(4) Draw upon staff of other executive agencies for advice and assistance in the formulation and implementation of administrative and operational plans and policies;

(5) Recommend to the Governor transfers of equipment and human resources from any executive agency and the most effective and efficient uses of the fiscal resources of executive agencies, to consolidate or centralize information-processing operations; and
(6) Ensure information technology equipment is properly cleansed before disposal or transfer to another agency or organization, and is responsible for the retirement or transfer of information technology equipment that may contain confidential or privileged electronic data. Information technology equipment shall be cleansed using appropriate and effective methods that are commensurate with the data, the decommissioning agency and the planned disposition of the information technology equipment. Following the cleansing, the Chief Technology Officer may distribute the information technology equipment for reuse by another state spending unit, send the information technology equipment to a state authorized recycler or send the information technology equipment to a certified information technology equipment refurbisher. Transfers and disposal of information technology equipment are specifically exempt from the surplus property requirements enumerated in sections forty-three through forty-six, article three of this chapter.

(c) The Chief Technology Officer may employ the personnel necessary to carry out the work of the Office of Technology and may approve reimbursement of costs incurred by employees to obtain education and training.

(d) The Chief Technology Officer shall develop a comprehensive, statewide, four-year strategic information technology and technical infrastructure policy and development plan to be submitted to the Governor and the Joint Committee on Government and Finance. A preliminary plan shall be submitted by December 1, 2006, and the final plan shall be submitted by June 1, 2007. The plan shall include, but not be limited to:

(A) A discussion of specific projects to implement the plan;

(B) A discussion of the acquisition, management and use of information technology by state agencies;
(C) A discussion of connectivity, priorities and interoperability of the state’s technical infrastructure with the technical infrastructure of political subdivisions and encouraging the coordinated development of facilities and services regarding homeland security, law enforcement and emergency services to provide for the continuity of government operations in times of disaster or emergency;

(D) A discussion identifying potential market demand areas in which expanded resources and technical infrastructure may be expected;

(E) A discussion of technical infrastructure as it relates to higher education and health;

(F) A discussion of the use of public-private partnerships in the development of technical infrastructure and technology services; and

(G) A discussion of coordinated initiatives in website architecture and technical infrastructure to modernize and improve government to citizen services, government to business services, government-to-government relations and internal efficiency and effectiveness of services, including a discussion of common technical data standards and common portals to be utilized by state, county and local governmental units.

(e) The Chief Technology Officer shall oversee telecommunications services used by state spending units for the purpose of maximizing efficiency to the fullest possible extent. The Chief Technology Officer shall establish microwave or other networks and LATA hops; audit telecommunications services and usage; recommend and develop strategies for the discontinuance of obsolete or excessive utilization; participate in the renegotiation of telecommunications contracts; and encourage the use of
technology and take other actions necessary to provide the greatest value to the state.

CHAPTER 4

(S. B. 500 - By Senators Prezioso and Snyder)

[Passed March 10, 2012; in effect July 1, 2012.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §5A-7-4a of the Code of West Virginia, 1931, as amended, relating to monthly statements of spending units; and allowing certain monthly statements to accumulate and be mailed in one statement.

Be it enacted by the Legislature of West Virginia:

That §5A-7-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the Information and Communications Division and Secretary of Administration.

(a) The Legislature finds that it is in the best interest of the state, its spending units and those vendors supplying telecommunications services to the state and its spending units that any properly registered and qualified vendor supplying telecommunications services to two or more spending units under a shared account is entitled to prompt
payment upon presentation of a legitimate uncontested invoice for telecommunications services to the division, as provided in the following subsections.

(b) To facilitate the administration and payment of telecommunications services, there is continued in the State Treasury a special revenue account to be known as the Telecommunications Services Payment and Reserve Fund. All moneys transferred from state spending units pursuant to the requirements of this section shall be deposited in the account. Expenditures from the fund shall be made by the director for the exclusive purposes set forth in this section: 

Provided, That no more than $150,000 or the actual amount collected pursuant to subsection (j) of this section in any fiscal year, whichever is less, may be expended from the fund in any fiscal year to defray the costs of administration of this section.

(c) Upon receipt of any telecommunications charges from a properly registered and qualified vendor, the division shall conduct a preliminary review of the charges. If the division determines during this preliminary review that: (1) any of the charges are not authorized by law or by the contract under which the telecommunications services are provided; (2) no specific spending unit is designated for any charge; or (3) any charge or service is not in accordance with contract pricing, the division shall reject those charges. Within fourteen days of receipt of any telecommunications charge, the director shall notify a vendor of any rejected charges and shall include in the notice a description of the rejected charges, the reasons a charge was rejected and a proposed resolution of the rejected charge. The director and the vendor shall attempt to resolve the matter in good faith. Within ninety days of the receipt of the vendor’s invoice or a time period mutually agreed to by the vendor and secretary, the secretary shall make the final decision as to the legitimacy of the rejected amount and determine if payment
is warranted. If the final decision of the secretary is to require payment of the rejected amount, the secretary shall cause the division to bill that amount to the appropriate spending unit which shall remit payment of the amount as required in subsection (d) of this section. If the final decision of the secretary is to refuse to pay any amount, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

(d) Following the preliminary review of the charges, the director shall fully apportion all telecommunications charges not rejected during the preliminary review required by subsection (c) of this section among spending units based on the spending unit’s service and usage, as determined by the director. The director shall send each spending unit a statement of the spending unit’s proportionate share of any telecommunications charges within thirty days of receipt by the division of the invoice detailing the telecommunications charges. Monthly statements for a spending unit of less than $75 may be accumulated and sent to the spending unit on one statement near the end of the fiscal year. The director shall continue to pay any vendor invoices based upon the requirements of subsection (b) of this section. The statement is to provide a date of no more than thirty calendar days from the date the division sends the statement by which the spending unit shall submit payment or transfer to the telecommunications services payment and reserve fund all funds necessary to pay for the spending unit’s charges in full: Provided, That the statement sent in last month of the fiscal year shall provide that the transfer shall be made by July 31. If feasible for the spending unit, the preferable method of payment is by intergovernmental transfer.

(e) All spending units shall budget for telecommunications service expenses. Prior to the date provided in each statement sent to a spending unit pursuant to subsection (d) of this section, each spending unit shall pay or transfer the statement
amount to the Telecommunications Services Payment and Reserve Fund.

(f) If a spending unit fails to pay or transfer funds by the date specified in the statement sent pursuant to subsection (d) of this section, the Secretary of the Department of Administration shall transfer to the Telecommunications Services Payment and Reserve Fund the statement amount plus an additional penalty in the amount of three percent of the statement amount from any funds supporting the administration of that spending unit: *Provided*, That the secretary shall complete all such transfers by July 31 of each fiscal year. Upon exercising a transfer under the authority of this subsection, the director shall provide a notification to the spending unit, including, but not limited to, the date, time, total amount of the transfer, statement amount and penalty amount. If a participating spending unit does not maintain funds in the State Treasury, the secretary may transfer funds by wire from any depository outside the State Treasury. A participating spending unit maintaining funds in depositories outside the State Treasury shall furnish the secretary access to those funds for the exclusive purposes of this section.

(g) If a spending unit contests any portion of its statement, it shall nonetheless remit payment for the entire statement amount and notify the division in writing within thirty days of statement receipt by the spending unit. The secretary shall consider any contested apportionments of charges and provide a final determination on the apportionment of legitimate charges. Corrections or adjustments to apportionments may be effected on future transfer payments: *Provided*, That legitimate vendor charges are to be fully apportioned. If the basis of the contest is vendor error, overcharge, service failure, failure to terminate services as required by the division or other failure of or error in vendor performance, the director shall withhold the contested amount from current or future vendor payments,
pending resolution by the secretary, and the director shall bring the contested matter to the attention of the vendor. The director and the vendor shall attempt to resolve the matter in good faith. Within ninety days of the receipt of the vendor’s invoice or a time period mutually agreed to by the vendor and secretary, the secretary shall make the final decision as to the legitimacy of the contested amount and determine if payment is warranted. If the final decision of the secretary is to refuse to pay any amount, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

(h) The director shall provide for full payment of legitimate, uncontested telecommunications charges within ninety days of receipt of an invoice detailing the telecommunications charges by the division. Payment for the charges shall be made by the director from the Telecommunications Services Payment and Reserve Fund.

(i) The director may direct the discontinuance of telecommunications services to any spending unit that fails to comply with the provisions of this section and the vendor supplying telecommunication services shall comply with the written direction of the director on discontinuance of services.

(j) To help defray the additional cost of administering this section, the director may assess a proportional fee of up to $150,000 in aggregate per fiscal year to the participating spending units based on each spending unit’s portion of service and usage. This fee is to be included in the statement sent to spending units pursuant to subsection (d) of this section and transferred to the Telecommunications Service Payment and Reserve Fund by the date specified in the statement for the transfer of payment.
(k) Notwithstanding any other provision of this code to the contrary, for purposes of this section, an invoice is considered received by the division on the date on which the invoice is marked as received by the division, or three business days after the date of the postmark made by the United States Postal Service as evidenced on the envelope in which the invoice is mailed, whichever is earlier: Provided, That if an invoice is received by the division prior to the date on which the telecommunications services covered by the invoice are delivered or fully performed, for purposes of determining the ninety-day time period for payment in subsection (h) of this section, the invoice is considered received on the date on which the telecommunications services covered by the invoice were delivered or fully performed.

(l) For purposes of this section, “telecommunications service” means and includes not only telephone service regulated under chapter twenty-four of this code or under federal law, but also may include, at the discretion of the Secretary of Administration, wireless service, voice over Internet protocol service, Internet service and any other service or equipment used for the electronic transmission of voice or data: Provided, That the service is provided under a statewide contract.

(m) The director may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the purposes of this section.
AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to licensing wine sales at certain professional baseball stadiums; providing license fees; providing a definition of professional baseball stadium; providing standards for licensing and authority for the commissioner to regulate such sales; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §60-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

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

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

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

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

(2) Twenty-five hundred dollars per year for a
distributor’s license and each separate warehouse or other
facility from which a distributor sells, transfers or delivers
wine shall be separately licensed and there shall be collected
with respect to each such location the annual license fee of
$2,500 as herein provided;

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

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

(5) One hundred fifty dollars per year for a wine tasting
license;
(6) One hundred fifty dollars per year for a private wine bed and breakfast license, and each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of $150 as herein provided;

(7) Two hundred fifty dollars per year for a private wine restaurant license, and each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of $250 as herein provided;

(8) One hundred fifty dollars per year for a private wine spa license and each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of $150 as herein provided;

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

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

(11) One hundred fifty dollars per year for a direct shipper’s license for a licensee who sells and ships only wine and $250 per for a direct shipper’s license who ships and sells wine, nonfortified dessert wine, port, sherry or Madeira wines.

(12) Three hundred dollars per year for a multicapacity winery or farm winery license which shall enable the holder to operate as a retailer, wine specialty shop, supplier and direct shipper without obtaining an individual license for each capacity.
(c) The license period shall begin on July 1, of each year and end on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

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

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

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

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer’s license may be issued only to the
(h) The commissioner may issue a special license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefor shall be $250 regardless of the term of the license unless the applicant is the manufacturer of said wine on a winery or a farm winery as defined in section five-a, article one of this chapter, in which event the fee shall be $50 if the event is held on the premises of the winery or farm winery. The application for such license shall contain such information as the commissioner may reasonably require and shall be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold at such festival or fair. A winery or a farm winery licensed under this subsection may exhibit, conduct tastings, not to exceed a reasonable serving, and may sell wine only for consumption off the premises of such festival or fair. A special license issued other than to a winery or a farm winery may be issued to a “wine club” as defined herein below. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words “wine club”. The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided in this subsection until the wine club has at least fifty dues-paying members who have been enrolled and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subsection may sell wine only to its members, and in portions not to exceed eight ounces per serving. Such sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general
public, and the general public shall not be admitted to such premises or area. A wine club licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.

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

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

(i) (A) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next
following June 30, and its fee is $250 regardless of the length
of the term of the license. The application for the special
license shall contain information as the commissioner may
reasonably require and must be submitted to the
commissioner at least thirty days prior to the first day when
wine is to be sold at the professional baseball stadium. The
special license may be issued in the name of the baseball
franchisee or the name of the primary food and beverage
vendor under contract with the baseball franchisee. These
sales must take place within the confines of the professional
baseball stadium, provided that the exterior of the area where
wine sales may occur are surrounded by a fence or other
barrier prohibiting entry except upon the franchisee’s express
permission, and under the conditions and restrictions
established by the franchisee, so that the wine sales area is
closed to free and unrestricted entry by the general public.

(B) A license issued under this subsection and the
licensee holding the license is subject to all other provisions
of this article and the rules and orders of the commissioner
relating to the special license: Provided, That the
commissioner may by rule or order grant certain waivers or
exceptions to those rules or orders as the circumstances of
each such professional baseball stadium may require,
including, without limitation, the right to revoke or suspend
any license issued pursuant to this section prior to any notice
or hearing notwithstanding sections twenty-seven and
twenty-eight of this article: Provided, however, That under
no circumstances may subsection (c) or (d), section twenty of
this article be waived nor shall any exception be granted
concerning those subsections.

(C) The commissioner has the authority to propose rules
for legislative approval in accordance with article three,
chapter twenty-nine-a of this code to implement this
subsection.
(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: Provided, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa or a private club may permit a person over twenty-one years of age to purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with regulations promulgated by the commissioner for the purpose of consumption of said wine off premises: Provided, however, That for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity or other fees is at least $15: Provided further, That a licensed private wine restaurant or a private club may offer for sale for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over twenty-one years of age, as verified by the private wine restaurant or private club, for consumption off the premises. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.

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

(l) The commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to allow restaurants to serve wine with meals, and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each restaurant so licensed shall be charged an additional $100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in section seven, article twenty-two, chapter seventeen of this code.

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

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

(q) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2012, to the Department of Administration - Children’s Health Insurance Agency, fund 8838, fiscal year 2012, organization 0230, to the Department of Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2012, organization 0313, to the Department of Health and Human Resources - Division of Health - Central Office, fund 8802, fiscal year 2012, organization 0506, to the Department of Health and Human Resources - Division of Health - West Virginia Safe Drinking Water Treatment, fund 8824, fiscal year 2012, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2012, organization 0511, and to Miscellaneous Boards and Commissions - Coal Heritage Highway Authority, fund 8861, fiscal year 2012, organization 0942, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2012, 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, 2012, to the fund 8838, fiscal year 2012, organization 0230, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Sec. 6. Appropriations of Federal Funds.**

**DEPARTMENT OF ADMINISTRATION**

*304-Children’s Health Insurance Agency*

(WV Code Chapter 5)

Fund 8838 FY 2012 Org 0230

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>096</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to the fund 8708, fiscal year 2012, organization 0313, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Sec. 6. Appropriations of Federal Funds.**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*324-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2012 Org 0313
2 And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 8802, fiscal year 2012, organization 0506, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

326-Division of Health - Central Office

(WV Code Chapter 16)

Fund 8802 FY 2012 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total ............ 096</td>
<td>$45,000,000</td>
</tr>
</tbody>
</table>

2 Federal Economic Stimulus...... 891 | 1,100,000 |

3 And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 8824, fiscal year 2012, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

327-Division of Health -
West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2012 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1 Unclassified - Total. ........... 096</td>
<td>$8,000,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 8722, fiscal year 2012, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

330-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2012 Org 0511
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 8861, fiscal year 2012, organization 0942, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Sec. 6. Appropriations of Federal Funds.**

**MISCELLANEOUS BOARDS AND COMMISSIONS**

**352-Coal Heritage Highway Authority**

(WV Code Chapter 29)

Fund 8861 FY 2012 Org 0942

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1</td>
<td>$ 75,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and increase existing items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2012.
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, 2012, to the Division of Human Services - Temporary Assistance for Needy Families, fund 8816, fiscal year 2012, organization 0511, by supplementing and amending the appropriation for the fiscal year ending June 30, 2012.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2012, 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, 2012, to fund 8816, fiscal year 2012, organization 0511, be supplemented and amended by increasing an existing item of appropriation and adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.

364-Division of Human Services -
Temporary Assistance for Needy Families

Fund 8816 FY 2012 Org 0511
Federal Activity Funds

1  1 Unclassified - Total . . . . . . . . . . . . . . . . . . . . . 096 $20,000,000
2  2 Federal Economic Stimulus . . . . . . . . . . . . . . . 891  9,443,282

The purpose of this supplementary appropriation bill is to supplement and amend by increasing an existing item of appropriation and by adding a new item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2012.

CHAPTER 8


[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2012, to the Department of Administration, Department of Administration - Office of the Secretary - Employee Pension and Health Care Benefit Fund, fund 2044, fiscal year 2012, organization 0201, to the Department of Administration - Division of Purchasing - Purchasing Improvement Fund, fund 2264, fiscal year 2012, organization 0213, to the Department of Environmental Protection - Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund, fund 3323, fiscal year 2012, organization 0313, to the Department of Environmental Protection - Division of Environmental Protection - Stream Restoration Fund, fund 3349, fiscal year 2012, organization
0313, to the Department of Environmental Protection - Division of Environmental Protection - Mountaintop Removal Fund, fund 3490, fiscal year 2012, organization 0313, to the Department of Health and Human Resources - Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2012, organization 0511, to a new item of appropriation designated to the to the Department of Military Affairs and Public Safety - West Virginia State Police - State Police Academy Post Exchange, fund 6544, fiscal year 2012, organization 0612, to the Department of Revenue - Racing Commission - General Administration, fund 7305, fiscal year 2012, organization 0707, to the Miscellaneous Boards and Commissions - WV State Board of Examiners for Licensed Practical Nurses, fund 8517, fiscal year 2012, organization 0906, and to the Miscellaneous Boards and Commissions - Public Service Commission - Consumer Advocate, fund 8627, fiscal year 2012, organization 0926, by supplementing and amending chapter 11, Acts of the Legislature, regular session, 2011, known as the Budget Bill.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Administration, Department of Administration - Office of the Secretary - Employee Pension and Health Care Benefit Fund, fund 2044, fiscal year 2012, organization 0201, in the Department of Administration - Division of Purchasing - Purchasing Improvement Fund, fund 2264, fiscal year 2012, organization 0213, in the Department of Environmental Protection - Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund, fund 3323, fiscal year 2012, organization 0313, in the Department of Environmental Protection - Division of Environmental Protection - Stream Restoration Fund, fund 3349, fiscal year 2012, organization 0313, in the Department of Environmental Protection - Division of Environmental Protection - Mountaintop Removal Fund, fund 3490, fiscal year 2012, organization 0313, in the Department of Health and Human Resources - Division of Human Services - West Virginia Works
Separate State Two-Parent Program Fund, fund 5468, fiscal year 2012, organization 0511, in the Department of Military Affairs and Public Safety - West Virginia State Police - State Police Academy Post Exchange, fund 6544, fiscal year 2012, organization 0612, in the Department of Revenue - Racing Commission - General Administration, fund 7305, fiscal year 2012, organization 0707, in the Miscellaneous Boards and Commissions - WV State Board of Examiners for Licensed Practical Nurses, fund 8517, fiscal year 2012, organization 0906, and in the Miscellaneous Boards and Commissions - Public Service Commission - Consumer Advocate, fund 8627, fiscal year 2012, organization 0926, that is available for expenditure during the fiscal year ending June 30, 2012, which is 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, 2012, to fund 2044, fiscal year 2012, organization 0201, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

**Sec. 3. Appropriations from Other Funds.**

**DEPARTMENT OF ADMINISTRATION**

121-Department of Administration -
Office of the Secretary
Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2012 Org 0201
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 2264, fiscal year 2012, organization 0213, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF ADMINISTRATION

124-Division of Purchasing - Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2012 Org 0213

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 53,976</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>780</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>18,800</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 3323, fiscal year 2012, organization 0313, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.
DEPARTMENT OF ENVIRONMENTAL PROTECTION

160-Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2012 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>001 $ 475,000</td>
</tr>
<tr>
<td>2</td>
<td>010 161,500</td>
</tr>
<tr>
<td>3</td>
<td>099 500,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 3349, fiscal year 2012, organization 0313, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

168-Division of Environmental Protection - Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2012 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>096 $4,054,182</td>
</tr>
</tbody>
</table>
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 3490, fiscal year 2012, organization 0313, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

171-Division of Environmental Protection - Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2012 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  1 Personal Services..........</td>
<td>$ 40,000</td>
</tr>
<tr>
<td>2  3 Employee Benefits..........</td>
<td>10,000</td>
</tr>
<tr>
<td>3  4 Unclassified...............</td>
<td>250,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 5468, fiscal year 2012, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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

(WV Code Chapter 9)

Fund 5468 FY 2012 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified. 096</td>
</tr>
</tbody>
</table>

And, that chapter eleven, Acts of the Legislature, regular session, 2011, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

200a-West Virginia State Police -  
State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2012 Org 0612

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses. 130</td>
</tr>
<tr>
<td>2</td>
<td>Repairs and Alterations. 064</td>
</tr>
</tbody>
</table>
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 7305, fiscal year 2012, organization 0707, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF REVENUE

226-Racing Commission -
General Administration

(WV Code Chapter 19)

Fund 7305 FY 2012 Org 0707

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$696,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 7305, fiscal year 2012, organization 0707, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF REVENUE

226-Racing Commission -
General Administration
### TITLE II — APPROPRIATIONS.

#### Sec. 3. Appropriations from Other Funds.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

**247-WV State Board of Examiners for Licensed Practical Nurses**

(WV Code Chapter 30)

**Fund 8517 FY 2012 Org 0906**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified.</td>
<td>$ 42,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 8517, fiscal year 2012, organization 0906, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

#### Sec. 3. Appropriations from Other Funds.

**Fund 7305 FY 2012 Org 0707**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services.</td>
<td>$ 487,200</td>
</tr>
<tr>
<td>2 Employee Benefits.</td>
<td>$ 208,800</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 8517, fiscal year 2012, organization 0906, be supplemented and amended by increasing an existing item of appropriation as follows:
MISCELLANEOUS BOARDS AND COMMISSIONS

252-Public Service Commission - Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2012 Org 0926

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total. 099</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and amend by increasing and decreasing existing items of appropriation and provide for a new item of appropriation to be established therein to appropriate funds in the aforesaid accounts for the designated spending units for expenditure during fiscal year 2012.

CHAPTER 9


[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT making 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 2012, organization 0803, for the fiscal year ending June 30, 2012.
WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 11, 2012, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2011, and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for the fiscal year 2012; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2012, organization 0803, be supplemented and amended by decreasing existing an item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

98–Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2012 Org 0803

<table>
<thead>
<tr>
<th>State Road Activity Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 Appalachian Programs.</td>
</tr>
</tbody>
</table>
And, That the items of the total appropriations from the State Road Fund, to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2012, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

98–Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2012 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>$13,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation bill is to supplement, amend, decrease and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year ending June 30, 2012.
AN ACT making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

TITLE I — GENERAL PROVISIONS.

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 2013.

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 2013” shall mean the period from July 1, 2012, through June 30, 2013.
“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 W.Va. Code §12-2-2 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 2, Chapter 11B 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 5, Chapter 5 of the Code.

“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” or “current expenses” 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 its “current expenses” 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 2, Chapter 11B 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 and workers 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 Premium” 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 benefits” line item, its “unclassified” line item, its “current expenses” line item or any other appropriate line item to “BRIM Premium” 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 W.Va. Code §12-3-12.

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 5F of the Code shall have the authority to transfer funds appropriated to “personal services”, “employee benefits”, “current expenses”, “repairs and alterations”, “equipment”, “other assets”, and “buildings” to other lines within the same account and no funds from other lines shall be transferred to the “personal services” or “unclassified” 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 5F 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 5, Chapter 5 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 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

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

Title

I. General Provisions.
II. Appropriations.
III. Administration.

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

**TITLE II--APPROPRIATIONS.**

§1. Appropriations from general revenue.

ADMINISTRATION, DEPARTMENT OF
Administration, Department of – Office of the Secretary – Fund No. 0186. 81
Children’s Health Insurance Agency – Fund No. 0588. 88
Committee for the Purchase of Commodities and Services from the Handicapped – Fund No. 0233. 87
Consolidated Public Retirement Board – Fund No. 0195. 82
Ethics Commission – Fund No. 0223. 86
Ch. 10] APPROPRIATIONS

Finance, Division of – Fund No. 0203. .................................................. 82
General Services, Division of – Fund No. 0230. .................................. 83
Prosecuting Attorneys’ Institute, West Virginia –
   Fund No. 0557. ........................................................................ 88
Public Defender Services – Fund No. 0226. ...................................... 86
Public Employees Grievance Board – Fund No. 0220. ....................... 85
Public Employees Insurance Agency – Fund No. 0200. ...................... 87
Purchasing, Division of – Fund No. 0210. ........................................ 84
Real Estate Division – Fund No. 0610. .............................................. 88
Travel Management – Fund No. 0615. .............................................. 84
Uniform State Laws, Commission on – Fund
   No. 0214. ........................................................................... 85

COMMERCE, DEPARTMENT OF
   Coal Mine Health and Safety, Board of –
      Fund No. 0280. ................................................................. 96
   Coal Mine Safety and Technical Review
      Committee – Fund No. 0285. ............................................... 96
   Commerce, Department of – Office of the Secretary –
      Fund No. 0606. ................................................................. 97
   Development Office, West Virginia – Fund
      No. 0256. ........................................................................ 90
   Energy, Division of – Fund No. 0612. ......................................... 98
   Forestry, Division of – Fund No. 0250. ....................................... 89
   Geological and Economic Survey – Fund
      No. 0253. ........................................................................ 90
   Labor, Division of – Fund No. 0260. .......................................... 94
   Labor, Division of – Occupational Safety and Health
      Fund – Fund No. 0616. ....................................................... 94
   Miners’ Health, Safety and Training, Division
      of – Fund No. 0277. ........................................................... 95
   Natural Resources, Division of – Fund
      No. 0265. ........................................................................ 94
   Tourism, Division of – Fund No. 0246. ....................................... 89
   WorkForce WV – Fund No. 0572. ............................................. 96

EDUCATION, DEPARTMENT OF
   State Board of Education – Division of Educational
      Performance Audits – Fund No. 0573. .................................... 104
   State Board of Education – Vocational
      Division – Fund No. 0390. .................................................. 104
   State Department of Education – Aid
      for Exceptional Children – Fund No. 0314. ......................... 102
   State Department of Education – Fund No. 0313. ...................... 99
   State Department of Education – School Lunch
      Program – Fund No. 0303. .................................................. 98
   State Department of Education – State Aid to
      Schools – Fund No. 0317. ................................................... 103
   State FFA-FHA Camp and Conference Center –
      Fund No. 0306. ............................................................... 99
West Virginia Schools for the Deaf and
the Blind – Fund No. 0320.......................... 105

EDUCATION AND THE ARTS, DEPARTMENT OF
Culture and History, Division of – Fund
No. 0293.............................................. 107
Educational Broadcasting Authority – Fund
No. 0300............................................. 109
Education and the Arts, Department of – Office
of the Secretary – Fund No. 0294.................. 106
Library Commission – Fund No. 0296.............. 108
State Board of Rehabilitation – Division of
Rehabilitation Services – Fund No. 0310........ 109

ENVIRONMENTAL PROTECTION, DEPARTMENT OF
Air Quality Board – Fund No. 0550.................... 112
Environmental Protection, Division of – Fund
No. 0273............................................... 111
Environmental Quality Board – Fund No. 0270..... 110

EXECUTIVE
Agriculture, Department of – Fund No. 0131.............. 76
Agriculture, Department of – Agricultural
Awards--Fund No. 0136.............................. 78
Agriculture, Department of – Meat Inspection--
Fund No. 0135.................................... 78
Agriculture, Department of – West Virginia
Agricultural Land Protection Authority--
Fund No. 0607..................................... 79
Attorney General – Fund No. 0150....................... 79
Auditor’s Office – General Administration--
Fund No. 0116..................................... 74
Governor’s Office – Fund No. 0101..................... 72
Governor’s Office – Civil Contingent Fund--
Fund No. 0105..................................... 73
Governor’s Office – Custodial Fund--Fund
No. 0102............................................. 73
Secretary of State – Fund No. 0155...................... 80
State Election Commission – Fund No. 0160......... 81
Treasurer’s Office – Fund No. 0126..................... 75
West Virginia Conservation Agency – Fund No. 0132... 77

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF
Consolidated Medical Service Fund – Fund
No. 0525............................................. 116
Health and Human Resources, Department of –
Office of the Secretary – Fund No. 0400................ 112
Health, Division of – Central Office--Fund
No. 0407............................................. 113
Ch. 10] APPROPRIATIONS

Health, Division of – West Virginia Drinking Water Treatment – Fund No. 0561.

Human Services, Division of – Fund No. 0403.

Human Rights Commission – Fund No. 0416.

HIGHER EDUCATION
Council for Community and Technical College Education – Fund No. 0596.

Higher Education Policy Commission – Administration – Fund No. 0589.


JUDICIAL
Supreme Court – General Judicial – Fund No. 0180.

LEGISLATIVE
House of Delegates – Fund No. 0170.

Joint Expenses – Fund No. 0175.

Senate – Fund No. 0165.

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF
Adjutant General – Military Fund – Fund No. 0605.

Adjutant General – State Militia – Fund No. 0433.

Corrections, Division of – Central Office – Fund No. 0446.

Corrections, Division of – Correctional Units – Fund No. 0450.

Fire Commission – Fund No. 0436.


Justice and Community Services, Division of – Fund No. 0546.

Juvenile Services, Division of – Fund No. 0570.

Military Affairs and Public Safety, Department of – Office of the Secretary – Fund No. 0430.

Parole Board, West Virginia – Fund No. 0440.

Protective Services, Division of – Fund No. 0585.

State Police, West Virginia – Fund No. 0453.

REVENUE, DEPARTMENT OF
Office of the Secretary – Fund No. 0465.


State Budget Office – Fund No. 0595.

Tax Appeals, West Virginia Office of – Fund 0593.

Tax Division – Fund No. 0470.
§2. Appropriations from state road fund.

TRANSPORTATION, DEPARTMENT OF
Administrative Hearings, Office of – Fund No. 9027. .......................... 149
Highways, Division of – Fund No. 9017. ........................................ 148
Motor Vehicles, Division of – Fund No. 9007. ................................. 147

§3. Appropriations from other funds.

ADMINISTRATION, DEPARTMENT OF
Administration, Department of – Office of the Secretary – Employee Pension and Health Care Benefit Fund – Fund No. 2044. ..................................................... 159
Information Services and Communications, Division of – Fund No. 2220. ........................................ 159
Personnel, Division of – Fund No. 2440. ........................................ 162
Prosecuting Attorneys’ Institute, West Virginia – Fund No. 2521. .......................... 162
Purchasing, Division of – Improvement Fund – Fund No. 2264. .......................... 161
Purchasing, Division of – Vendor Fee Fund – Fund No. 2263. .......................... 160
Technology, Office of – Fund No. 2531 ........................................ 163
Travel Management Aviation Fund – Fund No. 2302. .......................... 161
Travel Management Fleet Management Office Fund – Fund No. 2301. .......................... 161

COMMERCE, DEPARTMENT OF
Development Office, West Virginia – Broadband Development Fund – Fund No. 3174. .......................... 166
Development Office, West Virginia – Department of Commerce Marketing and Communications Operating Fund – Fund No. 3002. .......................... 165
Energy, Division of – Energy Assistance – Fund No. 3010. .......................... 171
Energy, Division of – Office of Coal Field Development – Community Development – Fund No. 3011 .......................... 172
Forestry, Division of – Fund No. 3081 .............................................. 163
Forestry, Division of – Severance Tax Operations – Fund No. 3084 .................................................. 164
Forestry, Division of – Timbering Operations Enforcement Fund – Fund No. 3082 ........................................... 164
Geological and Economic Survey – Fund No. 3100 .................................................. 165
Labor, Division of – Amusement Rides/Amusement Attraction Safety Fund – Fund No. 3192 ........................................... 167
Labor, Division of – Contractor Licensing Board Fund – Fund No. 3187 .................................................. 166
Labor, Division of – Crane Operator Certification Fund – Fund No. 3191 .................................................. 167
Labor, Division of – Elevator Safety Act– Fund No. 3188 .................................................. 166
Labor, Division of – State Manufactured Housing Administration Fund – Fund No. 3195 .................................................. 168
Labor, Division of – Weights and Measures Fund – Fund No. 3196 .................................................. 168
Miners’ Health, Safety and Training Fund – Fund No. 3355 .................................................. 171
Natural Resources, Division of – Fund No. 3200 .............................................. 168
Natural Resources, Division of – Game, Fish and Aquatic Life Fund – Fund No. 3202 .............................................. 169
Natural Resources, Division of – Nongame Fund – Fund No. 3203 .................................................. 169
Natural Resources, Division of – Planning and Development Division--Fund No. 3205 .................................................. 170
Natural Resources, Division of– Whitewater Advertising and Promotion Fund--Fund No. 3256 .................................................. 171
Natural Resources, Division of– Whitewater Study and Improvement Fund--Fund No. 3253 .................................................. 170

EDUCATION, DEPARTMENT OF
State Board of Education--Strategic Staff Development--Fund No. 3937 .................................................. 172
State Department of Education--FFA-FHA Conference Center--Fund No. 3960 .................................................. 173
State Department of Education--School Building Authority--Fund No. 3959 .................................................. 172

EDUCATION AND THE ARTS, DEPARTMENT OF
Culture and History, Division of--Public Records and Preservation Revenue Account -- Fund No. 3542 .................................................. 174
Office of the Secretary--Lottery Education Fund Interest Earnings Control Account--Fund No. 3508 .................................................. 174
State Board of Rehabilitation--Division of Rehabilitation Services--West Virginia
Rehabilitation Center--Special Account--
Fund No. 8664. ................................................................. 174

ENVIRONMENTAL PROTECTION, DEPARTMENT OF
Environmental Protection, Division of--
Air Pollution Control Fund – Fund No. 3336. ......................... 180
Environmental Protection, Division of--
Air Pollution Education and Environment
Fund--Fund No. 3024........................................................... 176
Environmental Protection, Division of--
Environmental Laboratory Certification
Fund--Fund No. 3340.......................................................... 180
Environmental Protection, Division of--
Hazardous Waste Emergency and
Response Fund – Fund No. 3331................................. 178
Environmental Protection, Division of--
Hazardous Waste Management Fund--Fund
No. 3023................................................................. 175
Environmental Protection, Division of --
Litter Control Fund – Fund No. 3486.. ............................. 181
Environmental Protection, Division of--Mining
and Reclamation Operations Fund--Fund
No. 3324................................................................. 177
Environmental Protection, Division of--Mountaintop
Removal Fund--Fund No. 3490........................................... 181
Environmental Protection, Division of--
Oil and Gas Operating Permit
and Processing Fund--Fund No. 3323............................... 177
Environmental Protection, Division of--Oil
and Gas Reclamation Fund--Fund No. 3322........................... 177
Environmental Protection, Division of--
Recycling Assistance Fund-- Fund No. 3487........................ 181
Environmental Protection, Division of--Solid
Waste Enforcement Fund--Fund No. 3333............................ 179
Environmental Protection, Division of--Solid
Waste Reclamation and Environmental
Response Fund--Fund No. 3332............................................. 179
Environmental Protection, Division of--Special
Reclamation Fund--Fund No. 3321..................................... 176
Environmental Protection, Division of--Stream
Restoration Fund--Fund No. 3349....................................... 180
Environmental Protection, Division of--
Underground Storage Tanks Administrative
Fund--Fund No. 3325............................................................. 178
Oil and Gas Conservation Commission--Fund
No. 3371................................................................. 182
Solid Waste Management Board--Fund No. 3288................. 175

EXECUTIVE
Agriculture, Department of--Agricultural Fees
Fund--Fund No. 1401............................................................. 155
<table>
<thead>
<tr>
<th>Agency/Program</th>
<th>Fund No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Department of--Donated Food Fund--</td>
<td>1446</td>
<td>156</td>
</tr>
<tr>
<td>Agriculture, Department of--Farm Operating Fund--</td>
<td>1412</td>
<td>156</td>
</tr>
<tr>
<td>Agriculture, Department of--Integrated Predation Management Fund -- Fund No. 1465</td>
<td></td>
<td>157</td>
</tr>
<tr>
<td>Agriculture, Department of--General John McCausland Memorial Farm--Fund No. 1409</td>
<td></td>
<td>155</td>
</tr>
<tr>
<td>Agriculture, Department of--West Virginia Rural Rehabilitation Program--Fund No. 1408</td>
<td></td>
<td>155</td>
</tr>
<tr>
<td>Attorney General--Anti-Trust Enforcement--Fund No. 1507</td>
<td></td>
<td>157</td>
</tr>
<tr>
<td>Attorney General--Preneed Funeral Guarantee Fund--Fund No. 1514</td>
<td></td>
<td>158</td>
</tr>
<tr>
<td>Attorney General--Preneed Funeral Regulation Fund--Fund No. 1513</td>
<td></td>
<td>157</td>
</tr>
<tr>
<td>Auditor’s Office--Land Operating Fund--Fund No. 1206</td>
<td></td>
<td>151</td>
</tr>
<tr>
<td>Auditor’s Office--Local Government Purchasing Card Expenditure Fund--Fund No. 1224</td>
<td></td>
<td>152</td>
</tr>
<tr>
<td>Auditor’s Office--Office of the Chief Inspector--Fund No. 1235</td>
<td></td>
<td>153</td>
</tr>
<tr>
<td>Auditor’s Office--Purchasing Card Administration Fund--Fund No. 1234</td>
<td></td>
<td>153</td>
</tr>
<tr>
<td>Auditor’s Office--Securities Regulation Fund--Fund No. 1225</td>
<td></td>
<td>152</td>
</tr>
<tr>
<td>Auditor’s Office--Technology Support and Acquisition--Fund No. 1233</td>
<td></td>
<td>152</td>
</tr>
<tr>
<td>Governor’s Office – Office of Minority Affairs Fund –Fund No. 1058</td>
<td></td>
<td>151</td>
</tr>
<tr>
<td>Secretary of State--General Administrative Fees Account – Fund No. 1617</td>
<td></td>
<td>158</td>
</tr>
<tr>
<td>Secretary of State – Service Fees and Collection Account – Fund No. 1612</td>
<td></td>
<td>158</td>
</tr>
<tr>
<td>Treasurer’s Office – College Prepaid Tuition and Savings Program – Administrative Account –Fund No. 1301</td>
<td></td>
<td>154</td>
</tr>
<tr>
<td>Treasurer’s Office – Technology Support and Acquisition – Fund No. 1329</td>
<td></td>
<td>154</td>
</tr>
</tbody>
</table>

**HEALTH AND HUMAN RESOURCES, DEPARTMENT OF**

<table>
<thead>
<tr>
<th>Agency/Program</th>
<th>Fund No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Protection Services Board--Domestic Violence Legal Services Fund – Fund No. 5455</td>
<td></td>
<td>190</td>
</tr>
<tr>
<td>Health Care Authority, West Virginia – Health Care Cost Review Fund – Fund No. 5375</td>
<td></td>
<td>186</td>
</tr>
<tr>
<td>Health Care Authority, West Virginia – Health Information Network Account – Fund No. 5380</td>
<td></td>
<td>187</td>
</tr>
<tr>
<td>Health Care Authority, West Virginia – Revolving Loan Fund – Fund No. 5382</td>
<td></td>
<td>188</td>
</tr>
<tr>
<td>Health, Division of – Health Facility Licensing – Fund No. 5172</td>
<td></td>
<td>185</td>
</tr>
<tr>
<td>Health, Division of – Hepatitis B Vaccine – Fund No. 5183</td>
<td>185</td>
<td></td>
</tr>
<tr>
<td>Health, Division of – Hospital Services Revenue Account (Special Fund) (Capital Improvement, Renovation and Operations) – Fund No. 5156</td>
<td>183</td>
<td></td>
</tr>
<tr>
<td>Health, Division of – Laboratory Services – Fund No. 5163</td>
<td>184</td>
<td></td>
</tr>
<tr>
<td>Health, Division of – Lead Abatement Fund – Fund No. 5204</td>
<td>185</td>
<td></td>
</tr>
<tr>
<td>Health, Division of – Tobacco Control Special Fund – Fund No. 5218</td>
<td>186</td>
<td></td>
</tr>
<tr>
<td>Health, Division of – Vital Statistics – Fund No. 5144</td>
<td>182</td>
<td></td>
</tr>
<tr>
<td>Health, Division of – West Virginia Birth to Three Fund – Fund No. 5214</td>
<td>186</td>
<td></td>
</tr>
<tr>
<td>Human Services, Division of – Child Support Enforcement – Fund No. 5094</td>
<td>188</td>
<td></td>
</tr>
<tr>
<td>Human Services, Division of – Health Care Provider Tax – Fund No. 5090</td>
<td>188</td>
<td></td>
</tr>
<tr>
<td>Human Services, Division of – James “Tiger” Morton Catastrophic Illness Fund – Fund No. 5454</td>
<td>189</td>
<td></td>
</tr>
<tr>
<td>Human Services, Division of – Medical Services Trust Fund – Fund No. 5185</td>
<td>189</td>
<td></td>
</tr>
<tr>
<td>Human Service, Division of – WV Works Separate State College Program Fund – Fund No. 5467</td>
<td>190</td>
<td></td>
</tr>
<tr>
<td>Human Service, Division of – WV Works Separate State Two – Parent Program Fund – Fund No. 5468</td>
<td>190</td>
<td></td>
</tr>
</tbody>
</table>

**HIGHER EDUCATION**

| Higher Education Policy Commission – Community and Technical College Capital Improvement Fund – Fund No. 4908 | 210 |
| Higher Education Policy Commission – Marshall University Lane Sale Account – Fund No. 4270 | 211 |
| Higher Education Policy Commission – Registration Fee – Capitol Improvement and Bond Retirement Fund – Fund No. 4902 | 208 |
| Higher Education Policy Commission – Tuition Fee – Capitol Improvement and Bond Retirement Fund – Fund No. 4903 | 209 |
| Higher Education Policy Commission – Tuition Fee – Revenue Bond Construction Fund – Fund No. 4906 | 210 |
| Higher Education Policy Commission – West Liberty University – Land Sales Account – Fund No. 4566 | 212 |
| Higher Education Policy Commission – West Virginia University Health Sciences Center – Fund No. 4179 | 211 |
| WV Council for Community and Technical College Education – Fund No. 4732 | 212 |

**JUDICIAL**

| Supreme Court – Family Court Fund – Fund No. 1763 | 150 |
APPROPRIATIONS

LEGISLATIVE
Crime Victims Compensation Fund--Fund No. 1731. .................................................. 150

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF
Corrections, West Virginia Division of--Parolee Supervision Fees--Fund No. 6362. .................. 192
Corrections, West Virginia Division of--West Virginia Community Corrections Fund--Fund No. 6386. ................................................................. 196
Criminal Justice Services--Court Security Fund--Fund No. 6804. ..................................... 196
Fire Commission--Fire Marshal Fees--Fund No. 6152. ....................................................... 195
Homeland Security and Emergency Management -- Interoperable Radio Project--Fund No. 6295. ........ 191
Justice and Community Service, Division of -- Community Corrections Fund -- Fund No. 6386. ........ 196
Justice and Community Service, Division of--Court Security Fund--Fund No. 6804. ................. 196
Law Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund--Fund No. 6003. ............. 191
Regional Jail and Correctional Facility Authority -- Fund No. 6675. ........................................ 195
State Armory Board--General Armory Fund -- Fund No. 6057. ............................................. 191
State Police, West Virginia -- Bail Bond Enforcer Fund -- Fund No. 6532 .................................. 194
State Police, West Virginia -- Central Abuse Registry Fund -- Fund No. 6527. .......................... 194
State Police, West Virginia -- Drunk Driving Prevention Fund -- Fund No. 6513. ...................... 193
State Police, West Virginia -- Motor Vehicle Inspection Fund -- Fund No. 6501. ....................... 192
State Police, West Virginia -- State Police Academy Post Exchange -- Fund No. 6544. ................ 194
State Police, West Virginia -- Surplus Real Property Proceeds Fund -- Fund No. 6516. .............. 193
State Police, West Virginia -- Surplus Transfer Account -- Fund No. 6519. ................................ 193

MISCELLANEOUS BOARDS AND COMMISSIONS
Barbers and Cosmetologists, Board of-- Fund No. 5425. .................................................. 213
Enterprise Resource Planning Board -- Fund No. 9080. .................................................... 219
Examiners for Speech--Language Pathology and Audiology, West Virginia Board of--Fund No. 8646. ................................................................. 217
Hospital Finance Authority--Fund No. 5475. ................................................................. 213
Licensed Dietitians, West Virginia Board of-- Fund No. 8680. ........................................... 218
| Licensed Practical Nurses, West Virginia State Board of Examiners for--Fund No. 8517. | 214 |
| Massage Therapy Licensure--Fund No. 8671. | 218 |
| Medicine, Board of--Fund No. 9070. | 219 |
| Public Service Commission--Fund No. 8623. | 215 |
| Public Service Commission--Consumer Advocate--Fund No. 8627. | 216 |
| Public Service Commission--Gas Pipeline Division--Fund No. 8624. | 215 |
| Public Service Commission--Motor Carrier Division--Fund No. 8625. | 216 |
| Real Estate Commission--Fund No. 8635. | 217 |
| Registered Professional Nurses, West Virginia Board of Examiners for--Fund No. 8520. | 214 |
| Respiratory Care, West Virginia Board of--Fund No. 8676. | 218 |
| Treasury Investments, Board of--Fund No. 9152. | 220 |

**REVENUE, DEPARTMENT OF**

| Alcohol Beverage Control Administration--Fund No. 7352. | 205 |
| Alcohol Beverage Control Administration--Wine License Special Fund--Fund No. 7351. | 204 |
| Banking, Division of--Fund No. 3041. | 197 |
| Insurance Commissioner--Fund No. 7152. | 200 |
| Insurance Commissioner--Consumer Advocate–Fund No. 7151. | 200 |
| Insurance Commissioner--Examination Revolving Fund--Fund No. 7150. | 200 |
| Insurance Commissioner--Self-Insured Employer Guaranty Risk Pool--Fund No. 7164. | 201 |
| Insurance Commissioner--Self-Insured Employer Security Risk Pool--Fund No. 7165. | 202 |
| Insurance Commissioner--Workers’ Compensation Old Fund -- Fund No. 7162. | 201 |
| Insurance Commissioner--Workers’ Compensation Uninsured Employers’ Fund--Fund No. 7163. | 201 |
| Lottery Commission--Revenue Center Construction Fund -- Fund No. 7209. | 202 |
| Municipal Bond Commission--Fund No. 7253. | 202 |
| Office of the Secretary--State Debt Reduction Fund--Fund No. 7007. | 197 |
| Racing Commission--Administration and Promotion--Fund No. 7304. | 203 |
| Racing Commission--Administration, Promotion and Education Fund--Fund No. 7307. | 204 |
| Racing Commission--General Administration--Fund No. 7305. | 203 |
| Racing Commission--Relief Fund--Fund No. 7300. | 202 |
Ch. 10] APPROPRIATIONS 61

State Budget Office--Public Employees Insurance Reserve Fund--Fund No. 7400. ................................................ 199
Tax Division--Cemetery Company Account-- Fund No. 7071. .......................................................... 197
Tax Division – Reduced Cigarette Ignition Propensity Standard and Fire Protection Act Fund – Fund No. 7092. ........ 199
Tax Division--Special Audit and Investigative Unit--Fund No. 7073. ......................................................... 198
Tax Division--Special District Excise Tax Administration Fund--Fund No. 7086. ................................................. 198
Tax Division--Wine Tax Administration Fund-- Fund No. 7087. .......................................................... 198

SENIOR SERVICES, BUREAU OF
Senior Services, Bureau of--Community Based Service Fund--Fund No. 5409. ...................................................... 208

TRANSPORTATION, DEPARTMENT OF
Highways, Division of--A. James Manchin Fund-- Fund No. 8319. .......................................................... 206
Motor Vehicles, Division of--Dealer Recovery Fund--Fund No. 8220. ......................................................... 206
Motor Vehicles, Division of--Motor Vehicle Fees Fund--Fund No. 8223. ......................................................... 206
Public Port Authority--Special Railroad and Intermodal Enhancement Fund--Fund No. 8254. ......................... 207

VETERANS’ ASSISTANCE, DEPARTMENT OF
Veterans’ Assistance, Department of – Veterans’ Facilities Support Fund – Fund No. 6703. ......................................... 207
Veterans’ Affairs, Department of – Veterans Home – Fund No. 6754. .............................................................. 207

§4. Appropriations from lottery net profits.

APPROPRIATIONS

Community and Technical College Capital Improvement Fund--Fund No. 4908. ...................................................... 237
Culture and History, Division of--Lottery Education Fund--Fund No. 3534. ......................................................... 224
Development Office, West Virginia--Division of Tourism--Fund No. 3067. ......................................................... 221
Education and the Arts, Department of--Office of the Secretary--Control Account--Lottery Education Fund--Fund No. 3508. .......................................................... 223
Education, Arts, Sciences and Tourism Debt Service Fund--Fund No. 2252. ......................................................... 221
Education, State Department of--Fund No. 3951. .......................................................... 223
Education, State Department of--School Building Authority--Debt Service Fund--Fund No. 3963. ......................... 223
§5. Appropriations from state excess lottery revenue fund.

§6. Appropriations of federal funds.

ADMINISTRATION, DEPARTMENT OF
Children’s Health Insurance Agency – Fund No. 8838. 250
WV Retiree Health Benefits Trust Fund – Fund No. 8759. 251

COMMERCE, DEPARTMENT OF
Development Office, West Virginia – Fund No. 8705. 252
Energy, Division of – Fund No. 8892. 254
Forestry, Division of – Fund No. 8703. 251
Geological and Economic Survey – Fund No. 8704. 251
Labor, Division of – Fund No. 8706. 252
Miners’ Health, Safety and Training, Division of – Fund No. 8709. .................................................. 253
Natural Resources, Division of – Fund No. 8707................................................................. 253
WorkForce WV – Fund No. 8835................................................................. 253

EDUCATION, DEPARTMENT OF
State Board of Education – Vocational Division – Fund No. 8714. .................................................. 256
State Department of Education – Fund No. 8712................................................................. 255
State Department of Education – Aid for Exceptional Children – Fund No. 8715. ....................... 256
State Department of Education – School Lunch Program – Fund No. 8713. ....................... 255
WV School for the Deaf and the Blind – Fund No. 8716. .................................................. 256

EDUCATION AND THE ARTS, DEPARTMENT OF
Culture and History, Division of – Fund No. 8718................................................................. 257
Educational Broadcasting Authority – Fund No. 8721................................................................. 258
Education and the Arts, Department of – Office of the Secretary – Fund No. 8841. ....................... 257
Library Commission – Fund No. 8720................................................................. 258
Rehabilitation, State Board of – Division of Rehabilitation Services – Fund No. 8734. ............... 258
Rehabilitation, State Board of – Division of Rehabilitation Services – Disability Determination Services – Fund No. 8890. .................................................. 259

ENVIRONMENTAL PROTECTION, DEPARTMENT OF
Environmental Protection, Division of – Fund No. 8708. .................................................. 259

EXECUTIVE
Agriculture, Department of – Fund No. 8736................................................................. 249
Agriculture, Department of – Land Protection Authority – Fund No. 8896. .................................. 250
Agriculture, Department of – Meat Inspection – Fund No. 8737. .................................................. 249
Agriculture, Department of – State Soil Conservation Committee – Fund No. 8783. ....................... 249
Governor’s Office – Fund No. 8742................................................................. 248
Governor’s Office – American Recovery and Reinvestment Act – Fund No. 8701. ....................... 247
Governor’s Office – American Recovery and Reinvestment Act – NTIA Broadband Infrastructure Grant Fund – Fund No. 8717................................................................. 247
Governor’s Office--Commission for National and Community Service--Fund No. 8800. .......... 248
Governor’s Office--Office of Economic Opportunity--Fund No. 8797. .................................................. 248
Secretary of State--State Election Fund-- Fund No. 8854. .......................... 250

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF
Consolidated Medical Service Fund--Fund
No. 8723. ........................................ 260
Health, Division of--Central Office--Fund
No. 8802. ........................................ 260
Health, Division of--West Virginia Safe
Drinking Water Treatment--Fund No. 8824. ............ 260
Human Services, Division of--Fund No. 8722. ............ 261
Human Rights Commission--Fund No. 8725. ............ 261
West Virginia Health Care Authority--
Fund No. 8851. .................................. 261

LEGISLATIVE
Crime Victims Compensation Fund--Fund
No. 8738. ........................................ 246

JUDICIAL
Supreme Court--Consolidated Federal Funds--
Fund No. 8867. .................................. 247

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF
Adjutant General--State Militia--Fund
No. 8726. ........................................ 262
Corrections, Division of--Fund No. 8836. ............ 263
Homeland Security and Emergency Management,
Division of--Fund No. 8727. ...................... 263
Fire Commission--Fund No. 8819. ...................... 264
Justice and Community Services, Division of--
Fund No. 8803. .................................. 264
Office of the Secretary--Fund No. 8876. ................ 262
State Police, West Virginia--Fund No. 8741. .......... 263

MISCELLANEOUS BOARDS AND COMMISSIONS
Coal Heritage Highway Authority--Fund No. 8861. .... 269
National Coal Heritage Area Authority--
Fund No. 8869. .................................. 268
Public Service Commission--Gas Pipeline
Division--Fund No. 8744. ...................... 268
Public Service Commission--Motor Carrier
Division--Fund No. 8743. ...................... 268

REVENUE, DEPARTMENT OF
Insurance Commission--Fund No. 8883. ............ 265
Tax Division--Consolidated Federal Fund--
Fund No. 8899. .................................. 264
§7. Appropriations from federal block grants.

### APPROPRIATIONS

- **Criminal Justice Services, Division of--Juvenile Accountability Incentive--Fund No. 8829.** .................................................. 274
- **Development Office, West Virginia--Community Development--Fund No. 8746.** .................................................. 270
- **Energy, Division of--Energy and Conservation--Fund No. 8702.** .................................................. 271
- **Governor’s Office--Office of Economic Opportunity--Fund No. 8799.** .................................................. 269
- **Health, Division of--Abstinence Education Program--Fund No. 8825.** .................................................. 272
- **Health, Division of--Community Mental Health Services--Fund No. 8794.** .................................................. 272
- **Health, Division of--Maternal and Child Health--Fund No. 8750.** .................................................. 271
- **Health, Division of--Preventive Health--Fund No. 8753.** .................................................. 271
- **Health, Division of--Substance Abuse Prevention and Treatment--Fund No. 8793.** .................................................. 271
- **Human Services, Division of--Child Care and Development--Fund No. 8817.** .................................................. 273
- **Human Services, Division of--Energy Assistance--Fund No. 8755.** .................................................. 272
- **Human Services, Division of--Social Services--Fund No. 8757.** .................................................. 273
- **Human Services, Division of--Temporary Assistance Needy Families--Fund No. 8816.** .................................................. 273
- **WorkForce West Virginia--Workforce Investment Act--Fund No. 8749.** .................................................. 270

§8. Awards for claims against the state.


Finance, Division of
§10. Special Revenue Appropriations.
§12. Specific funds and collection accounts.
§15. Appropriations for local governments.
§16. Total appropriations.
§17. General school fund.

Section 1. Appropriations from general revenue. —
From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2013.

LEGISLATIVE

1-Senate

Fund 0165 FY 2013 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R) . . . . . . . . .</td>
<td>$ 1,010,000</td>
</tr>
<tr>
<td>Compensation and Per Diem of</td>
<td></td>
</tr>
<tr>
<td>Officers and Employees (R) . . . . . . . . . .</td>
<td>3,003,210</td>
</tr>
<tr>
<td>Employee Benefits (R) . . . . . . . . . . . .</td>
<td>597,712</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund (R) . .</td>
<td>561,392</td>
</tr>
<tr>
<td>Repairs and Alterations (R) . . . . . . . . .</td>
<td>210,410</td>
</tr>
<tr>
<td>Computer Supplies (R) . . . . . . . . . . . .</td>
<td>40,000</td>
</tr>
<tr>
<td>Computer Systems (R) . . . . . . . . . . . .</td>
<td>150,000</td>
</tr>
<tr>
<td>Printing Blue Book (R) . . . . . . . . . . . .</td>
<td>150,000</td>
</tr>
<tr>
<td>Expenses of Members (R) . . . . . . . . . . .</td>
<td>700,000</td>
</tr>
<tr>
<td>BRIM Premium (R) . . . . . . . . . . . . . . .</td>
<td>29,482</td>
</tr>
<tr>
<td>Total . . . . . . . . . . . . . . . . . . . . .</td>
<td>$ 6,452,206</td>
</tr>
</tbody>
</table>
The appropriations for the Senate for the fiscal year 2012 are to remain in full force and effect and are hereby reappropriated to June 30, 2013. Any balances so reappropriated may be transferred and credited to the fiscal year 2012 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 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 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 75 copies for each
member of the Legislature and two copies for each classified
and approved high school and junior high or middle school
and one copy for each elementary school within the state.

2-House of Delegates

Fund 0170 FY 2013 Org 2200

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R)...003</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers</td>
<td></td>
</tr>
<tr>
<td>and Employees (R)...005</td>
<td>700,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td></td>
</tr>
<tr>
<td>Fund (R)...021</td>
<td>3,954,031</td>
</tr>
<tr>
<td>Expenses of Members (R)...399</td>
<td>1,700,000</td>
</tr>
<tr>
<td>BRIM Premium (R)...913</td>
<td>50,000</td>
</tr>
<tr>
<td>Total</td>
<td>$9,404,031</td>
</tr>
</tbody>
</table>

The appropriations for the House of Delegates for the
fiscal year 2012 are to remain in full force and effect and are
hereby reappropriated to June 30, 2013. Any balances so
reappropriated may be transferred and credited to the fiscal
year 2012 accounts.
14 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.

18 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.

29 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.

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

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2013 Org 2300

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>104</td>
<td>Government and Finance (R)</td>
<td>$6,758,015</td>
</tr>
<tr>
<td>105</td>
<td>Legislative Printing (R)</td>
<td>$760,000</td>
</tr>
<tr>
<td>106</td>
<td>Review Committee (R)</td>
<td>$147,250</td>
</tr>
<tr>
<td>107</td>
<td>Legislative Computer System (R)</td>
<td>$902,500</td>
</tr>
<tr>
<td>913</td>
<td>BRIM Premium (R)</td>
<td>$27,692</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$8,595,457</td>
</tr>
</tbody>
</table>

The appropriations for the joint expenses for the fiscal year 2012 are to remain in full force and effect and are hereby reappropriated to June 30, 2013 with the exception of fund 0175, activity 319 and activity 666, which shall expire on June 30, 2011. Any balances reappropriated may be transferred and credited to the fiscal year 2012 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 2013 Org 2400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services (R)</td>
<td>$70,199,069</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment (R)</td>
<td>$870,250</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits (R)</td>
<td>$24,748,388</td>
</tr>
<tr>
<td>090</td>
<td>Children’s Protection Act (R)</td>
<td>$2,663,012</td>
</tr>
<tr>
<td>130</td>
<td>Current Expenses</td>
<td>$17,486,000</td>
</tr>
<tr>
<td>064</td>
<td>Repairs and Alterations</td>
<td>$700,000</td>
</tr>
<tr>
<td>070</td>
<td>Equipment</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>110</td>
<td>Judges’ Retirement System (R)</td>
<td>$2,422,000</td>
</tr>
<tr>
<td>690</td>
<td>Other Assets</td>
<td>$919,979</td>
</tr>
<tr>
<td>913</td>
<td>BRIM Premium (R)</td>
<td>$312,254</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$122,320,952</td>
</tr>
</tbody>
</table>

The appropriations to the Supreme Court of Appeals for the fiscal years 2010, 2011 and 2012 are to remain in full force and effect and are hereby reappropriated to June 30, 2013. Any balances so reappropriated may be transferred and credited to the fiscal year 2012 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 there from as required by law for taxes and other items.

The appropriation for the Judges’ Retirement System (activity 110) is to be transferred to the Consolidated Public
Retirement Board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

**EXECUTIVE**

5-Governor’s Office

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund 0101 FY 2013 Org 0100</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services.............. 001</td>
<td>$2,441,095</td>
</tr>
<tr>
<td>2 Salary of Governor.............. 002</td>
<td>150,000</td>
</tr>
<tr>
<td>3 Annual Increment................ 004</td>
<td>30,360</td>
</tr>
<tr>
<td>4 Employee Benefits............... 010</td>
<td>777,889</td>
</tr>
<tr>
<td>5 Office of Economic Opportunity... 034</td>
<td>126,284</td>
</tr>
<tr>
<td>6 Current Expenses.................. 130</td>
<td>977,708</td>
</tr>
<tr>
<td>7 Repairs and Alterations.......... 064</td>
<td>9,200</td>
</tr>
<tr>
<td>8 Equipment.......................... 070</td>
<td>40,000</td>
</tr>
<tr>
<td>9 GO HELP (R)...................... 116</td>
<td>509,912</td>
</tr>
<tr>
<td>10 National Governors’ Association... 123</td>
<td>60,700</td>
</tr>
<tr>
<td>11 Southern States Energy Board..... 124</td>
<td>28,732</td>
</tr>
<tr>
<td>12 Southern Governors’ Association.. 314</td>
<td>25,000</td>
</tr>
<tr>
<td>13 Herbert Henderson Office of Minority Affairs.................. 134</td>
<td>176,000</td>
</tr>
<tr>
<td>15 BRIM Premium...................... 913</td>
<td>156,851</td>
</tr>
<tr>
<td>16 P20 Jobs Cabinet.................. 954</td>
<td>38,000</td>
</tr>
<tr>
<td>17 Total.............................</td>
<td>$5,547,731</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, activity 099), GO HELP (fund 0101, activity 116), JOBS Fund (fund 0101, activity 665), and Pharmaceutical Cost Management Council (fund 0101, activity 796) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.
The above appropriation for Herbert Henderson Office of Minority Affairs (fund 0101, activity 134) shall be transferred to Fund 1058.

6-Governor’s Office — Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2013 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2013</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services.</td>
<td></td>
<td>275,000</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment.</td>
<td></td>
<td>1,500</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits.</td>
<td></td>
<td>97,566</td>
</tr>
<tr>
<td>130</td>
<td>Current Expenses.</td>
<td></td>
<td>227,666</td>
</tr>
<tr>
<td>064</td>
<td>Repairs and Alterations.</td>
<td></td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>Total.</td>
<td></td>
<td>606,732</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0102, activity 096) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

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 2013 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2013</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>114</td>
<td>Civil Contingent Fund - Total.</td>
<td></td>
<td>2,000,000</td>
</tr>
</tbody>
</table>
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), May 2009 Flood Recovery - Surplus (fund 0105, activity 236), 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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

From this appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000 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 2013 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,307,257</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Auditor</td>
<td>002</td>
<td>95,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>47,686</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>840,635</td>
</tr>
<tr>
<td>5</td>
<td>Current Expenses</td>
<td>130</td>
<td>408,509</td>
</tr>
<tr>
<td>6</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>20,500</td>
</tr>
</tbody>
</table>
Other Assets. .......................... 690  29,298
BRIM Premium. .......................... 913  15,428
Total. ................................. $ 3,764,313

Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0116, activity 097), Unclassified (fund 0116, activity 099), and Volunteer Fire Department Workers Compensation Subsidy (fund 0116, activity 832) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

9-Treasurer’s Office

(WV Code Chapter 12)

Fund 0126 FY 2013 Org 1300

Personal Services. ................. 001 $ 1,993,886
Salary of Treasurer................. 002  95,000
Annual Increment.................... 004  26,440
Employee Benefits................... 010  684,681
Unclassified (R)...................... 099  39,000
Current Expenses.................... 130  622,431
Repairs and Alterations............. 064  10,000
Equipment............................ 070  10,000
Abandoned Property Program........ 118  258,855
Other Assets......................... 690  10,000
Tuition Trust Fund (R).............. 692  147,045
BRIM Premium......................... 913  30,809
Total. ................................. $ 3,928,147

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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$4,146,646</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Commissioner</td>
<td>002</td>
<td>$95,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>$102,356</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$1,850,538</td>
</tr>
<tr>
<td>5</td>
<td>Animal Identification Program</td>
<td>039</td>
<td>$207,068</td>
</tr>
<tr>
<td>6</td>
<td>State Farm Museum</td>
<td>055</td>
<td>$104,500</td>
</tr>
<tr>
<td>7</td>
<td>Unclassified (R)</td>
<td>099</td>
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<td>9</td>
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<td>064</td>
<td>$100,000</td>
</tr>
<tr>
<td>10</td>
<td>Equipment</td>
<td>070</td>
<td>$62,141</td>
</tr>
<tr>
<td>11</td>
<td>Gypsy Moth Program (R)</td>
<td>119</td>
<td>$1,560,000</td>
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<tr>
<td>12</td>
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<td>13</td>
<td>Black Fly Control (R)</td>
<td>137</td>
<td>$722,756</td>
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<td>14</td>
<td>Donated Foods Program</td>
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<td>15</td>
<td>Predator Control (R)</td>
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<td>16</td>
<td>Logan Farmers Market</td>
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<td>17</td>
<td>Bee Research</td>
<td>691</td>
<td>$77,109</td>
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<td>18</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>$75,000</td>
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<tr>
<td>19</td>
<td>Microbiology Program (R)</td>
<td>785</td>
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<td>20</td>
<td>Moorefield Agriculture Center (R)</td>
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<td>21</td>
<td>Chesapeake Bay Watershed</td>
<td>830</td>
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<td>Livestock Care Standards Board</td>
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<td>23</td>
<td>BRIM Premium</td>
<td>913</td>
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<td>24</td>
<td>Threat Preparedness</td>
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<td>25</td>
<td>WV Food Banks</td>
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<td>Senior’s Farmers’ Market Nutrition</td>
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<td>27</td>
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<td></td>
<td>$12,218,989</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0131, activity...
31 097), Unclassified (fund 0131, activity 099), Gypsy Moth
32 Program (fund 0131, activity 119), Black Fly Control (fund
33 0131, activity 137), Predator Control (fund 0131, activity
34 470), Capital Outlay and Maintenance (fund 0131, activity
35 755), Microbiology Program (fund 0131, activity 785),
36 Moorefield Agriculture Center (fund 0131, activity 786),
37 Agricultural Disaster and Mitigation Needs - Surplus (fund
38 0131, activity 850), and Predator Control - Surplus (fund
39 0131, activity 924) at the close of the fiscal year 2012 are
40 hereby reappropriated for expenditure during the fiscal year
41 2013.

42 A portion of the Unclassified or Current Expenses
43 appropriation may be transferred to a special revenue fund
44 for the purpose of matching federal funds for marketing and
45 development activities.

46 From the above appropriation for WV Food Banks
47 (activity 969), $20,000 is for House of Hope and the
48 remainder of the appropriation shall be allocated to the
49 Huntington Food Bank and the Mountaineer Food Bank in
50 Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2013 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>001</th>
<th>004</th>
<th>010</th>
<th>099</th>
<th>130</th>
<th>064</th>
<th>070</th>
<th>120</th>
<th>757</th>
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<td>Personal Services</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
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<td>4</td>
<td>Unclassified (R)</td>
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<td></td>
<td></td>
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<td>5</td>
<td>Current Expenses</td>
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<td></td>
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<tr>
<td>6</td>
<td>Repairs and Alterations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>7</td>
<td>Equipment</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Soil Conservation Projects (R)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Marlinton Flood Wall (R)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
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<tr>
<td>001</td>
<td>511,152</td>
</tr>
<tr>
<td>004</td>
<td>11,580</td>
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<td>010</td>
<td>235,404</td>
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<td>099</td>
<td>103,597</td>
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<td>130</td>
<td>317,841</td>
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<tr>
<td>064</td>
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<td>070</td>
<td>10,000</td>
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<td>120</td>
<td>8,382,948</td>
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<td>757</td>
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<td></td>
<td>Appropriations [Ch. 10]</td>
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<tr>
<td>---</td>
<td>------------------------</td>
</tr>
<tr>
<td>10</td>
<td>BRIM Premium. ................. 913</td>
</tr>
<tr>
<td>11</td>
<td>Total. ..........................</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), Soil Conservation Projects - Surplus (fund 0132, activity 269) and Marlinton Flood Wall (fund 0132, activity 757) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

12-Department of Agriculture — Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2013 Org 1400

|   | Personal Services. ................. 001 | $427,055 |
|---|-----------------------------------|
| 2 | Annual Increment. .................... 004 | $8,621 |
| 3 | Employee Benefits. .................. 010 | $181,513 |
| 4 | Unclassified. ......................... 099 | $7,182 |
| 5 | Current Expenses. .................... 130 | $94,763 |
| 6 | Total. ................................ | $719,134 |

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

13-Department of Agriculture — Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2013 Org 1400

|   | Programs & Awards for 4-H Clubs and FFA/FHA. .................. 577 | $15,000 |
|---|---------------------------------------------------------------|

|   | Programs & Awards for 4-H Clubs and FFA/FHA. .................. 577 | $15,000 |
### Commissioner’s Awards and Programs

<table>
<thead>
<tr>
<th>3</th>
<th>Commissioner’s Awards and Programs</th>
<th>737</th>
<th>43,650</th>
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<tr>
<td>4</td>
<td><strong>Total.</strong></td>
<td></td>
<td><strong>58,650</strong></td>
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</table>

### Department of Agriculture —

*West Virginia Agricultural Land Protection Authority*

(WV Code Chapter 8A)

**Fund 0607 FY 2013 Org 1400**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services.</th>
<th>001</th>
<th>$ 75,000</th>
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<tbody>
<tr>
<td>2</td>
<td>Employee Benefits.</td>
<td>010</td>
<td>26,976</td>
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<tr>
<td>3</td>
<td>Unclassified.</td>
<td>099</td>
<td>750</td>
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<td>4</td>
<td><strong>Total.</strong></td>
<td></td>
<td><strong>102,726</strong></td>
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Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0607, activity 096) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

### Attorney General

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

**Fund 0150 FY 2013 Org 1500**

<table>
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<tr>
<th>1</th>
<th>Personal Services (R).</th>
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<th>$ 2,228,612</th>
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<td>2</td>
<td>Salary of Attorney General.</td>
<td>002</td>
<td>95,000</td>
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<tr>
<td>3</td>
<td>Annual Increment.</td>
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<td>010</td>
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<td>5</td>
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<td>685,773</td>
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<tr>
<td>7</td>
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<td>7,500</td>
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<td>8</td>
<td>Equipment.</td>
<td>070</td>
<td>40,000</td>
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<tr>
<td>9</td>
<td>Criminal Convictions and</td>
<td></td>
<td></td>
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<tr>
<td>10</td>
<td>Habeas Corpus Appeals (R).</td>
<td>260</td>
<td>1,190,647</td>
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<tr>
<td>11</td>
<td>Better Government Bureau.</td>
<td>740</td>
<td>325,766</td>
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</table>
Any unexpended balances remaining in the above appropriations for Personal Services (fund 0150, activity 001), Employee Benefits (fund 0150, activity 010), Unclassified (fund 0150, activity 099), Criminal Convictions and Habeas Corpus Appeals (fund 0150, activity 260), and Agency Client Revolving Liquidity Pool (fund 0150, activity 362) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
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<td>0155</td>
<td>2013</td>
<td>1600</td>
<td>Personal Services</td>
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<td></td>
<td></td>
<td>Salary of Secretary of State</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
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<td></td>
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<td>Unclassified (R)</td>
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<td></td>
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<td></td>
<td>Current Expenses</td>
<td>$324,333</td>
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7  BRIM Premium. .................. 913  16,000
8  Total. ..........................  $ 1,307,638

9  Any unexpended balances remaining in the
10  appropriations for Unclassified - Surplus (fund 0155, activity
11  097), Unclassified (fund 0155, activity 099), and Technology
12  Improvements - Surplus (fund 0155, activity 725) at the close
13  of the fiscal year 2012 are hereby reappropriated for
14  expenditure during the fiscal year 2013.

17-State Election Commission

(WV Code Chapter 3)

Fund 0160  FY 2013  Org 1601

<table>
<thead>
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<th>Item</th>
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DEPARTMENT OF ADMINISTRATION

18-Department of Administration —
Office of the Secretary

(WV Code Chapter 5F)

Fund 0186  FY 2013  Org 0201

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<th>Item</th>
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<td>004</td>
<td>3,026</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>139,705</td>
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<tr>
<td>Unclassified</td>
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<td>Current Expenses</td>
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<td>97,056</td>
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<td>Repairs and Alterations</td>
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<td>100</td>
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<tr>
<td>Equipment</td>
<td>070</td>
<td>5,000</td>
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Appropriations

<table>
<thead>
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<th>Item Description</th>
<th>Fund 0186</th>
<th>Activity 304</th>
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<td>Financial Advisor (R)</td>
<td>304</td>
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<td>Lease Rental Payments</td>
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<td>Design-Build Board</td>
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<td>Other Assets</td>
<td>690</td>
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<td>5,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
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<td><strong>Total</strong></td>
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<td><strong>$16,925,756</strong></td>
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</table>

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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

The appropriation for Lease Rental Payments shall be disbursed as provided by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2013 Org 0205

1 The division of highways, division of motor vehicles, public service commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2013 Org 0209

1 Personal Services....................... 001 $ 83,590
### APPROPRIATIONS

<table>
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<th>Item</th>
<th>Code</th>
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<tr>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Equipment</td>
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<td>GAAP Project (R)</td>
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<td>$ 920,761</td>
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</table>

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

**21-Division of General Services**

*(WV Code Chapter 5A)*

**Fund 0230 FY 2013 Org 0211**

<table>
<thead>
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<th>Item</th>
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<tr>
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<td>Employee Benefits</td>
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<td>897,138</td>
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<td>Unclassified</td>
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<td>Current Expenses</td>
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<td>1,106,133</td>
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<td>Equipment</td>
<td>070</td>
<td>1,000</td>
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<tr>
<td>Fire Service Fee</td>
<td>126</td>
<td>14,000</td>
</tr>
<tr>
<td>Preservation and Maintenance of Statues and Monuments on Capitol Grounds</td>
<td>371</td>
<td>68,000</td>
</tr>
<tr>
<td>Other Assets</td>
<td>690</td>
<td>1,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>112,481</td>
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<tr>
<td><strong>Total</strong></td>
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<td>$ 4,001,030</td>
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</table>
From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (activity 371), the Division shall consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2013 Org 0213

1 Personal Services. ................. 001 $ 722,838
2 Annual Increment................... 004 12,095
3 Employee Benefits............... 010 292,777
4 Unclassified. ....................... 099 9,771
5 Current Expenses............... 130 131,932
6 Repairs and Alterations........ 064 700
7 Equipment. ......................... 070 1,000
8 Other Assets......................... 690 1,000
9 BRIM Premium....................... 913 6,167
10 Total. ......................... $ 1,178,280

The division of highways shall reimburse Fund 2031 within the division of purchasing for all actual expenses incurred pursuant to the provisions of W.Va. Code §17-2A-13.

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2013 Org 0215

1 Personal Services.................. 001 $ 576,312
2 Annual Increment.................. 004 4,680
3 Employee Benefits............... 010 355,403
### 24-Commission on Uniform State Laws

(WV Code Chapter 29)

<table>
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<tr>
<th>Description</th>
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<th>FY 2013</th>
<th>Org 0217</th>
<th>Amount</th>
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<td>Unclassified</td>
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<td>$ 500</td>
</tr>
<tr>
<td>Current Expenses</td>
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<td></td>
<td></td>
<td>$46,050</td>
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<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$46,550</td>
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</tbody>
</table>

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

### 25-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

<table>
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<th>Activity</th>
<th>FY 2013</th>
<th>Org 0219</th>
<th>Amount</th>
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<td>Repairs and Alterations</td>
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<td>Equipment</td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 0220, activity 099) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
## 26-Ethics Commission

(WV Code Chapter 6B)

**Fund 0223 FY 2013 Org 0220**

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</thead>
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<td>Repairs and Alterations</td>
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## 27-Public Defender Services

(WV Code Chapter 29)

**Fund 0226 FY 2013 Org 0221**

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<td>318,531</td>
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<td>Public Defender Corporations</td>
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<td>Appointed Counsel Fees (R)</td>
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<td><strong>Total</strong></td>
<td></td>
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Any unexpended balance remaining in the above appropriation for Appointed Counsel Fees (fund 0226, activity 788) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund
0226, activity 352) to Appointed Counsel Fees (fund 0226, activity 788).

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

(WV Code Chapter 5A)

Fund 0233 FY 2013 Org 0224

<table>
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29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2013 Org 0225

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<th>Description</th>
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<tr>
<td>1</td>
<td>PEIA Subsidy</td>
<td>801</td>
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The above appropriation for PEIA Subsidy (fund 0200, activity 801) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employee’s Insurance Agency for the purposes of offsetting benefit changes and to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

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 public employees health insurance cost for their respective divisions.

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2013 Org 0228

1 Forensic Medical Examinations (R) 683 $139,927
2 Federal Funds/Grant Match (R) 749 99,880
3 Total. .......................... $239,807

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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

31-Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2013 Org 0230

1 Personal Services. .......................... 001 $86,036
2 Annual Increment. .......................... 004 1,200
3 Employee Benefits. .......................... 010 45,431
4 Current Expenses. .......................... 130 10,295,876
5 Autism Spectrum Disorder Coverage. 856 497,035
6 Total. .......................... $10,925,578

32-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2013 Org 0233

1 Personal Services. .......................... 001 $524,095
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<td>2</td>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
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<td>Current Expenses</td>
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<td>6</td>
<td>Repairs and Alterations</td>
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<td>7</td>
<td>Equipment</td>
<td>070</td>
<td>5,000</td>
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<td>Other Assets</td>
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<td>1,000</td>
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<td>9</td>
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### DEPARTMENT OF COMMERCE

#### 33-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2013 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 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

#### 34-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2013 Org 0305

<table>
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<td>Repairs and Alterations</td>
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</table>
Out of the above appropriation a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

35-GEOLOGICAL AND ECONOMIC SURVEY

(WV Code Chapter 29)

Fund 0253 FY 2013 Org 0306

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<td>099  Unclassified</td>
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<td>064  Repairs and Alterations</td>
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<td>070  Equipment</td>
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<tr>
<td>207  Mineral Mapping System (R)</td>
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<td>690  Other Assets</td>
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<td>913  BRIM Premium</td>
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<tr>
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</table>

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, activity 207) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

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

36-WEST VIRGINIA DEVELOPMENT OFFICE

(WV Code Chapter 5B)

Fund 0256 FY 2013 Org 0307

<table>
<thead>
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<th>Account</th>
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<tbody>
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### APPROPRIATIONS

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<td>36,480</td>
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<td>209,000</td>
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<td>6</td>
<td>Current Expenses</td>
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<td>*3,145,169</td>
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<td>7</td>
<td>Repairs and Alterations</td>
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<tr>
<td>8</td>
<td>Equipment</td>
<td>070</td>
<td>200,000</td>
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<td>9</td>
<td>Southern WV Career Center</td>
<td>071</td>
<td>448,476</td>
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<tr>
<td>10</td>
<td>Partnership Grants (R)</td>
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<td>605,150</td>
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<tr>
<td>11</td>
<td>Local Economic Development Partnerships (R)</td>
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<td>12</td>
<td>ARC Assessment</td>
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<td>Mid-Atlantic Aerospace Complex</td>
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<td>161,226</td>
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<td>14</td>
<td>Guaranteed Work Force Grant (R)</td>
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<td>15</td>
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<td>16</td>
<td>Advantage Valley</td>
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<td>67,762</td>
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<td>17</td>
<td>Chemical Alliance Zone</td>
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<td>45,600</td>
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<td>18</td>
<td>WV High Tech Consortium</td>
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<td>19</td>
<td>Regional Contracting Assistance Center</td>
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<td>20</td>
<td>Highway Authorities</td>
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<td>Charleston Farmers Market</td>
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<td>22</td>
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<td>23</td>
<td>Small Business Development (R)</td>
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<td>24</td>
<td>WV Manufacturing Extension Partnership</td>
<td>731</td>
<td>131,328</td>
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<td>25</td>
<td>Polymer Alliance</td>
<td>754</td>
<td>104,880</td>
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<td>26</td>
<td>Regional Councils</td>
<td>784</td>
<td>401,280</td>
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<td>27</td>
<td>Mainstreet Program</td>
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*Clerk's Note:* The Governor reduced Item 36, line 7, Current Expenses, by $250,000, from $3,395,169 to $3,145,169.
<table>
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<td>37</td>
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<td>39</td>
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<tr>
<td>41</td>
<td>Mingo County Post Mine Land</td>
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<tr>
<td>42</td>
<td>Use Projects 841</td>
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<tr>
<td>43</td>
<td>BRIM Premium</td>
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<tr>
<td>44</td>
<td>4-H Camp Improvements (R)</td>
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<td>45</td>
<td>Hatfield McCoy Recreational Trail</td>
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</tr>
<tr>
<td>46</td>
<td>Hardwood Alliance Zone</td>
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<td>47</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), 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), and 4-H Camp Improvements (fund 0256, activity 941) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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 W.Va. Code §5B-2-14. 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 or redevelopment corporation or authority.

From the above appropriation for Current Expenses (fund 0256, activity 130) $250,000 is for TechConnect; $250,000 is for Tamarack Foundation; $150,000 is for the Citizens Conservation Corps; *$100,000 is for One Voice and $1,000,000 is to be transferred to Development Office Promotion Fund (Fund 3171).

From the above appropriation for Highway Authorities (fund 0256, activity 431), $115,187 is for King Coal Highway Authority; $115,187 is for Coal Field Expressway Authority; $92,150 is for Coal Heritage Highway Authority; $92,150 is for Coal Heritage Area Authority; $46,076 is for Little Kanawha River Parkway; $82,935 is for Midland Trail Scenic Highway Association; $52,525 is for Shawnee Parkway Authority; $92,150 is for Corridor G Regional Development Authority; $57,000 is for Corridor H Authority; and $46,076 is for Route 2 I68 Highway Authority.

*CLERK'S NOTE: The Governor reduced Item 36, line 80, by $250,000, from $350,000 to $100,000. The Governor also deleted language in Item 36, lines 93 through 96, which read “From the above appropriation for Local Economic Development Assistance (fund 0256, activity 819) the division may retain an amount not to exceed one percent of the total appropriation for administrative purposes.”
### 37-Division of Labor

(WV Code Chapters 21 and 47)

<table>
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<th>FY Year</th>
<th>Org</th>
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<th>Amount</th>
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<tbody>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>Repairs and Alterations</td>
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<td>BRIM Premium</td>
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### 38-Division of Labor - Occupational Safety and Health Fund

(WV Code Chapter 21)

<table>
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<th>FY Year</th>
<th>Org</th>
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### 39-Division of Natural Resources

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY Year</th>
<th>Org</th>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0265</td>
<td>2013</td>
<td>0310</td>
<td>Personal Services</td>
<td>$9,202,183</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>$292,050</td>
</tr>
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</table>
Ch. 10] APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits.</td>
<td>010</td>
<td>4,417,715</td>
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<tr>
<td>Unclassified.</td>
<td>099</td>
<td>11,220</td>
</tr>
<tr>
<td>Current Expenses.</td>
<td>130</td>
<td>500</td>
</tr>
<tr>
<td>Repairs and Alterations.</td>
<td>064</td>
<td>400</td>
</tr>
<tr>
<td>Equipment.</td>
<td>070</td>
<td>400</td>
</tr>
<tr>
<td>Buildings.</td>
<td>258</td>
<td>500</td>
</tr>
<tr>
<td>Litter Control Conservation Officers.</td>
<td>564</td>
<td>159,382</td>
</tr>
<tr>
<td>Upper Mud River Flood Control.</td>
<td>654</td>
<td>180,522</td>
</tr>
<tr>
<td>Other Assets.</td>
<td>690</td>
<td>200</td>
</tr>
<tr>
<td>Land</td>
<td>730</td>
<td>400</td>
</tr>
<tr>
<td>Law Enforcement.</td>
<td>806</td>
<td>2,954,720</td>
</tr>
<tr>
<td>BRIM Premium.</td>
<td>913</td>
<td>293,374</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$17,513,566</td>
</tr>
</tbody>
</table>

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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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.

40-Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2013 Org 0314

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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<td>Annual Increment.</td>
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<td>Employee Benefits.</td>
<td>010</td>
<td>2,860,731</td>
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<tr>
<td>Unclassified.</td>
<td>099</td>
<td>120,000</td>
</tr>
<tr>
<td>Current Expenses.</td>
<td>130</td>
<td>1,851,467</td>
</tr>
</tbody>
</table>
96 APPROPRIATIONS [Ch. 10

6 Coal Dust and Rock Dust Sampling 270 $564,908
7 BRIM Premium 913 $68,134
8 Total  $13,026,397

9 Included in the above appropriation for Current Expenses (fund 0277, activity 130) is $500,000 for the sixth year of Southern West Virginia Community and Technical College Mine Rescue and Rapid Response Team.

41-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2013 Org 0319

1 Personal Services 001 $143,110
2 Annual Increment 004 1,200
3 Employee Benefits 010 48,043
4 Mine Safety Technology Task Force 061 115,000
5 Unclassified 099 3,000
6 Current Expenses 130 23,493
7 Repairs and Alterations 064 300
8 Equipment 070 250
9 Board of Miners Training and Certification 667 48,750
10 WV Diesel Equipment Commission 712 37,050
11 Total  $420,196

42-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2013 Org 0320

1 Personal Services 001 $30,500
2 Employee Benefits 010 3,523
3 Unclassified 099 500
<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>130</td>
<td>Current Expenses</td>
<td>13,750</td>
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<tr>
<td>064</td>
<td>Repairs and Alterations</td>
<td>227</td>
</tr>
<tr>
<td>070</td>
<td>Equipment</td>
<td>250</td>
</tr>
<tr>
<td>664</td>
<td>Coal Forum</td>
<td>29,250</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>78,000</strong></td>
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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.

**43-WorkForce West Virginia**

(WV Code Chapter 23)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
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<tr>
<td>001</td>
<td>Personal Services</td>
<td>$500</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>100</td>
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<tr>
<td>099</td>
<td>Unclassified</td>
<td>950</td>
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<tr>
<td>130</td>
<td>Current Expenses</td>
<td>143,450</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>145,000</strong></td>
</tr>
</tbody>
</table>

From the above appropriation for Current Expenses (activity 130), is one time appropriation of $50,000 for West Virginia Women Work.

**44-Department of Commerce - Office of the Secretary**

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>001</td>
<td>Personal Services</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
<td>540</td>
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<td>010</td>
<td>Employee Benefits</td>
<td>76,120</td>
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<td>099</td>
<td>Unclassified</td>
<td>3,500</td>
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### Appropriations

<table>
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<th>Code</th>
<th>FY 2013 Org</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>130</td>
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<td>66,165</td>
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<td>Repairs and Alterations</td>
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<td>Equipment</td>
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<td><strong>Total</strong></td>
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<td><strong>392,275</strong></td>
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#### 45-Division of Energy

(WV Code Chapter 5H)

**Fund 0612 FY 2013 Org 0328**

<table>
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<th>Code</th>
<th>FY 2013 Org</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td></td>
<td>$159,000</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td></td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td>19,200</td>
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<td>Current Expenses</td>
<td>130</td>
<td></td>
<td>1,667,314</td>
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<tr>
<td>Repairs and Alterations</td>
<td>064</td>
<td></td>
<td>1,000</td>
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<tr>
<td>Equipment</td>
<td>070</td>
<td></td>
<td>16,000</td>
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<td>BRIM Premium</td>
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<td>3,297</td>
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<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>1,926,542</strong></td>
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</tbody>
</table>

10 From the above appropriation for Current Expenses (fund 0612, activity 130) $693,500 is for West Virginia University and $693,500 is for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.

### Department of Education

#### 46-State Department of Education - School Lunch Program

(WV Code Chapters 18 and 18A)

**Fund 0303 FY 2013 Org 0402**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>FY 2013 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>$255,730</td>
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<tr>
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<td>004</td>
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<td>5,730</td>
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</table>
### 47-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</thead>
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<tr>
<td>Personal Services</td>
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<td>$641,634</td>
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<td>Annual Increment</td>
<td>004</td>
<td>23,150</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>268,255</td>
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<tr>
<td>Unclassified (R)</td>
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<td>10,000</td>
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<td>Current Expenses</td>
<td>130</td>
<td>125,152</td>
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<td>BRIM Premium</td>
<td>913</td>
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<td>$1,089,885</td>
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</table>

### 48-State Department of Education

(WV Code Chapters 18 and 18A)

<table>
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<th>Code</th>
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</thead>
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<tr>
<td>Personal Services</td>
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<td>Unclassified (R)</td>
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<td>300,000</td>
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<tr>
<td>Current Expenses</td>
<td>130</td>
<td>2,519,000</td>
</tr>
<tr>
<td>Technology System Specialist</td>
<td>062</td>
<td>2,000,000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>064</td>
<td>50,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>070</td>
<td>100,000</td>
</tr>
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<td>Increased Enrollment</td>
<td>140</td>
<td>6,290,000</td>
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<td>Safe Schools</td>
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<td>5,054,091</td>
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<td>Appropriations</td>
<td>[Ch. 10]</td>
</tr>
<tr>
<td>---</td>
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<tr>
<td>11</td>
<td>Teacher Mentor (R)</td>
<td>158</td>
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<tr>
<td>12</td>
<td>National Teacher Certification (R)</td>
<td>161</td>
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<tr>
<td>13</td>
<td>Buildings</td>
<td>258</td>
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<tr>
<td>14</td>
<td>Technology Repair and Modernization</td>
<td>298</td>
</tr>
<tr>
<td>15</td>
<td>HVAC Technicians</td>
<td>355</td>
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<tr>
<td>16</td>
<td>Early Retirement Notification Incentive</td>
<td>366</td>
</tr>
<tr>
<td>17</td>
<td>MATH Program</td>
<td>368</td>
</tr>
<tr>
<td>18</td>
<td>Assessment Programs</td>
<td>396</td>
</tr>
<tr>
<td>19</td>
<td>21st Century Fellows</td>
<td>507</td>
</tr>
<tr>
<td>20</td>
<td>English as a Second Language</td>
<td>528</td>
</tr>
<tr>
<td>21</td>
<td>Teacher Reimbursement</td>
<td>573</td>
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<tr>
<td>22</td>
<td>Hospitality Training</td>
<td>600</td>
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<tr>
<td>23</td>
<td>Hi-Y Youth in Government</td>
<td>616</td>
</tr>
<tr>
<td>24</td>
<td>High Acuity Special Needs (R)</td>
<td>634</td>
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<tr>
<td>25</td>
<td>Foreign Student Education</td>
<td>636</td>
</tr>
<tr>
<td>26</td>
<td>State Teacher of the Year</td>
<td>640</td>
</tr>
<tr>
<td>27</td>
<td>Principals Mentorship</td>
<td>649</td>
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<tr>
<td>28</td>
<td>Other Assets</td>
<td>690</td>
</tr>
<tr>
<td>29</td>
<td>Land</td>
<td>730</td>
</tr>
<tr>
<td>30</td>
<td>Local Solutions Dropout Prevention and Recovery</td>
<td>780</td>
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<tr>
<td>31</td>
<td>Pilot Program of Structured In- School Alternatives</td>
<td>826</td>
</tr>
<tr>
<td>32</td>
<td>Elementary/Middle Alternative Schools</td>
<td>833</td>
</tr>
<tr>
<td>33</td>
<td>21st Century Innovation Zones</td>
<td>876</td>
</tr>
<tr>
<td>34</td>
<td>Student Enrichment Program</td>
<td>879</td>
</tr>
<tr>
<td>35</td>
<td>21st Century Learners (R)</td>
<td>886</td>
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<tr>
<td>36</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>37</td>
<td>High Acuity Health Care Needs Program</td>
<td>920</td>
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<tr>
<td>38</td>
<td>21st Century Assessment and Professional Development</td>
<td>931</td>
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<tr>
<td>39</td>
<td>WV Commission on Holocaust Education</td>
<td>935</td>
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<tr>
<td>40</td>
<td>Allowance for Extraordinary Sustained Growth</td>
<td>943</td>
</tr>
</tbody>
</table>
Ch. 10] APPROPRIATIONS

50 Regional Education Service Agencies .................. 972 3,990,000
51 Educational Program Allowance .................. 996 450,000
52 Total ................................................. $ 53,106,950

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

56 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 Needs (fund 0313, activity 634), and 21st Century Learners (fund 0313, activity 886) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

64 The above appropriation for Technology System Specialists (activity 062), shall first be used for the continuance of current pilot projects. The remaining balance, if any, may be used to expand the pilot project for additional counties.

69 Included in the above appropriation for Current Expenses (activity 130) is $50,000 for the second year of a five year special community development school pilot program per W.Va. Code 18-3-12.

*CLERK’S NOTE: The Governor deleted language in Item 48, lines 73 through 76, which read “From the above appropriation for National Teacher Certification (activity 161), any funds remaining after all initial certification expenses have been met shall be for the reimbursement of NBPTS certificate renewal.”
The above appropriation for Hospitality Training (activity 600), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

The above appropriation for Local Solutions Dropout Prevention and Recovery (activity 780) shall be transferred to the Local Solutions Dropout Prevention and Recovery Fund.

From the above appropriation for Educational Program Allowance (activity 996), $100,000 shall be expended for Webster County Board of Education for Hacker Valley; $150,000 for the Randolph County Board of Education for Pickens School; and $100,000 shall be for the Preston County Board of Education for the Aurora School and $100,000 is for Project Based Learning in STEM fields.

49-State Department of Education - Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314  FY 2013  Org 0402

1 Special Education - Counties........ 159 $ 7,271,757
2 Special Education - Institutions..... 160 3,823,331
3 Education of Juveniles Held in
4 Predispositional Juvenile
5 Detention Centers. ............... 302 635,846
6 Education of Institutionalized
7 Juveniles and Adults (R).......... 472 16,850,007
8 Total. . . . . . . . . . . . . . . . . . . . . . . . . . . . 28,580,941

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund
11 0314, activity 472) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

14 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.

50-State Department of Education - State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2013 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Org</th>
<th>FY 2013</th>
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</thead>
<tbody>
<tr>
<td>Other Current Expenses</td>
<td>022</td>
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<td>Advanced Placement</td>
<td>053</td>
<td>470,271</td>
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<tr>
<td>Professional Educators</td>
<td>151</td>
<td>876,996,897</td>
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<tr>
<td>Service Personnel</td>
<td>152</td>
<td>290,963,958</td>
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<td>Fixed Charges</td>
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<td>105,032,906</td>
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<td>Transportation</td>
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<td>81,460,742</td>
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<td>Professional Student Support Services</td>
<td>655</td>
<td>37,927,850</td>
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<td>Improved Instructional Programs</td>
<td>156</td>
<td>40,612,113</td>
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<tr>
<td>21st Century Strategic Technology</td>
<td>936</td>
<td>7,611,965</td>
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<tr>
<td>Basic Foundation Allowances</td>
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<td>1,595,909,261</td>
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<tr>
<td>Less Local Share</td>
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<tr>
<td>Total Basic State Aid</td>
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<tr>
<td>Public Employees’ Insurance</td>
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<tr>
<td>Matching</td>
<td>012</td>
<td>226,482,702</td>
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<tr>
<td>Teachers’ Retirement System</td>
<td>019</td>
<td>66,018,000</td>
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<td>School Building Authority</td>
<td>453</td>
<td>23,308,645</td>
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<td>Retirement Systems - Unfunded</td>
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<tr>
<td>Liability</td>
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<td>Total</td>
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<td>1.</td>
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<td>2.</td>
<td>Annual Increment</td>
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<td>3.</td>
<td>Employee Benefits</td>
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<td>4.</td>
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<td>5.</td>
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<td>6.</td>
<td>Repairs and Alterations</td>
<td>$10,000</td>
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<tr>
<td>7.</td>
<td>Equipment</td>
<td>$10,000</td>
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<tr>
<td>8.</td>
<td>Wood Products - Forestry Vocational Program</td>
<td>$63,503</td>
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<tr>
<td>9.</td>
<td>Albert Yanni Vocational Program</td>
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<td>10.</td>
<td>Vocational Aid</td>
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<td>11.</td>
<td>Adult Basic Education</td>
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<td>12.</td>
<td>Program Modernization</td>
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<tr>
<td>13.</td>
<td>Technical &amp; Secondary Program Improvement Staff</td>
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<td>14.</td>
<td>GED Testing (R)</td>
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<td>15.</td>
<td>Other Assets</td>
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<td>16.</td>
<td>FFA Grant Awards</td>
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<td>17.</td>
<td>Pre-Engineering Academy Program</td>
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<td>18.</td>
<td>Total</td>
<td>$28,121,083</td>
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Any unexpended balance remaining in the appropriation for GED Testing (fund 0390, activity 339) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
## Fund 0573 FY 2013 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<td>Annual Increment</td>
<td>004</td>
<td>4,900</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
<td>099</td>
<td>7,000</td>
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<td>064</td>
<td>1,000</td>
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<tr>
<td>Equipment</td>
<td>070</td>
<td>1,000</td>
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<tr>
<td>Other Assets</td>
<td>690</td>
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<tr>
<td>Total</td>
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</table>

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

(WV Code Chapters 18 and 18A)

## Fund 0320 FY 2013 Org 0403

<table>
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<th>Code</th>
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<td>Annual Increment</td>
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<td>$2,890,037</td>
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<td>Unclassified</td>
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<td>132,879</td>
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<td>Repairs and Alterations</td>
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<td>Equipment</td>
<td>070</td>
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<tr>
<td>Buildings</td>
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<td>100,000</td>
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<td>Other Assets</td>
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<td>73,000</td>
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<td>Capital Outlay and Maintenance (R)</td>
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<td>62,500</td>
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<td>BRIM Premium</td>
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<td>68,628</td>
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<td>Total</td>
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<td>$13,327,637</td>
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</table>

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0320, activity 755) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
### DEPARTMENT OF EDUCATION AND THE ARTS

#### 54-Department of Education and the Arts -
**Office of the Secretary**

(WV Code Chapter 5F)

**Fund 0294 FY 2013 Org 0431**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>010</td>
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<td>Unclassified (R)</td>
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<td>$35,000</td>
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<td>Current Expenses</td>
<td>130</td>
<td>$126,016</td>
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<tr>
<td>Center for Professional</td>
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<td>$2,729,771</td>
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<tr>
<td>National Youth Science Camp</td>
<td>132</td>
<td>$290,000</td>
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<tr>
<td>WV Humanities Council</td>
<td>168</td>
<td>$450,000</td>
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<tr>
<td>Benedum Professional Development Collaborative</td>
<td>427</td>
<td>$927,500</td>
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<tr>
<td>Governor’s Honor Academy (R)</td>
<td>478</td>
<td>$600,780</td>
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<td>Energy Express</td>
<td>861</td>
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<td>BRIM Premium</td>
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<td>$4,509</td>
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<tr>
<td>Special Olympic Games</td>
<td>966</td>
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</tr>
<tr>
<td>Total</td>
<td></td>
<td>$6,526,826</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), Benedum Professional Development Collaborative (fund 0294, activity 427), Governor’s Honor Academy (fund 0294, activity 478), and Educational Enhancements - Surplus (fund 0294, activity 927) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.
From the above appropriation for Current Expenses (activity 130), $100,000 is for Globaloria.

55-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2013 Org 0432

1 Personal Services. ......................... 001 $ 2,763,729
2 Annual Increment. ......................... 004 67,114
3 Employee Benefits. ....................... 010 1,283,414
4 Unclassified (R). ......................... 099 131,341
5 Current Expenses. ......................... 130 919,546
6 Repairs and Alterations. ............... 064 44,000
7 Equipment. ............................... 070 1,000
8 Buildings. ............................... 258 1,000
9 Other Assets. ............................ 690 10,000
10 Land. .................................... 730 100
11 Culture and History Programming.... 732 292,945
12 Capital Outlay and Maintenance (R). 755 100,000
13 Historical Highway Marker
14 Program (R). ............................ 844 75,185
15 BRIM Premium. ......................... 913 33,677
16 Total. ................................. $ 5,723,051

Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0293, activity 097), Unclassified (fund 0293, activity 099), Capital Outlay, Repairs and Equipment (fund 0293, activity 589), Capital Outlay, Repairs and Equipment — Surplus (fund 0293, activity 677), Capital Outlay and Maintenance (fund 0293, activity 755), and Historical Highway Marker Program (fund 0293, activity 844) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.
From the above appropriation for Unclassified (activity 099), $75,000 is for the Strand Theatre.

From the above appropriation for Unclassified (activity 099), and Current Expenses (activity 130), is *$100,000 for the WVSOM in conjunction with WV Public Broadcasting for the Healthy Choices Childrens Television Program.

The Current Expense 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 5A, Article 3, and Chapter 12 of the Code.

From the above appropriation for Current Expenses (activity 130), $100,000 shall be used for the Sesquicentennial Celebration and $4,500 shall be used for Z.D. Ramsdell House.

56-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2013 Org 0433

<table>
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<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>$1,009,270</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>37,080</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>233,332</td>
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<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>6,500</td>
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<td>6</td>
<td>Equipment</td>
<td>070</td>
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<td>7</td>
<td>Services to Blind &amp; Handicapped</td>
<td>181</td>
<td>184,903</td>
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<tr>
<td>8</td>
<td>BRIM Premium</td>
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<td>9</td>
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</table>

*Clerk’s Note: The Governor reduced Item 55, line 30, Current Expenses, by $150,000, from $250,000 to $100,000.
57-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2013 Org 0439

<table>
<thead>
<tr>
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<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$3,254,489</td>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Current Expenses</td>
<td>130</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
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<td>6</td>
<td>Equipment</td>
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<tr>
<td>7</td>
<td>Mountain Stage</td>
<td>249</td>
<td>$300,000</td>
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<td>8</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>$50,000</td>
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<td>9</td>
<td>BRIM Premium</td>
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<td>$41,929</td>
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<tr>
<td>10</td>
<td>Total</td>
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<td>$5,644,888</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 0300, activity 099) and Capital Outlay and Maintenance (fund 0300, activity 755) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

From the above appropriation for Current Expenses (fund 0300, activity 130) $45,000 is for the WV Music Hall of Fame.

58-State Board of Rehabilitation - Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2013 Org 0932

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>1</td>
<td>Annual Increment</td>
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<td>$166,317</td>
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<tr>
<td>2</td>
<td>Independent Living Services (R)</td>
<td>009</td>
<td>$500,000</td>
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</table>
110 APPROPRIATIONS [Ch. 10

3 Employee Benefits. ................. 010 2,746,504
4 Current Expenses. ................. 130 502,066
5 Workshop Development .......... 163 2,116,149
6 Supported Employment Extended
   Services (R).................... 206 100,000
7 Ron Yost Personal Assistance
   Fund (R)....................... 407 388,698
8 Employment Attendant Care
   Program ....................... 598 156,065
9 BRIM Premium .................... 913 67,033
10 Total. ........................... $ 14,280,401

Any unexpended balance remaining in the appropriation
for Independent Living Services (fund 0310, activity 009),
Supported Employment Extended Services (fund 0310,
activity 206), and Ron Yost Personal Assistance Fund (fund
0310, activity 407) at the close of the fiscal year 2012 is
hereby reappropriated for expenditure during the fiscal year
2013.

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

59-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270  FY 2013  Org 0311
### 60-Division of Environmental Protection

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2013</th>
<th>Org 0313</th>
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<td>0273</td>
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<table>
<thead>
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<th>Description</th>
<th>Fund</th>
<th>FY 2013</th>
<th>Org 0313</th>
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<tbody>
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<tr>
<td>Employee Benefits.</td>
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<td>1,363,725</td>
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<td>Water Resources Protection and Management</td>
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<td>581,897</td>
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<td>Current Expenses.</td>
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<td>723,396</td>
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<td>12,150</td>
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<tr>
<td>Equipment.</td>
<td>070</td>
<td>4,600</td>
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<tr>
<td>Dam Safety.</td>
<td>607</td>
<td>216,966</td>
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<tr>
<td>West Virginia Stream Partners</td>
<td>637</td>
<td>77,396</td>
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<tr>
<td>Meth Lab Cleanup.</td>
<td>656</td>
<td>227,142</td>
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<td>Other Assets.</td>
<td>690</td>
<td>4,500</td>
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<td>WV Contribution to River Commissions.</td>
<td>776</td>
<td>148,485</td>
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<td>Office of Water Resources Non-Enforcement Activity</td>
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<td>1,218,139</td>
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<td>BRIM Premium.</td>
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<td>56,802</td>
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<tr>
<td>Total.</td>
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</table>

Any unexpended balance remaining in the appropriation for Meth Lab Cleanup - Surplus (fund 0273, activity 474) at
the close of fiscal year 2012 is hereby reappropriated for expenditure during FY 2013.

A portion of the appropriation for Current Expenses (fund 0273, activity 130) 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.

61-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2013 Org 0325

<table>
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<th>Description</th>
<th>FY 2013</th>
<th>Amount</th>
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<tbody>
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<td>001</td>
<td>Personal Services</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
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<td>510</td>
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<td>010</td>
<td>Employee Benefits</td>
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<td>130</td>
<td>Current Expenses</td>
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<td>064</td>
<td>Repairs and Alterations</td>
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<td>96</td>
</tr>
<tr>
<td>070</td>
<td>Equipment</td>
<td></td>
<td>350</td>
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<td>690</td>
<td>Other Assets</td>
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<td>400</td>
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<td>913</td>
<td>BRIM Premium</td>
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<td><strong>Total</strong></td>
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<td><strong>$101,893</strong></td>
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</table>

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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

(WV Code Chapter 5F)

Fund 0400 FY 2013 Org 0501

<table>
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<th>Item</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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<td>139,096</td>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
<td></td>
<td>46,341</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td></td>
<td>6,447</td>
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</tbody>
</table>
Ch. 10] APPROPRIATIONS 113

| 3 | Current Expenses. | 130 | 21,245 |
| 4 | Women’s Commission (R). | 191 | 180,255 |
| 5 | Commission for the Deaf and Hard of Hearing. | 704 | 250,773 |
| 7 | Total. | | $ 644,157 |

Any unexpended balance remaining in the appropriation for the Women’s Commission (fund 0400, fiscal year 2010, fiscal year 2011, fiscal year 2012, activity 191) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

63-Division of Health - Central Office

(WV Code Chapter 16)

Fund 0407 FY 2013 Org 0506

| 1 | Personal Services. | 001 | $ 9,213,842 |
| 2 | Annual Increment. | 004 | 207,144 |
| 3 | Employee Benefits. | 010 | 3,602,573 |
| 4 | Chief Medical Examiner. | 045 | 4,749,576 |
| 5 | Unclassified. | 099 | 827,029 |
| 6 | Current Expenses. | 130 | 4,439,298 |
| 7 | State Aid for Local and Basic Public Health Services. | 184 | 16,642,506 |
| 9 | Safe Drinking Water Program. | 187 | 522,984 |
| 10 | Women, Infants and Children. | 210 | 65,099 |
| 11 | Early Intervention. | 223 | 3,307,043 |
| 12 | Cancer Registry. | 225 | 210,184 |
| 13 | ABCA Tobacco Retailer Education Program - Transfer. | 239 | 200,000 |
| 15 | CARDIAC Project. | 375 | 475,000 |
| 16 | State EMS Technical Assistance. | 379 | 1,439,139 |
| 17 | Statewide EMS Program Support (R). | 383 | 954,177 |
19  Primary Care Centers - Mortgage Finance .......................... 413  723,182
20  Black Lung Clinics ............................................. 467  198,646
21  Center for End of Life ........................................... 545  466,886
22  Women’s Right to Know ........................................... 546  15,000
23  Pediatric Dental Services ................................. 550  151,603
24  Vaccine for Children ............................................. 551  446,680
25  Adult Influenza Vaccine ........................................... 552  65,000
26  Tuberculosis Control ............................................. 553  392,933
27  Maternal and Child Health Clinics, Clinicians and Medical Contracts
28  and Fees (R) .................................................. 575  7,228,168
29  Epidemiology Support ........................................... 626  1,709,675
30  Primary Care Support ........................................... 628  8,858,922
31  Health Right Free Clinics ...................................... 727  * 4,750,000
32  Capital Outlay and Maintenance (R) .................. 755  2,125,000
33  Healthy Lifestyles ................................................ 778  169,285
34  Emergency Response Entities - Special Projects (R) .... 822  744,800
35  Maternal Mortality Review ..................................... 834  108,653
36  Osteoporosis and Arthritis Prevention ....................... 849  259,416
37  Diabetes Education and Prevention ......................... 873  105,000
38  Tobacco Education Program (R) .......................... 906  5,684,814
39  BRIM Premium ................................................ 913  211,214
40  State Trauma and Emergency Care System ............... 918  1,839,632
41  Total ......................................................... 918  $ 83,360,103

Any unexpended balances remaining in the
appropriations for Unclassified - Surplus (fund 0407, activity
097) and Statewide EMS Program Support (fund 0407, activity 383), Maternal and Child Health Clinics, Clinicians
and Medical Contracts and Fees (fund 0407, activity 575),
Capital Outlay and Maintenance (fund 0407, activity 755),

*Clerk’s Note: The Governor reduced Item 63, line 33, by $250,000, from
$5,000,000 to $4,750,000.
Emergency Response Entities - Special Projects (fund 0407, activity 822), Assistance to Primary Health Care Centers Community Health Foundation (fund 0407, activity 845) and Tobacco Education Program (fund 0407, activity 906) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

From the above appropriation for Current Expenses (activity 130), an amount not less than $100,000 is for the West Virginia Cancer Coalition; $50,000 shall be expended for the West Virginia AIDS Coalition; $100,000 is for Adolescent Immunization Education; $73,065 is for informal dispute resolution relating to nursing home administrative appeals; and $50,000 is for Hospital Hospitality House of Huntington.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) $250,000 is for the West Virginia University Center for Excellence in Women’s Health; and $400,000 shall be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197).

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

Included in the above appropriation for Primary Care Centers - Mortgage Finance (activity 413) is $47,500 for the mortgage payment for the Lincoln Primary Care Center, Inc.; $50,483 for the mortgage payment for the Monroe County Health Center; $40,436 for the mortgage payment for Roane County Family Health Care, Inc.; $45,600 for the mortgage payment for Community Care of West Virginia, Inc. (formerly Primary Care Systems) (Clay); $19,000 for the mortgage payment for the Belington Clinic; $28,500 for the mortgage payment for the Community Care of West Virginia, Inc. (formerly Tri-County Health Clinic); $14,250 for the
mortgage payment for Valley Health Care (Randolph); $25,236 for the mortgage payment for Family Care Health Center (WomenCare) in Madison; $7,600 for the mortgage payment for Northern Greenbrier Health Clinic, Inc.; $12,061 for the mortgage payment for the WomenCare, Inc. (Putnam); $23,750 for the mortgage payment for the Preston-Taylor Community Health Center, Inc.; $19,000 for the mortgage payment for the Pendleton Community Care Inc. (North Fork); $38,000 for the mortgage payment for the Pendleton Community Care, Inc.; $36,480 for the mortgage payment for Clay-Battelle Health Services Association; $31,920 for the mortgage payment for Mountaineer Community Health Center in Paw Paw; $12,350 for the mortgage payment for the St. George Medical Clinic, Inc.; $26,600 for the mortgage payment for the Bluestone Health Association, Inc.; $42,750 for the mortgage payment for Wheeling Health Right, Inc.; $45,600 for the mortgage payment for the Minnie Hamilton Health Care Center, Inc.; $51,300 for the mortgage payment for the Shenandoah Valley Medical Systems, Inc.; $42,750 for the mortgage payment for the Change, Inc.; $34,506 for the mortgage payment for Valley Health Systems, Inc.; and $27,510 for the mortgage payment for the Wirt County Health Services Association.

From the above appropriation for Pediatric Dental Services (fund 0407, activity 550), $11,000 is for the Marshall County Health Department for dental services.

64-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525  FY 2013  Org 0506

1 Personal Services...................... 001  $ 678,606
2 Annual Increment...................... 004  14,869
3 Employee Benefits..................... 010  303,506
4 Current Expenses...................... 130  6,663
5 Special Olympics...................... 208  26,074
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Behavioral Health Program (R). . .</td>
<td>219</td>
</tr>
<tr>
<td>7</td>
<td>Family Support Act. . . . . . . . .</td>
<td>221</td>
</tr>
<tr>
<td>8</td>
<td>Institutional Facilities Operations (R).</td>
<td>335</td>
</tr>
<tr>
<td>9</td>
<td>Substance Abuse Continuum of Care.</td>
<td>354</td>
</tr>
<tr>
<td>10</td>
<td>Capital Outlay and Maintenance (R).</td>
<td>755</td>
</tr>
<tr>
<td>11</td>
<td>Colin Anderson Community Placement (R).</td>
<td>803</td>
</tr>
<tr>
<td>12</td>
<td>BRIM Premium.</td>
<td>913</td>
</tr>
<tr>
<td>13</td>
<td>Total.</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Behavioral Health Program - Unclassified (fund 0525, activity 219), Institutional Facilities Operations (fund 0525, activity 335), Capital Outlay (fund 0525, activity 511), Institutional Facilities Operations - Surplus (fund 0525, activity 632), Capital Outlay and Maintenance (fund 0525, activity 755), and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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.

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, 2012, the sum of $160,000 shall be transferred to the department of agriculture - land division - farm operating fund (1412) 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.

From the above appropriation (fund 0525, activity 354), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan. Prior to disbursement of funds, the Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities, shall submit a gap analysis of substance abuse services, and an outline of service provision costs to provide assistance to the Regional Task Forces and the Advisory Council for development and prioritization of recommendations.

Additional funds have been appropriated in fund 5156, fiscal year 2013, 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.

65-Division of Health -
West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2013 Org 0506

1 West Virginia Drinking Water Treatment Revolving
2 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 16 of the Code.

66-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2013 Org 0510

1 Personal Services.................. 001 $  748,458
2 Annual Increment.................. 004  19,912
3 Employee Benefits............... 010  342,588
4 Current Expenses............... 130  260,878
5 Repairs and Alterations........ 064  5,000
6 Equipment.................... 070  15,015
7 BRIM Premium.................. 913   9,311
8 Total.......................... $ 1,401,162

67-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2013 Org 0511

1 Personal Services.................. 001 $ 27,527,367
2 Annual Increment.................. 004  771,638
3 Employee Benefits............... 010 12,439,358
4 Unclassified.................... 099  5,688,944
5 Current Expenses............... 130  9,463,913
6 Child Care Development......... 144  776,070
7 Medical Services Contracts and
   Office of Managed Care....... 183  1,835,469
8 Medical Services (R)............ 189 226,739,877
9 Social Services................ 195  97,380,502
<table>
<thead>
<tr>
<th>Item</th>
<th>Program Description</th>
<th>Fiscal Year</th>
<th>Amount</th>
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<tbody>
<tr>
<td>11</td>
<td>Family Preservation Program</td>
<td>196</td>
<td>1,565,000</td>
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<tr>
<td>12</td>
<td>Family Resource Networks (R)</td>
<td>274</td>
<td>1,905,367</td>
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<tr>
<td>13</td>
<td>Domestic Violence Legal Services</td>
<td></td>
<td></td>
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<tr>
<td>14</td>
<td>Fund</td>
<td>384</td>
<td>400,000</td>
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<tr>
<td>15</td>
<td>James “Tiger” Morton Catastrophic Illness Fund</td>
<td>455</td>
<td>700,005</td>
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<tr>
<td>16</td>
<td>MR/DD Waiver</td>
<td>466</td>
<td>88,753,483</td>
</tr>
<tr>
<td>17</td>
<td>Child Protective Services Case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>WV Teaching Hospitals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Tertiary/Safety Net</td>
<td>547</td>
<td>6,356,000</td>
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<tr>
<td>20</td>
<td>Specialized Foster Care</td>
<td>566</td>
<td>310,948</td>
</tr>
<tr>
<td>21</td>
<td>Child Welfare System</td>
<td>603</td>
<td>1,735,815</td>
</tr>
<tr>
<td>22</td>
<td>In-Home Family Education</td>
<td>688</td>
<td>900,000</td>
</tr>
<tr>
<td>23</td>
<td>WV Works Separate State Program</td>
<td>698</td>
<td>4,750,000</td>
</tr>
<tr>
<td>24</td>
<td>Child Support Enforcement</td>
<td>705</td>
<td>6,146,074</td>
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<tr>
<td>25</td>
<td>Medicaid Auditing</td>
<td>706</td>
<td>605,548</td>
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<td>26</td>
<td>Temporary Assistance for Needy Families/Maintenance of Effort</td>
<td>707</td>
<td>22,969,096</td>
</tr>
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<td>27</td>
<td>Child Care Maintenance of Effort</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Effort Match</td>
<td>708</td>
<td>5,693,743</td>
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<tr>
<td>29</td>
<td>Child and Family Services</td>
<td>736</td>
<td>2,850,000</td>
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<tr>
<td>30</td>
<td>Specialized Foster Care</td>
<td></td>
<td></td>
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<tr>
<td>31</td>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
<td>750</td>
<td>2,500,000</td>
</tr>
<tr>
<td>32</td>
<td>Sexual Assault Intervention and Prevention</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Effort Match</td>
<td></td>
<td></td>
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<tr>
<td>34</td>
<td>Child and Family Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
<td></td>
<td></td>
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<tr>
<td>36</td>
<td>Medical Services Administrative</td>
<td></td>
<td></td>
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<tr>
<td>37</td>
<td>Costs</td>
<td>789</td>
<td>24,508,787</td>
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<td>38</td>
<td>Traumatic Brain Injury Waiver</td>
<td>835</td>
<td>800,000</td>
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<tr>
<td>39</td>
<td>Indigent Burials (R)</td>
<td>851</td>
<td>2,550,000</td>
</tr>
<tr>
<td>40</td>
<td>BRIM Premium</td>
<td>913</td>
<td>834,187</td>
</tr>
<tr>
<td>41</td>
<td>Rural Hospitals Under 150 Beds</td>
<td>940</td>
<td>2,596,000</td>
</tr>
</tbody>
</table>

*Clerk's Note: The Governor reduced Item 67, line 39, by $250,000, from $500,000 to $250,000.*
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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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

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.

Included in the above appropriation for Social Services (activity 195) is funding for continuing education requirements relating to the practice of social work.

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

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 Article 5Q, Chapter 16 of the Code.
The above appropriation for WV Works Separate State Program (activity 698), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the Secretary of the Department of Health and Human Resources.

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), 50% of the total shall be divided equally and distributed among the fourteen (14) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The 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 above appropriation for Children’s Trust Fund - Transfer (activity 951) shall be transferred to the Children’s Fund (fund 5469, org 0511).

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

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

(WV Code Chapter 5F)

Fund 0430 FY 2013 Org 0601
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund 0433 FY 2013</th>
<th>Org 0603</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$ 21,030,650</td>
</tr>
<tr>
<td>2</td>
<td>College Education Fund</td>
<td>232</td>
<td>0</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, activity 099), Fusion Center (fund 0430, activity 469), Capital Outlay (fund 0430, activity 511), WV Fire and EMS Survivor Benefit (fund 0430, activity 939) and Homeland State Security Administrative Agency (fund 0430, activity 953), at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013 with the exception of fund 0430, fiscal years 2007, 2008, and 2009, activity 099 which shall expire on June 30, 2012.

69-Adjutant General -
State Militia

(WV Code Chapter 15)
Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, activity 099) and Armory Capital Improvements - Surplus (fund 0433, activity 325) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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.

70-Adjutant General -
Military Fund

(WV Code Chapter 15)

Fund 0605  FY 2013  Org 0603

1  Personal Services. ....................... 001 $ 125,000
2  Current Expenses. ....................... 130 75,000
3  Total. ................................. $ 200,000

71-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440  FY 2013  Org 0605
The above appropriation for Salaries of Members of West Virginia Parole Board (activity 227) includes funding for salary, annual increment (as provided for in W.Va. Code §5-5-1), and related employee benefits of board members.

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

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th> </th>
<th>Personal Services</th>
<th>$</th>
<th>416,740</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Annual Increment</td>
<td>$</td>
<td>8,060</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>$</td>
<td>171,219</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified (R)</td>
<td>$</td>
<td>33,409</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$</td>
<td>209,304</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>$</td>
<td>15,000</td>
</tr>
<tr>
<td>6</td>
<td>Radiological Emergency</td>
<td>$</td>
<td>30,000</td>
</tr>
<tr>
<td>7</td>
<td>Federal Funds/Grant Match (R)</td>
<td>$</td>
<td>687,296</td>
</tr>
<tr>
<td>8</td>
<td>Mine and Industrial Accident</td>
<td>$</td>
<td>515,348</td>
</tr>
<tr>
<td>9</td>
<td>Rapid Response Call Center</td>
<td>$</td>
<td>541,029</td>
</tr>
<tr>
<td>10</td>
<td>Early Warning Flood System (R)</td>
<td>$</td>
<td>20,336</td>
</tr>
<tr>
<td>11</td>
<td>BRIM Premium</td>
<td>$</td>
<td>596,100</td>
</tr>
<tr>
<td>12</td>
<td>WVU Charleston Poison Control</td>
<td>$</td>
<td>596,100</td>
</tr>
</tbody>
</table>
16  Disaster Mitigation (R). ............  952  100,000
17                  Total. ............................  $ 3,343,841

18 Any unexpended balances remaining in the appropriations for Unclassified (fund 0443, activity 099), Federal Funds/Grant Match (fund 0443, activity 749), Early Warning Flood System (fund 0443, activity 877), and Disaster Mitigation (fund 0443, activity 952) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

73-Division of Corrections - Central Office

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

Fund 0446  FY 2013  Org 0608

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 430,008</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>8,285</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>169,507</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>6,944</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>130</td>
<td>93,640</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 708,384</td>
</tr>
</tbody>
</table>

7 Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

74-Division of Corrections - Correctional Units

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

Fund 0450  FY 2013  Org 0608
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Employee Benefits</td>
<td>$1,258,136</td>
</tr>
<tr>
<td>2</td>
<td>Children’s Protection Act (R)</td>
<td>934,195</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>1,290,870</td>
</tr>
<tr>
<td>4</td>
<td>Charleston Work Release Center</td>
<td>1,574,114</td>
</tr>
<tr>
<td>5</td>
<td>Beckley Correctional Center</td>
<td>1,734,038</td>
</tr>
<tr>
<td>6</td>
<td>Huntington Work Release Center</td>
<td>949,918</td>
</tr>
<tr>
<td>7</td>
<td>Anthony Correctional Center</td>
<td>4,973,213</td>
</tr>
<tr>
<td>8</td>
<td>Huttonsville Correctional Center</td>
<td>22,301,261</td>
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<tr>
<td>9</td>
<td>Northern Correctional Center</td>
<td>8,054,639</td>
</tr>
<tr>
<td>10</td>
<td>Inmate Medical Expenses (R)</td>
<td>24,226,064</td>
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<tr>
<td>11</td>
<td>Pruntytown Correctional Center</td>
<td>7,360,906</td>
</tr>
<tr>
<td>12</td>
<td>Payments to Federal, County and/or Regional Jails (R)</td>
<td>31,000,000</td>
</tr>
<tr>
<td>13</td>
<td>Corrections Academy</td>
<td>1,384,187</td>
</tr>
<tr>
<td>14</td>
<td>Martinsburg Correctional Center</td>
<td>3,504,984</td>
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<tr>
<td>15</td>
<td>Parole Services</td>
<td>3,011,558</td>
</tr>
<tr>
<td>16</td>
<td>Special Services</td>
<td>3,977,420</td>
</tr>
<tr>
<td>17</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>2,000,000</td>
</tr>
<tr>
<td>18</td>
<td>McDowell County Correctional Center</td>
<td>1,949,983</td>
</tr>
<tr>
<td>19</td>
<td>Stevens Correctional Center</td>
<td>6,474,500</td>
</tr>
<tr>
<td>20</td>
<td>Parkersburg Correctional Center</td>
<td>2,421,744</td>
</tr>
<tr>
<td>21</td>
<td>St. Mary’s Correctional Center</td>
<td>13,042,762</td>
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<tr>
<td>22</td>
<td>Denmar Correctional Center</td>
<td>4,717,283</td>
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<tr>
<td>23</td>
<td>Ohio County Correctional Center</td>
<td>1,794,838</td>
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<tr>
<td>24</td>
<td>Mt. Olive Correctional Complex</td>
<td>20,514,782</td>
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<tr>
<td>25</td>
<td>Lakin Correctional Center</td>
<td>8,679,864</td>
</tr>
<tr>
<td>26</td>
<td>BRIM Premium</td>
<td>829,190</td>
</tr>
<tr>
<td>27</td>
<td>Total</td>
<td>$179,960,449</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Children’s Protection Act (fund 0450, activity 090), Unclassified - Surplus (fund 0450, activity 097), Inmate Medical Expenses (fund 0450, activity 535), Payments to Federal, County and/or Regional Jails (fund 0450, activity 555), Capital Improvements - Surplus (fund 0450, activity 661), Capital Outlay, Repairs and Equipment -
Surplus (fund 0450, activity 677), and Capital Outlay and Maintenance (fund 0450, activity 755) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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).

From the above appropriation to Unclassified, on July 1, 2012, the sum of $300,000 shall be transferred to the department of agriculture - land division - farm operating fund (1412) 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.

*CLERK'S NOTE: The Governor reduced item 75, line 1, Personal Services, by $807,500, from $46,664,205 to $45,856,705; and line 3, Employee Benefits, by $242,500, from $10,257,264 to $10,014,764.
9 Communications and
10 Other Equipment (R).............. 558  1,268,968
11 Trooper Retirement Fund........... 605  4,966,353
12 Handgun Administration Expense... 747   76,816
13 Capital Outlay and Maintenance (R). 755  250,000
14 Retirement Systems - Unfunded
15 Liability....................... 775  15,162,000
16 Automated Fingerprint
17 Identification System.............. 898   662,394
18 BRIM Premium.................... 913  4,946,608
19 Total. ........................... $ 96,223,567

20 Any unexpended balances remaining in the
21 appropriations for Communications and Other Equipment
22 (fund 0453, activity 558), Capital Outlay, Repairs and
23 Equipment - Surplus (fund 0453, activity 677), and Capital
24 Outlay and Maintenance (fund 0453, activity 755) at the
25 close of the fiscal year 2012 are hereby reappropriated for
26 expenditure during the fiscal year 2013.

27 From the above appropriation for Personal Services
28 (activity 001), an amount not less than $25,000 shall be
29 expended to offset the costs associated with providing police
30 services for the West Virginia State Fair.

31 Included in the above appropriation for Personal
32 Services (activity 001), and Employee Benefits (activity 010),
33 is *$250,000 for salary increases and associated benefits for
34 civilian employees of the West Virginia State Police.

76-Fire Commission

(WV Code Chapter 29)

Fund 0436  FY 2013  Org 0619

1 Current Expenses................. 130  $  81,156

*CLERK’S NOTE: The Governor reduced Item 75, line 33, by $1,050,000, from $1,300,000 to $250,000.
### 77-Division of Justice and Community Services

**(WV Code Chapter 15)**

**Fund 0546 FY 2013 Org 0620**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>001</td>
<td>$435,295</td>
</tr>
<tr>
<td>2. Annual Increment</td>
<td>004</td>
<td>6,025</td>
</tr>
<tr>
<td>3. Employee Benefits</td>
<td>010</td>
<td>187,828</td>
</tr>
<tr>
<td>4. Unclassified</td>
<td>099</td>
<td>7,000</td>
</tr>
<tr>
<td>5. Current Expenses</td>
<td>130</td>
<td>145,193</td>
</tr>
<tr>
<td>6. Repairs and Alterations</td>
<td>064</td>
<td>2,000</td>
</tr>
<tr>
<td>7. Equipment</td>
<td>070</td>
<td>100</td>
</tr>
<tr>
<td>8. Buildings</td>
<td>258</td>
<td>100</td>
</tr>
<tr>
<td>9. Child Advocacy Centers (R)</td>
<td>458</td>
<td>1,502,466</td>
</tr>
<tr>
<td>10. Community Corrections (R)</td>
<td>561</td>
<td>5,000,233</td>
</tr>
<tr>
<td>11. Statistical Analysis Program</td>
<td>597</td>
<td>54,021</td>
</tr>
<tr>
<td>12. Law Enforcement Professional</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Standards</td>
<td>838</td>
<td>182,798</td>
</tr>
<tr>
<td>14. BRIM Premium</td>
<td>913</td>
<td>1,660</td>
</tr>
<tr>
<td>15. Total</td>
<td></td>
<td>$7,524,719</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Child Advocacy Centers (fund 0546, activity 458) and Community Corrections (fund 0546, activity 561) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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

### 78-Division of Juvenile Services

**(WV Code Chapter 49)**
Fund 0570  FY 2013  Org 0621

1 Jones Building Treatment Center... 261  $ 2,233,738
2 Statewide Reporting Centers (R)... 262  4,434,987
3 Robert L. Shell Juvenile Center.... 267  2,062,244
4 Central Office  ...................... 701  2,219,388
5 Capital Outlay and Maintenance (R). 755  250,000
6 Gene Spadaro Juvenile Center.... 793  2,119,386
7 Davis Center for Girls (R). ......... 818  900,875
8 BRIM Premium  ....................... 913  96,187
9 WV Industrial Home for Youth (R) . 979  10,816,042
10 Kenneth Honey Rubenstein
   Juvenile Center (R) ............... 980  5,391,033
11 Vicki Douglas Juvenile Center...... 981  1,821,025
12 Northern Regional Juvenile Center.. 982  1,344,737
13 Lorrie Yeager Jr. Juvenile Center. 983  1,941,020
14 Sam Perdue Juvenile Center........ 984  1,988,776
15 Tiger Morton Center ................ 985  2,134,113
16 Donald R. Kuhn Juvenile Center... 986  4,217,898
17 J.M. “Chick” Buckbee
   Juvenile Center ...................... 987  2,042,495
18 Total. .............................. $ 46,013,944

Any unexpended balances remaining in the appropriations for Statewide Reporting Centers (fund 0570, activity 262), Capital Outlay and Maintenance (fund 0570, activity 755), Davis Center for Girls (fund 0570, activity 818), WV Industrial Home for Youth (fund 0570, activity 979), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, activity 980) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

From the above appropriations, on July 1, 2012, the sum of $50,000 shall be transferred to the department of agriculture - land division - farm operating fund (1412) 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.

79-Division of Protective Services
(WV Code Chapter 5F)

Fund 0585 FY 2013 Org 0622

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$1,405,714</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>38,090</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>590,925</td>
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<td>Unclassified (R)</td>
<td>099</td>
<td>23,223</td>
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<tr>
<td>Current Expenses</td>
<td>130</td>
<td>100,000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>064</td>
<td>8,500</td>
</tr>
<tr>
<td>Equipment (R)</td>
<td>070</td>
<td>75,000</td>
</tr>
<tr>
<td>Other Assets</td>
<td>690</td>
<td>72,825</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>9,969</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,324,246</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the
appropriations for Personal Services (fund 0585, activity
001), Equipment (fund 0585, activity 070), and Unclassified
(fund 0585, activity 099) at the close of the fiscal year 2012
are hereby reappropriated for expenditure during the fiscal
year 2013.

DEPARTMENT OF REVENUE
80-Office of the Secretary
(WV Code Chapter 11)

Fund 0465 FY 2013 Org 0701
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services.</td>
<td>001</td>
<td>$510,000</td>
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<tr>
<td>Annual Increment.</td>
<td>004</td>
<td>4,800</td>
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<tr>
<td>Employee Benefits.</td>
<td>010</td>
<td>162,007</td>
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<tr>
<td>Unclassified.</td>
<td>099</td>
<td>7,890</td>
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<tr>
<td>Current Expenses.</td>
<td>130</td>
<td>90,000</td>
</tr>
<tr>
<td>Repairs and Alterations.</td>
<td>064</td>
<td>3,000</td>
</tr>
<tr>
<td>Equipment.</td>
<td>070</td>
<td>10,000</td>
</tr>
<tr>
<td>Other Assets.</td>
<td>690</td>
<td>2,000</td>
</tr>
<tr>
<td><strong>Total</strong>.</td>
<td>690</td>
<td><strong>$789,697</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0465, activity 096) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

### 81-Tax Division

(WV Code Chapter 11)

**Fund 0470 FY 2013 Org 0702**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R).</td>
<td>001</td>
<td>$13,350,443</td>
</tr>
<tr>
<td>Annual Increment.</td>
<td>004</td>
<td>300,000</td>
</tr>
<tr>
<td>Employee Benefits (R).</td>
<td>010</td>
<td>5,620,662</td>
</tr>
<tr>
<td>Unclassified (R).</td>
<td>099</td>
<td>275,100</td>
</tr>
<tr>
<td>Current Expenses.</td>
<td>130</td>
<td>7,471,923</td>
</tr>
<tr>
<td>Repairs and Alterations.</td>
<td>064</td>
<td>15,100</td>
</tr>
<tr>
<td>Equipment.</td>
<td>070</td>
<td>282,500</td>
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<tr>
<td>GIS Development Project (R).</td>
<td>562</td>
<td>150,000</td>
</tr>
<tr>
<td>Multi State Tax Commission.</td>
<td>653</td>
<td>77,958</td>
</tr>
<tr>
<td>Other Assets.</td>
<td>690</td>
<td>25,000</td>
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<tr>
<td>BRIM Premium.</td>
<td>913</td>
<td>14,420</td>
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<tr>
<td><strong>Total</strong>.</td>
<td>690</td>
<td><strong>$27,583,106</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Personal Services (fund 0470, activity 001), Employee Benefits (fund 0470, activity 010), Tax
Technology Upgrade (fund 0470, activity 094), Unclassified (fund 0470, activity 099), GIS Development Project (fund 0470, activity 562), and Remittance Processor (fund 0470, activity 570) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

82-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2013 Org 0703

1  Personal Services. ........................... 001   $  525,000
2  Annual Increment............................. 004  10,200
3  Employee Benefits............................. 010  166,437
4  Unclassified (R)............................... 099  8,680
5  Current Expenses.............................. 130  148,493
6  Repairs and Alterations....................... 064  500
7  Equipment ..................................... 070  5,000
8  Pay Equity Reserve............................. 364  250,000
9  BRIM Premium................................ 913  2,750
10  Total. ........................................  $  1,117,060

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, activity 099) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

83-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2013 Org 0709

1  Personal Services. ........................... 001   $  405,320
2  Annual Increment............................. 004  8,820
3  Employee Benefits............................. 010  167,075
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>2013 Appropriation</th>
<th>2013 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>070</td>
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<tr>
<td>7</td>
<td>Other Assets</td>
<td>690</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$668,147</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0593, activity 099) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

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

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Item</th>
<th>2013 Appropriation</th>
<th>2013 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>3</td>
<td>Current Expenses</td>
<td>130</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$55,990</td>
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</table>

DEPARTMENT OF TRANSPORTATION

85-State Rail Authority

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Item</th>
<th>2013 Appropriation</th>
<th>2013 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
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<tr>
<td>5</td>
<td>Other Assets</td>
<td>690</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$2,493</td>
</tr>
</tbody>
</table>
86-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2013 Org 0805

1 Equipment. ......................... 070 $ 225,000
2 Current Expenses. ................. 130 1,832,525
3 Buildings. ......................... 258 555,956
4 Other Assets. ...................... 690 172,528
5 Total. ............................. $ 2,786,009

Any unexpended balances remaining in the appropriations for Unclassified - Total (fund 0510, activity 096), Unclassified (fund 0510, activity 099), and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

87-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2013 Org 0806

1 Personal Services................. 001 $ 194,992
88-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582  FY 2013  Org 0807

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$4,200</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>Current Expenses</td>
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<td>$1,012,702</td>
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<tr>
<td>Repairs and Alterations</td>
<td>064</td>
<td>$100</td>
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<tr>
<td>Civil Air Patrol</td>
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<td>$155,095</td>
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<tr>
<td>Total</td>
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<td>$1,374,775</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0582, activity 099) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

From the above appropriation for Current Expenses, the sum of $120,000 shall be distributed equally to each of the twelve local Civil Air Patrol Squadrons.
## DEPARTMENT OF VETERANS’ ASSISTANCE

### 89-Department of Veterans’ Assistance

(WV Code Chapter 9A)

<table>
<thead>
<tr>
<th>Fund</th>
<th>Activity</th>
<th>FY 2013</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0456</td>
<td>001</td>
<td>$1,142,895</td>
<td>Personal Services</td>
<td>1,142,895</td>
</tr>
<tr>
<td></td>
<td>004</td>
<td>20,000</td>
<td>Annual Increment</td>
<td>20,000</td>
</tr>
<tr>
<td></td>
<td>010</td>
<td>574,361</td>
<td>Employee Benefits</td>
<td>574,361</td>
</tr>
<tr>
<td></td>
<td>099</td>
<td>20,000</td>
<td>Unclassified</td>
<td>20,000</td>
</tr>
<tr>
<td></td>
<td>130</td>
<td>152,189</td>
<td>Current Expenses</td>
<td>152,189</td>
</tr>
<tr>
<td></td>
<td>064</td>
<td>5,000</td>
<td>Repairs and Alterations</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>228</td>
<td>168,345</td>
<td>Veterans’ Field Offices</td>
<td>168,345</td>
</tr>
<tr>
<td></td>
<td>286</td>
<td>6,812,258</td>
<td>Veterans’ Nursing Home (R)</td>
<td>6,812,258</td>
</tr>
<tr>
<td></td>
<td>328</td>
<td>2,015</td>
<td>Veterans’ Toll Free Assistance</td>
<td>2,015</td>
</tr>
<tr>
<td></td>
<td>329</td>
<td>131,604</td>
<td>Veterans’ Reeducation Assistance (R)</td>
<td>131,604</td>
</tr>
<tr>
<td></td>
<td>342</td>
<td>150,000</td>
<td>Veterans’ Grant Program (R)</td>
<td>150,000</td>
</tr>
<tr>
<td></td>
<td>473</td>
<td>2,754</td>
<td>Veterans’ Grave Markers</td>
<td>2,754</td>
</tr>
<tr>
<td></td>
<td>483</td>
<td>625,000</td>
<td>Veterans’ Transportation</td>
<td>625,000</td>
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<tr>
<td></td>
<td>617</td>
<td>205,277</td>
<td>Veterans Outreach Programs</td>
<td>205,277</td>
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<tr>
<td></td>
<td>697</td>
<td>20,000</td>
<td>Memorial Day Patriotic Exercise</td>
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<tr>
<td></td>
<td>808</td>
<td>373,484</td>
<td>Veterans Cemetery</td>
<td>373,484</td>
</tr>
<tr>
<td></td>
<td>913</td>
<td>23,860</td>
<td>BRIM Premium</td>
<td>23,860</td>
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<tr>
<td></td>
<td></td>
<td>$10,429,042</td>
<td>Total</td>
<td>10,429,042</td>
</tr>
</tbody>
</table>

21 Any unexpended balances remaining in the
22 appropriations for Veterans’ Nursing Home (fund 0456, activity 286), Veterans’ Reeducation Assistance (fund 0456, activity 329), Veterans’ Grant Program (fund 0456, activity 342), Women’s Veterans’ Monument (fund 0456, activity 385), Veterans’ Bonus (fund 0456, activity 483), and Educational Opportunities for Children of Deceased Veterans (fund 0456, activity 854) at the close of the fiscal year 2012.
are hereby reappropriated for expenditure during the fiscal year 2013.

90-Department of Veterans’ Assistance - Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2013 Org 0618

1 Personal Services ......................... 001 $ 723,352
2 Annual Increment .......................... 004 18,600
3 Employee Benefits ....................... 010 416,015
4 Current Expenses ......................... 130 5,366
5 Total ......................................... $ 1,163,333

BUREAU OF SENIOR SERVICES

91-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2013 Org 0508

1 Transfer to Division of Human Services
2 for Health Care and Title XIX Waiver
3 for Senior Citizens ....................... 539 $23,482,933
4
5 The above appropriation for Transfer to Division of
6 Human Services for Health Care and Title XIX Waiver for
7 Senior Citizens (activity 539) along with the federal moneys
generated thereby shall be used for reimbursement for
8 services provided under the program.

9 The above appropriation is in addition to funding
10 provided in fund 5405 for this program.
<table>
<thead>
<tr>
<th></th>
<th>Fund</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0596</td>
<td>0420</td>
<td>New River Community and Technical College.</td>
<td>358 $ 6,305,522</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td>West Virginia Council for Community and Technical Education (R).</td>
<td>392 863,576</td>
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<tr>
<td>3</td>
<td></td>
<td></td>
<td>Eastern West Virginia Community and Technical College.</td>
<td>412 2,100,509</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td>Kanawha Valley Community and Technical College.</td>
<td>445 4,125,664</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td>Southern West Virginia Community and Technical College.</td>
<td>446 9,228,731</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td>West Virginia Northern Community and Technical College.</td>
<td>447 7,893,643</td>
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<tr>
<td>7</td>
<td></td>
<td></td>
<td>West Virginia University - Parkersburg.</td>
<td>471 10,916,188</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td>Bridgemont Community and Technical College.</td>
<td>486 3,973,597</td>
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<tr>
<td>9</td>
<td></td>
<td></td>
<td>Mountwest Community and Technical College.</td>
<td>487 6,352,577</td>
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<tr>
<td>10</td>
<td></td>
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<td>Transit Training Partnership.</td>
<td>783 80,000</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td>West Virginia Advance Workforce Development (R).</td>
<td>878 3,644,020</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td>Technical Program Development (R).</td>
<td>893 2,261,100</td>
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<tr>
<td>13</td>
<td></td>
<td></td>
<td>West Virginia University - Parkersburg.</td>
<td>894 918,000</td>
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<tr>
<td>14</td>
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<td>Blue Ridge Community and Technical College.</td>
<td>885 5,138,415</td>
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<tr>
<td>15</td>
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<td>College Transition Program.</td>
<td>887 333,500</td>
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<tr>
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<td></td>
<td>West Virginia Advance Workforce Development (R).</td>
<td>893 3,644,020</td>
</tr>
<tr>
<td>17</td>
<td></td>
<td></td>
<td>Technical Program Development (R).</td>
<td>894 2,261,100</td>
</tr>
</tbody>
</table>
29  Pierpont Community and Technical
College. ............................. 930 8,443,703
31  Total. ............................... $ 72,578,745

32  Any unexpended balances remaining in the
33  appropriations for Unclassified - Surplus (fund 0596, activity
34  097), West Virginia Council for Community and Technical
35  Education (fund 0596, activity 392), Community College
36  Workforce Development (fund 0596, activity 878), West
37  Virginia Advance Workforce Development (fund 0596,
38  activity 893), and Technical Program Development (fund
39  0596, activity 894) at the close of the fiscal year 2012 are
40  hereby reappropriated for expenditure during the fiscal year
41  2013.

42  From the above appropriation for New River
43  Community and Technical College no funds shall be
44  expended for the pursuit, planning, procurement, lease or
45  construction of any new student housing on any state lands in
46  Greenbrier County including any and all lands under the
47  control of New River Community and Technical College.

48  From the above appropriation for the Community
49  College Workforce Development (fund 0596, activity 878),
50  $200,000 shall be expended on the Mine Training Program
51  in Southern West Virginia.

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

93-Higher Education Policy Commission -
Administration -
Control Account

(WV Code Chapter 18B)
<table>
<thead>
<tr>
<th></th>
<th>Appropriation Details</th>
<th>Budget Amount</th>
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<td>Current Expenses</td>
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<td>5</td>
<td>Higher Education Grant Program</td>
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<td>6</td>
<td>Tuition Contract Program (R)</td>
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<td>7</td>
<td>WVNET</td>
<td>1,948,443</td>
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<tr>
<td>8</td>
<td>PROMISE Scholarship — Transfer</td>
<td>18,500,000</td>
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<td>9</td>
<td>HEAPS Grant Program (R)</td>
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<tr>
<td>10</td>
<td>BRIM Premium</td>
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<tr>
<td>11</td>
<td>Total</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0589, activity 097), Tuition Contract Program (fund 0589, activity 165), Capital Improvements - Surplus (fund 0589, activity 661), Capital Outlay and Maintenance (fund 0589, activity 755), and HEAPS Grant Program (fund 0589, activity 867) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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.

The above appropriation for PROMISE Scholarship - Transfer (activity 800) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.
<table>
<thead>
<tr>
<th></th>
<th>Institution</th>
<th>Fund</th>
<th>FY 2013</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
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<td>Eastern Division</td>
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<td>3</td>
<td>West Virginia School of Osteopathic Medicine</td>
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<td>7,978,095</td>
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<td>173</td>
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<td>WVU—School of Health Sciences</td>
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<td>WVU School of Health Sciences -</td>
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<td>7</td>
<td>Charleston Division</td>
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<td>8</td>
<td>General Operations</td>
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<td>9</td>
<td>Rural Health Outreach Programs (R)</td>
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<td>Fairmont State University</td>
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<td>Glenville State College</td>
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<td>18</td>
<td>Marshall University</td>
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<td>54,348,822</td>
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<td>19</td>
<td>Marshall University Medical School</td>
<td>449</td>
<td>1,015,462</td>
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<td>20</td>
<td>BRIM Subsidy</td>
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<td>21</td>
<td>West Virginia University</td>
<td>459</td>
<td>116,272,285</td>
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<td>22</td>
<td>West Virginia University School of Medicine BRIM</td>
<td>460</td>
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<td>23</td>
<td>Jackson’s Mill (R)</td>
<td>461</td>
<td>351,480</td>
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<td>24</td>
<td>West Virginia University Institute</td>
<td>479</td>
<td>8,717,640</td>
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<tr>
<td>25</td>
<td>Vista E-Learning (R)</td>
<td>519</td>
<td>300,000</td>
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<tr>
<td>26</td>
<td>State Priorities - Brownfield</td>
<td>531</td>
<td>806,198</td>
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<tr>
<td>27</td>
<td>Professional Development (R)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>28</td>
<td>Rural Health Initiative - Medical</td>
<td>581</td>
<td>480,988</td>
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<tr>
<td>29</td>
<td>Schools Support</td>
<td></td>
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</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Rural Health Outreach Programs (fund 0586, activity 377), Jackson’s Mill (fund 0586, activity 461), Vista E-Learning (fund 0586, activity 519), State Priorities-Brownfield Professional Development (fund 0586, activity 531), and WVU - School of Health Sciences - Surplus (fund 0586, activity 713) at the close of fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

Included in the appropriation for WVU — School of Health Sciences (activity 174) and Marshall Medical School (activity 173) 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 - Charleston Division (activity 175) and Marshall Medical School (activity 173), an amount not less than $5,000 respectively, is to be used for the West Virginia Academy of Family Physicians Doc of the Day Program.

Included in the above appropriation for Marshall Medical School (activity 173) is $417,351 for the Marshall
University Forensic Lab and $275,061 for the Marshall University Center for Rural Health.

Included in the above appropriation for WVU - School of Health Sciences (activity 174) is $1,000,000 for the Blanchette Rockefeller Project and $1,000,000 for the School of Public Health (year 2 of 5).

The above appropriation for Rural Health 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.

Included in the above appropriation for Concord University (activity 410) is $100,000 for the Geographic Alliance.

Included in the above appropriation for Glenville State College (activity 428) is $300,000 for a 20 county “Hidden Promise” consortium between the County School Systems and Glenville State College; $200,000 for courses offered in conjunction with the corrections academy; and $80,000 for the installation of security equipment at the Corrections Academy.

Included in the above appropriation for Shepherd University (activity 432) is $100,000 for the Gateway Program.

Included in the above appropriation for Marshall University (activity 448) is $181,280 for the Marshall University - Southern WV CTC 2+2 Program and $175,000 for the Luke Lee Listening Language & Learning Lab.

Included in the above appropriation for West Virginia University (activity 459) is $34,500 for the Marshall and
WVU Faculty and Course Development International Study Project; $246,429 for the WVU Law School — Skills Program; $300,000 for the WVU Coal and Energy Research Bureau to be expended in consultation with the Board of Coal Mine Health and Safety, the Mine Safety Technology Task Force, and the DEP Advisory Council; $19,714 for the WVU College of Engineering and Mineral Resources — Diesel Training — Transfer; $500,000 for the Mining Engineering Program; $220,000 for the WVU Petroleum Engineering Program; $82,500 for the WVU — Sheep Study; $630,000 for the Davis College of Forestry Agriculture and Consumer Sciences of which $80,000 is for a Landscape Architect, $112,500 is to be used for Morgantown Farms, $112,500 is to be used for Raymond Memorial Farm, $112,500 is to be used for Reedsville Farm, and $112,500 is to be used for Kerneysville Farm; $200,000 for Reedsville Arena and Jackson’s Mill Arena; $100,000 for the WVU — Soil Testing Program; $100,000 for a veterinarian; $50,000 for the WVU Cancer Study; $500,000 for the Center for Multiple Sclerosis Program; $150,000 for the WV Alzheimer Disease Register; and $100,000 for the rifle team.

Included in the above appropriation for Jackson’s Mill (activity 461) is $150,000 for the Jackson’s Mill Fire Academy.

From the above appropriation for West Virginia University - Potomac State (activity 994) 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) $4,149,751,000

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 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2013.

DEPARTMENT OF TRANSPORTATION

95-Division of Motor Vehicles

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

Fund 9007 FY 2013 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services.</td>
<td>001 $14,907,549</td>
</tr>
<tr>
<td>2 Annual Increment.</td>
<td>004 340,000</td>
</tr>
<tr>
<td>3 Employee Benefits.</td>
<td>010 7,242,182</td>
</tr>
<tr>
<td>4 Current Expenses.</td>
<td>130 16,274,559</td>
</tr>
<tr>
<td>5 Repairs and Alterations.</td>
<td>064 51,000</td>
</tr>
<tr>
<td>6 Equipment.</td>
<td>070 40,000</td>
</tr>
<tr>
<td>7 Buildings.</td>
<td>258 10,000</td>
</tr>
<tr>
<td>8 Other Assets.</td>
<td>690 1,600,000</td>
</tr>
<tr>
<td>9 BRIM Premium.</td>
<td>913 113,435</td>
</tr>
<tr>
<td>10 Total.</td>
<td>$40,578,725</td>
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</tbody>
</table>
**96-Division of Highways**

(WV Code Chapters 17 and 17C)

**Fund 9017 FY 2013 Org 0803**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
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<tr>
<td>2</td>
<td>Maintenance</td>
<td>354,846,000</td>
</tr>
<tr>
<td>3</td>
<td>Secondary Road Maintenance</td>
<td>60,000,000</td>
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<tr>
<td>4</td>
<td>Bridge Repair and Replacement</td>
<td>30,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Inventory Revolving</td>
<td>4,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Equipment Revolving</td>
<td>15,000,000</td>
</tr>
<tr>
<td>7</td>
<td>General Operations</td>
<td>55,033,495</td>
</tr>
<tr>
<td>8</td>
<td>Interstate Construction</td>
<td>120,000,000</td>
</tr>
<tr>
<td>9</td>
<td>Other Federal Aid Programs</td>
<td>350,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Appalachian Programs</td>
<td>120,000,000</td>
</tr>
<tr>
<td>11</td>
<td>Nonfederal Aid Construction</td>
<td>12,500,000</td>
</tr>
<tr>
<td>12</td>
<td>Highway Litter Control</td>
<td>1,755,000</td>
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<tr>
<td>13</td>
<td>Federal Economic Stimulus</td>
<td>3,000,000</td>
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<tr>
<td>14</td>
<td><strong>Total</strong></td>
<td><strong>$1,164,634,495</strong></td>
</tr>
</tbody>
</table>

The above appropriations are to be expended in accordance with the provisions of Chapters 17 and 17-c of the Code.

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

There is hereby appropriated within the above items sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Sections 17 and 18, Article 2, Chapter 14 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.

97-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2013 Org 0808

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$1,089,743</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>19,680</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>463,864</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>367,242</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
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<td>6</td>
<td>Equipment</td>
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<td>7</td>
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<td>8</td>
<td>BRIM Premium</td>
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<tr>
<td>9</td>
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</table>

Total TITLE II, Section 2 - State Road Fund
(Including claims against the state) $1,209,259,147

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 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2013.
### LEGISLATIVE

#### 98-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2013 Org 2300

<table>
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<th>Activity</th>
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<td>Annual Increment 004 6,200</td>
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<tr>
<td>3</td>
<td>Employee Benefits 010 147,600</td>
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<td>4</td>
<td>Current Expenses 130 133,903</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations 064 1,000</td>
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<tr>
<td>6</td>
<td>Economic Loss Claim Payment Fund (R) 334 3,460,125</td>
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<td>7</td>
<td>Other Assets 690 3,700</td>
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<td>8</td>
<td>Total 4,096,748</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, fiscal year 2012, activity 334) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

### JUDICIAL

#### 99-Supreme Court - Family Court Fund

(WV Code Chapter 51)

Fund 1763 FY 2013 Org 2400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses 130 1,000,000</td>
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</tbody>
</table>
**EXECUTIVE**

*100-Governor’s Office*

**Minority Affairs Fund**

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund 1058 FY 2013 Org 0100</th>
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<tbody>
<tr>
<td>1 Current Expenses............ 130 $ 676,000</td>
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</table>

*101-Auditor’s Office -*

**Land Operating Fund**

(WV Code Chapters 11A, 12 and 36)

<table>
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<tr>
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<tr>
<td>1 Personal Services............ 001 432,487</td>
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<td>3 Employee Benefits.......... 010 187,360</td>
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<td>4 Unclassified................ 099 15,139</td>
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<tr>
<td>5 Current Expenses............ 130 440,291</td>
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<tr>
<td>6 Repairs and Alterations..... 064 2,600</td>
</tr>
<tr>
<td>7 Equipment................... 070 426,741</td>
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<tr>
<td>8 Total......................... $1,513,918</td>
</tr>
</tbody>
</table>

9 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 11-a of the West Virginia Code.

15 The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.
### 102-Auditor’s Office -  
**Local Government Purchasing Card Expenditure Fund**

(WV Code Chapter 6)

<table>
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<tr>
<th>Fund 1224 FY 2013 Org 1200</th>
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</thead>
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<tr>
<td>7</td>
</tr>
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<td><strong>8</strong></td>
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</table>

### 103-Auditor’s Office -  
**Securities Regulation Fund**

(WV Code Chapter 32)

<table>
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<tr>
<td>8</td>
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<tr>
<td><strong>9</strong></td>
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### 104-Auditor’s Office -  
**Technology Support and Acquisition Fund**

(WV Code Chapter 12)
### Fund 1233 FY 2013 Org 1200

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
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<td>$300,000</td>
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<tr>
<td>2</td>
<td>Other Assets</td>
<td>690</td>
<td>$100,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$400,000</td>
</tr>
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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 W.Va. Code §12-3-10c.

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

(WV Code Chapter 12)

Fund 1234 FY 2013 Org 1200

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,829,705</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>20,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>496,102</td>
</tr>
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<td>4</td>
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<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>5,500</td>
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<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>400,000</td>
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<td>7</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$4,234,315</td>
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</tbody>
</table>

There is hereby appropriated from this fund, in addition to the above appropriation, the amount necessary to meet the transfer requirements to the Purchasing Improvement Fund and the Hatfield-McCoy Regional Recreation Authority per W.Va. Code §12-3-10d.

### 106-Auditor’s Office - Office of the Chief Inspector

(WV Code Chapter 6)
# Appropriations

## Fund 1235 FY 2013 Org 1200

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

(WV Code Chapter 18)

## Fund 1301 FY 2013 Org 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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### 108-Treasurer’s Office - Technology Support and Acquisition Fund

(WV Code Chapter 12)

## Fund 1329 FY 2013 Org 1300

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## Appropriations

### 109-Department of Agriculture - Agriculture Fees Fund

(WV Code Chapter 19)

**Fund 1401 FY 2013 Org 1400**

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<tr>
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<th>Code</th>
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### 110-Department of Agriculture - West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

**Fund 1408 FY 2013 Org 1400**

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### 111-Department of Agriculture - General John McCausland Memorial Farm

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

(WV Code Chapter 19)

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<td>010</td>
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### 113-Department of Agriculture - Donated Food Fund

(WV Code Chapter 19)

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### 114-Department of Agriculture - Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2013 Org 1400

<table>
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<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
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### 115-Attorney General - Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2013 Org 1500

<table>
<thead>
<tr>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>001</td>
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<td>Employee Benefits</td>
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<td>$155,538</td>
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### 116-Attorney General - Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)
<table>
<thead>
<tr>
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<th>Function</th>
<th>Budget</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$170,000</td>
<td>FY 2013 Org 1500</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$2,044</td>
<td>FY 2013 Org 1500</td>
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<td>Employee Benefits</td>
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<td>4</td>
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<td>5</td>
<td>Total</td>
<td>$266,841</td>
<td>FY 2013 Org 1500</td>
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</table>

**117-Attorney General - Preneed Funeral Guarantee Fund**

(WV Code Chapter 47)

**Fund 1514 FY 2013 Org 1500**

<table>
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<tr>
<th></th>
<th>Function</th>
<th>Budget</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>$901,135</td>
<td>FY 2013 Org 1500</td>
</tr>
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</table>

**118-Secretary of State - Service Fees and Collection Account**

(WV Code Chapters 3, 5, and 59)

**Fund 1612 FY 2013 Org 1600**

<table>
<thead>
<tr>
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<th>Function</th>
<th>Budget</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$503,355</td>
<td>FY 2013 Org 1600</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,680</td>
<td>FY 2013 Org 1600</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>$267,146</td>
<td>FY 2013 Org 1600</td>
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<tr>
<td>4</td>
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<td>Total</td>
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<td>FY 2013 Org 1600</td>
</tr>
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</table>

**119-Secretary of State - General Administrative Fees Account**

(WV Code Chapters 3, 5 and 59)

**Fund 1617 FY 2013 Org 1600**
1 Personal Services. ................. 001 $ 1,111,954
2 Annual Increment. ................. 004 19,200
3 Employee Benefits. ............... 010 648,187
4 Unclassified. ...................... 099 25,445
5 Current Expenses. ................. 130 739,719
6 Technology Improvements. ....... 599 750,000
7 Total. ............................ $ 3,294,505

DEPARTMENT OF ADMINISTRATION

120-Department of Administration -
Office of the Secretary
Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2013 Org 0201

1 Current Expenses. ................. 130 *$28,061,000

The above appropriation for Current Expenses (fund 2044, activity 130) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

121-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2013 Org 0210

1 Personal Services. ............... 001 $ 16,542,399
2 Annual Increment. ............... 004 342,459

*Clerk’s Note: The Governor reduced Item 120, line 1, Current Expenses, by $9,939,000, from $38,000,000 to $28,061,000.
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>[Ch. 10]</th>
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</thead>
<tbody>
<tr>
<td>3</td>
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<td>7</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

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.

122-Division of Purchasing -
Vendor Fee Fund

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>FY 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
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</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
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<td>Current Expenses</td>
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<tr>
<td>6</td>
<td>Repairs and Alterations</td>
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<td>7</td>
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<td>9</td>
<td>BRIM Premium</td>
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<tr>
<td>10</td>
<td>Total</td>
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</table>
### 123-Division of Purchasing - Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2013 Org 0213

<table>
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### 124-Travel Management - Fleet Management Office Fund

(WV Code Chapter 5A)

Fund 2301 FY 2013 Org 0215

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### 125-Travel Management - Aviation Fund

(WV Code Chapter 5A)
### Fund 2302 FY 2013 Org 0215

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**126-Division of Personnel**

(WV Code Chapter 29)

### Fund 2440 FY 2013 Org 0222

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<td>064</td>
<td>2,500</td>
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<tr>
<td>Equipment</td>
<td>070</td>
<td>15,000</td>
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<tr>
<td>Other Assets</td>
<td>690</td>
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</tr>
<tr>
<td>Total</td>
<td></td>
<td>$5,141,821</td>
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</table>

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

### Fund 2521 FY 2013 Org 0228

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<td>--------------------------------------------</td>
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<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
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<td>7</td>
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128-Office of Technology -
Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

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<td>Equipment</td>
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</table>

From the above fund, the provisions of W.Va. Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

129-Division of Forestry

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<td>17,620</td>
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### 130-Division of Forestry -
*Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2013</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
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### 131-Division of Forestry -
*Severance Tax Operations*

(WV Code Chapter 11)

<table>
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<tr>
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<th>FY 2013</th>
<th>Org</th>
<th>Description</th>
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### 132-Geological and Economic Survey-
Geological and Analytical Services Fund

(WV Code Chapter 29)

**Fund 3100 FY 2013 Org 0306**

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The above appropriation shall be used in accordance with W.Va. Code §29-2-4.

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

(WV Code Chapter 5B)

**Fund 3002 FY 2013 Org 0307**

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<thead>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Repairs and Alterations</td>
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<td>500</td>
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<td>7</td>
<td>Equipment</td>
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</table>
134-West Virginia Development Office -
Broadband Deployment Fund

(WV Code Chapter 31)

Fund 3174 FY 2013 Org 0307

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135-Division of Labor -
Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2013 Org 0308

<table>
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<th>Description</th>
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<td>1</td>
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<td>Equipment</td>
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136-Division of Labor -
Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2013 Org 0308

*Clerk’s Note: The Governor reduced Item 135, line 5, Equipment, by $510,000, from $510,000 to $0.
<table>
<thead>
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<tr>
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<td>Employee Benefits</td>
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<td>4</td>
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<td>1,879</td>
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<td>Repairs and Alterations</td>
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**137-Division of Labor - Crane Operator Certification Fund**

(WV Code Chapter 21)

Fund 3191 FY 2013 Org 0308

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<th>Description</th>
<th>Code</th>
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<td>Repairs and Alterations</td>
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**138-Division of Labor - Amusement Rides and Amusement Attraction Safety Fund**

(WV Code Chapter 21)

Fund 3192 FY 2013 Org 0308

<table>
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### 139-Division of Labor - State Manufactured Housing Administration Fund

*(WV Code Chapter 21)*

Fund 3195 FY 2013 Org 0308

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Employee Benefits</td>
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<td>$32,377</td>
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<td>Unclassified</td>
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<td>$1,847</td>
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<td>Current Expenses</td>
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<td>6</td>
<td>Repairs and Alterations</td>
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<td>BRIM Premium</td>
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### 140-Division of Labor - Weights and Measures Fund

*(WV Code Chapter 47)*

Fund 3196 FY 2013 Org 0308

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
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<td>130</td>
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<td>Repairs and Alterations</td>
<td>064</td>
<td>$20,000</td>
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<td>3</td>
<td>Equipment</td>
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<td>4</td>
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</table>

### 141-Division of Natural Resources - License Fund - Wildlife Resources

*(WV Code Chapter 20)*

Fund 3200 FY 2013 Org 0310

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>1</td>
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<tr>
<td>2</td>
<td>Administration</td>
<td>155</td>
<td>$1,387,974</td>
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</table>
3 Capital Improvements and
4 Land Purchase (R)................. 248 1,387,974
5 Law Enforcement................. 806 5,551,895
6 Total. .......................... $ 13,879,738

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

Any unexpended balances remaining in the
appropriations for Capital Improvements and Land Purchase
(fund 3200, activity 248) at the close of the fiscal year 2012
are hereby reappropriated for expenditure during the fiscal
year 2013.

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

(WV Code Chapter 20)

Fund 3202 FY 2013 Org 0310

<p>| | |</p>
<table>
<thead>
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143-Division of Natural Resources -
Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2013 Org 0310

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<td>Annual Increment................ 004</td>
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<td>Employee Benefits.............. 010</td>
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### 144-Division of Natural Resources - Planning and Development Division

(WV Code Chapter 20)

**Fund 3205 FY 2013 Org 0310**

<table>
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<td>001</td>
<td>$130,300</td>
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<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
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<td>Current Expenses</td>
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<td>Other Assets</td>
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<td><strong>$1,602,865</strong></td>
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### 145-Division of Natural Resources - Whitewater Study and Improvement Fund

(WV Code Chapter 20)

**Fund 3253 FY 2013 Org 0310**

<table>
<thead>
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<th>Code</th>
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<td>$66,458</td>
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<td><strong>Total</strong></td>
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### 146-Division of Natural Resources - Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

<table>
<thead>
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<th>Fund 3256 FY 2013 Org 0310</th>
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<tbody>
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<td>1  Unclassified. . . . . . . 099</td>
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### 147-Division of Miners’ Health, Safety and Training - Special Health, Safety and Training Fund

(WV Code Chapter 22A)

<table>
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<td>4  WV Mining Extension Service. . 026</td>
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<td>7  Buildings. . . . . . . . 258</td>
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<td>8  Land. . . . . . . . . . 730</td>
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### 148-Division of Energy - Energy Assistance

(WV Code Chapter 5B)

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<tr>
<td>1  Energy Assistance - Total. . 647</td>
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### Division of Energy -
Office of Coal Field Community Development

(WV Code Chapter 5B)

**Fund 3011 FY 2013 Org 0328**

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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
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<td>Repairs and Alterations</td>
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### DEPARTMENT OF EDUCATION

**State Board of Education -
Strategic Staff Development**

(WV Code Chapter 18)

**Fund 3937 FY 2013 Org 0402**

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<th>Item</th>
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<td>Equipment</td>
<td>070</td>
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<td>8</td>
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### State Department of Education -
School Building Authority
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</table>

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

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

(WV Code Chapter 18)

<table>
<thead>
<tr>
<th></th>
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<th>Code</th>
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</table>
DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 29)

Fund 3508 FY 2013 Org 0431

1 Any unexpended balance remaining in the appropriation
2 for Educational Enhancements (fund 3508, activity 695) at
3 the close of the fiscal year 2012 is hereby reappropriated for
4 expenditure during the fiscal year 2013.

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

(WV Code Chapter 5A)

Fund 3542 FY 2013 Org 0432

1 Personal Services. ................. 001 $ 152,679
2 Annual Increment. ................. 004 1,238
3 Employee Benefits. ............... 010 67,340
4 Current Expenses. ................. 130 852,067
5 Equipment. ....................... 070 75,000
6 Buildings. ......................... 258 1,000
7 Other Assets. ...................... 690 52,328
8 Land. .............................. 730 1,000
9 Total. ............................. $ 1,202,652

155-State Board of Rehabilitation -
Division of Rehabilitation Services -
West Virginia Rehabilitation Center -
Special Account
### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### 156-Solid Waste Management Board

(WV Code Chapter 22C)

<table>
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<tr>
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<th>FY</th>
<th>Org</th>
<th>Description</th>
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<td>0312</td>
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#### 157-Division of Environmental Protection - Hazardous Waste Management Fund

(WV Code Chapter 22)

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<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
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<td>0313</td>
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<td>Org 0313</td>
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<td>Annual Increment</td>
<td>004</td>
<td>FY 2013</td>
<td>Org 0313</td>
<td>3,060</td>
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<td>3</td>
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<td>Org 0313</td>
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<td>Org 0313</td>
<td>475,252</td>
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<td>FY 2013</td>
<td>Org 0313</td>
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<td>Org 0313</td>
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<td>Other Assets</td>
<td>690</td>
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<td>Org 0313</td>
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### Appropriations [Ch. 10]

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### 158-Division of Environmental Protection - Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2013 Org 0313

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<tr>
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<td>3</td>
<td>Employee Benefits</td>
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<td>Repairs and Alterations</td>
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<td>6</td>
<td>Equipment</td>
<td>070 53,105</td>
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<tr>
<td>7</td>
<td>Other Assets</td>
<td>690 10,000</td>
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<td>$1,016,651</td>
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### 159-Division of Environmental Protection - Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2013 Org 0313

<table>
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<tr>
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### 160-Division of Environmental Protection - Oil and Gas Reclamation Fund

(WV Code Chapter 22)

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<tbody>
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### 161-Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

<table>
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### 162-Division of Environmental Protection - Mining and Reclamation Operations Fund

(WV Code Chapter 22)

<table>
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</thead>
<tbody>
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### 163-Division of Environmental Protection -
**Underground Storage Tank Administrative Fund**

(WV Code Chapter 22)

| Fund 3325  FY 2013  Org 0313 |
|---|---|
| 1 | Personal Services. ... ... ... 001 | $ 271,667 |
| 2 | Annual Increment. ... ... ... 004 | 2,760 |
| 3 | Employee Benefits. ... ... ... 010 | 105,471 |
| 4 | Current Expenses. ... ... ... 130 | 171,648 |
| 5 | Repairs and Alterations. ... ... ... 064 | 5,400 |
| 6 | Equipment. ... ... ... ... ... ... 070 | 3,500 |
| 7 | Other Assets. ... ... ... ... ... ... 690 | 3,500 |
| 8 | Total. ... ... ... ... ... ... ... ... ... ... | $ 563,946 |

### 164-Division of Environmental Protection -
**Hazardous Waste Emergency Response Fund**

(WV Code Chapter 22)

<p>| Fund 3331  FY 2013  Org 0313 |
|---|---|
| 1 | Personal Services. ... ... ... 001 | $ 435,904 |
| 2 | Annual Increment. ... ... ... 004 | 7,650 |
| 3 | Employee Benefits. ... ... ... 010 | 187,762 |
| 4 | Current Expenses. ... ... ... 130 | 435,005 |
| 5 | Repairs and Alterations. ... ... ... 064 | 7,014 |</p>
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<th></th>
<th>Appropriations</th>
<th></th>
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</thead>
<tbody>
<tr>
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</tr>
<tr>
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<td>Total</td>
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**165-Division of Environmental Protection - Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 22)

Fund 3332 FY 2013 Org 0313

<p>| | | |</p>
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<tr>
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<td>3</td>
<td>Employee Benefits</td>
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**166-Division of Environmental Protection - Solid Waste Enforcement Fund**

(WV Code Chapter 22)

Fund 3333 FY 2013 Org 0313

<p>| | | |</p>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
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<td>Repairs and Alterations</td>
<td>064</td>
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<tr>
<td>6</td>
<td>Equipment</td>
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<td>Other Assets</td>
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167-Division of Environmental Protection -  
Air Pollution Control Fund

(WV Code Chapter 22)

Fund 3336  FY 2013  Org 0313

<table>
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168-Division of Environmental Protection -  
Environmental Laboratory  
Certification Fund

(WV Code Chapter 22)

Fund 3340  FY 2013  Org 0313

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169-Division of Environmental Protection -  
Stream Restoration Fund

(WV Code Chapter 22)
Ch. 10] APPROPRIATIONS 181

Fund 3349 FY 2013 Org 0313

1 Personal Services. 001 $ 83,008
2 Annual Increment. 004 300
3 Employee Benefits. 010 33,700
4 Current Expenses. 130 11,177,697
5 Repairs and Alterations. 064 2,500
6 Equipment. 070 500
7 Other Assets. 690 500
8 Total. $11,298,205

170-Division of Environmental Protection - Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2013 Org 0313

1 Current Expenses. 130 $ 60,000

171-Division of Environmental Protection - Recycling Assistance Fund

(WV Code Chapter 22)

Fund 3487 FY 2013 Org 0313

1 Personal Services. 001 $ 386,523
2 Annual Increment. 004 2,471
3 Employee Benefits. 010 154,550
4 Current Expenses. 130 2,241,458
5 Repairs and Alterations. 064 800
6 Equipment. 070 500
7 Total. $ 2,786,302

172-Division of Environmental Protection - Mountaintop Removal Fund
### Fund 3490 FY 2013 Org 0313

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<td>Equipment.</td>
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### Fund 3371 FY 2013 Org 0315

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### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

#### 174-Division of Health - The Vital Statistics Account

(WV Code Chapter 16)
### Fund 5144 FY 2013 Org 0506

<table>
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<tr>
<th>Item</th>
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<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
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<td>185,953</td>
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<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>30,000</td>
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<td>7</td>
<td>Other Assets</td>
<td>690</td>
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</table>

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

(WV Code Chapter 16)

### Fund 5156 FY 2013 Org 0506

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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Institutional Facilities</td>
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<tr>
<td>2</td>
<td>Operations (R)</td>
<td>335</td>
<td>$38,874,567</td>
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<td>3</td>
<td>Medical Services Trust Fund -</td>
<td></td>
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<td>4</td>
<td>Transfer (R)</td>
<td>512</td>
<td>25,300,000</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 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by W.Va. Code §16-1-13, 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 2013, 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, 2012, the sum of $160,000 shall be transferred to the department of agriculture - land division - farm operation fund (1412) 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.

176-Division of Health - Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2013 Org 0506

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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177-Division of Health -
The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172  FY 2013  Org 0506

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<td>1</td>
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178-Division of Health -
Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183  FY 2013  Org 0506

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179-Division of Health -
Lead Abatement Account

(WV Code Chapter 16)

Fund 5204  FY 2013  Org 0506

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### Appropriations

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<td>Division of Health - West Virginia Birth to Three Fund (WV Code Chapter 16)</td>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 494,117</td>
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<td>2</td>
<td>Annual Increment</td>
<td>$ 5,890</td>
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<td>3</td>
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<td>4</td>
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<td>Current Expenses</td>
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### Appropriations

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<th>Description</th>
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<td>181</td>
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### Appropriations

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<td>West Virginia Health Care Authority — Health Care Cost Review Fund (WV Code Chapter 16)</td>
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<td>5375</td>
<td>Fund 5375 FY 2013 Org 0507</td>
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<td>1</td>
<td>Personal Services</td>
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186

APPROPRIATIONS

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

(WV Code Chapter 16)

Fund 5214 FY 2013 Org 0506

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<th>Code</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>$ 5,890</td>
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<td>Employee Benefits</td>
<td>$ 207,538</td>
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<td>4</td>
<td>Unclassified</td>
<td>$ 249,000</td>
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**181-Division of Health - Tobacco Control Special Fund**

(WV Code Chapter 16)

Fund 5218 FY 2013 Org 0506

<table>
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**182-West Virginia Health Care Authority — Health Care Cost Review Fund**

(WV Code Chapter 16)

Fund 5375 FY 2013 Org 0507

<table>
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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 2,173,871</td>
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</tbody>
</table>

---
The above appropriation is to be expended in accordance with and pursuant to the provisions of Article 29B, Chapter 16 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 W.Va. Code §16-29G-4.

(WV Code Chapter 16)
184-West Virginia Health Care Authority -
Revolutiong Loan Fund

(WV Code Chapter 16)

Fund 5382 FY 2013 Org 0507

1. Current Expenses ...................... 130 $2,000,000

185-Division of Human Services -
Health Care Provider Tax -
Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2013 Org 0511

1. Medical Services ...................... 189 $174,934,076
2. Medical Services Administrative Costs 789 418,120
3. Total. ................................. $175,352,196

4. The above appropriation for Medical Services
5. Administrative Costs (fund 5090, activity 789) shall be
6. transferred to a special revenue account in the treasury for
7. use by the department of health and human resources for
8. administrative purposes. The remainder of all moneys
9. deposited in the fund shall be transferred to the West Virginia
10. medical services fund (fund 5084).

186-Division of Human Services -
Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2013 Org 0511

1. Personal Services ...................... 001 $16,771,990
### APPROPRIATIONS

<table>
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<th>Description</th>
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<td>6</td>
<td>Total</td>
<td>$38,000,000</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 5094, activity 096) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013, except for fund 5094, activity 096, fiscal year 2009 which shall expire on June 30, 2012.

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

(WV Code Chapter 9)

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

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

**188-Division of Human Services - James “Tiger” Morton Catastrophic Illness Fund**
### Fund 5454 FY 2013 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$63,817</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
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<td>600</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>24,975</td>
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<td>Unclassified</td>
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<td>Current Expenses</td>
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<td><strong>6</strong></td>
<td><strong>Total</strong></td>
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</table>

189–Family Protection Services Board - Domestic Violence Legal Services Fund

(WV Code Chapter 48)

### Fund 5455 FY 2013 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>130</td>
<td>$838,022</td>
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</tbody>
</table>

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

(WV Code Chapter 9)

### Fund 5467 FY 2013 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>130</td>
<td>$1,700,000</td>
</tr>
</tbody>
</table>

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

(WV Code Chapter 9)

### Fund 5468 FY 2013 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>130</td>
<td>$4,400,000</td>
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</table>

190 A APPROPRIATIONS [Ch. 10

(WV Code Chapter 16)
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

192-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 2013  Org 0601

1  Current Expenses......................... 130  $ 25,000

193-State Armory Board -
General Armory Fund

(WV Code Chapter 15)

Fund 6057  FY 2013  Org 0603

1  Personal Services......................... 001  $ 90,000
2  Employee Benefits......................... 010  12,300
3  Current Expenses......................... 130  50,000
4  Repairs and Alterations............... 064  490,750
5  Buildings.................................. 258  1,306,950
6  Land....................................... 730  50,000
7  Total...................................... $ 2,000,000

194-Division of Homeland Security and
Emergency Management -
West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295  FY 2013  Org 0606
## Appropriations

### Current Expenses

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>130</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 6295, activity 096) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

### 195-West Virginia Division of Corrections - Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2013 Org 0608

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
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<tr>
<td>1</td>
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<td>Annual Increment</td>
<td>004</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>129,310</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
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<td>5</td>
<td>Current Expenses</td>
<td>130</td>
<td>408,700</td>
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<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>30,000</td>
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<td>7</td>
<td>Other Assets</td>
<td>690</td>
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<td>8</td>
<td>Total</td>
<td></td>
<td>$1,002,426</td>
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### 196-West Virginia State Police - Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2013 Org 0612

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>001</td>
<td>$782,855</td>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Repairs and Alterations</td>
<td>064</td>
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<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>170,000</td>
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<td>7</td>
<td>Other Assets</td>
<td>690</td>
<td>5,000</td>
</tr>
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</table>
8 BRIM Premium. .......................... 913 302,432
9 Total. ................................. $ 1,870,427

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

197-West Virginia State Police -
Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513  FY 2013  Org 0612

1 Current Expenses. ....................... 130 $ 1,327,000
2 BRIM Premium. .......................... 913 154,452
3 Total. ................................. $ 1,481,452

4 The total amount of this appropriation shall be paid from
5 the special revenue fund out of receipts collected pursuant to
6 W.Va. Code §11-15-9a and 16 and paid into a revolving fund
7 account in the state treasury.

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

(WV Code Chapter 15)

Fund 6516  FY 2013  Org 0612

1 Buildings. ............................... 258 $ 444,980
2 BRIM Premium. .......................... 913 77,222
3 Total. ................................. $ 522,202

199-West Virginia State Police -
Surplus Transfer Account
### Fund 6519  FY 2013  Org 0612

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>130</td>
<td>$ 105,000</td>
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<tr>
<td>2</td>
<td>Equipment</td>
<td>070</td>
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<tr>
<td>3</td>
<td>BRIM Premium</td>
<td>913</td>
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<td>4</td>
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### 200-West Virginia State Police - Central Abuse Registry Fund

(WV Code Chapter 15)

### Fund 6527  FY 2013  Org 0612

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
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<td>500</td>
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<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
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### 201-West Virginia State Police - Bail Bond Enforcer Fund

(WV Code Chapter 15)

### Fund 6532  FY 2013  Org 0612

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>130</td>
<td>$ 8,300</td>
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</table>

### 202-West Virginia State Police - State Police Academy Post Exchange

(WV Code Chapter 15)
### 203-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
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<td>4 Debt Service</td>
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<tr>
<td>8 Total</td>
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### 204-Fire Commission - Fire Marshal Fees

(WV Code Chapter 29)

<table>
<thead>
<tr>
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<th>Code</th>
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<tr>
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<td>2 Annual Increment</td>
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<td>3 Employee Benefits</td>
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<td>4 Unclassified</td>
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<td>54,500</td>
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<td>7 Equipment</td>
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<td>44,800</td>
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<td>8 Other Assets</td>
<td>090</td>
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<tr>
<td>9 BRIM Premium</td>
<td>913</td>
<td>50,000</td>
</tr>
<tr>
<td>10 Total</td>
<td></td>
<td>$4,200,036</td>
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</table>
Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2012 is hereby available for expenditure as part of the fiscal year 2013 appropriation.

### 205-Division of Justice and Community Services - WV Community Corrections Fund

(WV Code Chapter 62)

**Fund 6386 FY 2013 Org 0620**

<table>
<thead>
<tr>
<th>Item</th>
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<th>Amount</th>
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<tbody>
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<td>001</td>
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<td>Annual Increment.</td>
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<td>1,779</td>
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<td>Employee Benefits.</td>
<td>010</td>
<td>66,074</td>
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<td>Unclassified.</td>
<td>099</td>
<td>20,000</td>
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<tr>
<td>5</td>
<td>Current Expenses.</td>
<td>130</td>
<td>1,761,045</td>
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<tr>
<td>6</td>
<td>Repairs and Alterations.</td>
<td>064</td>
<td>1,000</td>
</tr>
<tr>
<td>7</td>
<td>Equipment.</td>
<td>070</td>
<td>1,000</td>
</tr>
<tr>
<td>8</td>
<td>Buildings.</td>
<td>258</td>
<td>1,000</td>
</tr>
<tr>
<td>9</td>
<td>Other Assets.</td>
<td>690</td>
<td>1,000</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
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<td>$2,000,000</td>
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### 206-Division of Justice and Community Services - Court Security Fund

(WV Code Chapter 51)

**Fund 6804 FY 2013 Org 0620**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services.</td>
<td>001</td>
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<td>2</td>
<td>Annual Increment.</td>
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<td>354</td>
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<td>Employee Benefits.</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Current Expenses.</td>
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<td>1,472,540</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations.</td>
<td>064</td>
<td>100</td>
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<tr>
<td>6</td>
<td>Equipment.</td>
<td>070</td>
<td>100</td>
</tr>
<tr>
<td>7</td>
<td>Buildings.</td>
<td>258</td>
<td>100</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
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<td>$1,500,000</td>
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</table>
## DEPARTMENT OF REVENUE

### 207-Division of Banking

(WV Code Chapter 31A)

Fund 3041  FY 2013  Org 0303

<table>
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<tr>
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<th>Org</th>
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</thead>
<tbody>
<tr>
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<td>Personal Services</td>
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<td>$1,812,262</td>
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<td>Annual Increment</td>
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<td>24,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>865,928</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>32,291</td>
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<td>477,595</td>
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<td>Repairs and Alterations</td>
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<td>3,500</td>
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<tr>
<td>7</td>
<td>Equipment</td>
<td>070</td>
<td>13,500</td>
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<tr>
<td>8</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,229,076</strong></td>
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</table>

### 208–Office of the Secretary - State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2013 Org 0701

<table>
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<th>Description</th>
<th>Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Directed Transfer</td>
<td>700</td>
<td><strong>$20,000,000</strong></td>
</tr>
</tbody>
</table>

The above appropriation for Directed Transfer shall be transferred to the Consolidated Public Retirement Board - West Virginia Public Employees Retirement System Employers Accumulation Fund (fund 2510).

### 209-Tax Division - Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2013 Org 0702
### Appropriations

**210-Tax Division - Special Audit and Investigative Unit**

(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Fund 7073 FY 2013 Org 0702</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services........... 001 $ 571,192</td>
</tr>
<tr>
<td>2 Annual Increment............ 004 16,460</td>
</tr>
<tr>
<td>3 Employee Benefits........... 010 228,821</td>
</tr>
<tr>
<td>4 Unclassified................ 099 11,000</td>
</tr>
<tr>
<td>5 Current Expenses............ 130 260,527</td>
</tr>
<tr>
<td>6 Repairs and Alterations..... 064 7,000</td>
</tr>
<tr>
<td>7 Equipment................... 070 5,000</td>
</tr>
<tr>
<td>8 Total....................... $ 1,100,000</td>
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**211-Tax Division - Special District Excise Tax Administration Fund**

(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Fund 7086 FY 2013 Org 0702</th>
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<tbody>
<tr>
<td>1 Personal Services........... 001 $ 28,288</td>
</tr>
<tr>
<td>2 Annual Increment............ 004 300</td>
</tr>
<tr>
<td>3 Employee Benefits........... 010 11,994</td>
</tr>
<tr>
<td>4 Current Expenses............ 130 11,491</td>
</tr>
<tr>
<td>5 Total....................... $ 52,073</td>
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</table>

**212-Tax Division - Wine Tax Administration Fund**
Ch. 10] APPROPRIATIONS

(WV Code Chapter 60)

Fund 7087 FY 2013 Org 0702

<table>
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<tr>
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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>
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<td>2</td>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
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213-Tax Division - Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund

(WV Code Chapter 47)

Fund 7092 FY 2013 Org 0702

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
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<td>$35,000</td>
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<td>2</td>
<td>Equipment</td>
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214-State Budget Office - Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2013 Org 0703

<table>
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<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Public Employees Insurance Reserve Fund — Transfer</td>
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</tbody>
</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.
### 215-Insurance Commissioner - Examination Revolving Fund

(WV Code Chapter 33)

**Fund 7150 FY 2013 Org 0704**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$518,696</td>
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<td>Employee Benefits</td>
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<td><strong>Total</strong></td>
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### 216-Insurance Commissioner - Consumer Advocate

(WV Code Chapter 33)

**Fund 7151 FY 2013 Org 0704**

<table>
<thead>
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<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<td><strong>Total</strong></td>
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<td><strong>$817,930</strong></td>
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### 217-Insurance Commissioner

(WV Code Chapter 33)

**Fund 7152 FY 2013 Org 0704**

<table>
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<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$16,462,396</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$422,462</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$7,992,646</td>
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</table>
Current Expenses

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>130</td>
<td>12,682,166</td>
</tr>
</tbody>
</table>

Repairs and Alterations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>064</td>
<td>59,906</td>
</tr>
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</table>

Equipment

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>070</td>
<td>223,295</td>
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Buildings

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>258</td>
<td>235,984</td>
</tr>
</tbody>
</table>

Other Assets

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>690</td>
<td>205,682</td>
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</tbody>
</table>

Total

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>38,284,537</td>
</tr>
</tbody>
</table>

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

218-Insurance Commissioner – Workers’ Compensation Old Fund

Fund 7162 FY 2013 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>130</td>
<td>550,000,000</td>
</tr>
</tbody>
</table>

219-Insurance Commissioner – Workers’ Compensation Uninsured Employers’ Fund

Fund 7163 FY 2013 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>130</td>
<td>27,000,000</td>
</tr>
</tbody>
</table>

220-Insurance Commissioner – Self-Insured Employer Guaranty Risk Pool

Fund 7164 FY 2013 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>130</td>
<td>5,000,000</td>
</tr>
</tbody>
</table>
221-Insurance Commissioner –
Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2013 Org 0704

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

222-Lottery Commission -
Revenue Center Construction Fund

(WV Code Chapter 29)

Fund 7209 FY 2013 Org 0705

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$38,000</td>
</tr>
<tr>
<td>Buildings</td>
<td>$3,762,000</td>
</tr>
<tr>
<td>Total</td>
<td>$3,800,000</td>
</tr>
</tbody>
</table>

223-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2013 Org 0706

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$166,570</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$5,332</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$76,338</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$84,948</td>
</tr>
<tr>
<td>Total</td>
<td>$333,188</td>
</tr>
</tbody>
</table>

224-Racing Commission -
Relief Fund

(WV Code Chapter 19)
The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

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

225-Racing Commission -
Administration and Promotion Account

(WV Code Chapter 19)

226-Racing Commission -
General Administration

(WV Code Chapter 19)
227-Racing Commission -  
Administration, Promotion, Education, Capital Improvement 
and Greyhound Adoption Programs 
to include Spaying and Neutering Account

(WV Code Chapter 19)

Fund 7307  FY 2013  Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$110,000</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>010</td>
<td>53,414</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>130</td>
<td>405,507</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>5,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>070</td>
<td>200,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$773,921</td>
</tr>
</tbody>
</table>

228-Alcohol Beverage Control Administration -  
Wine License Special Fund

(WV Code Chapter 60)

Fund 7351  FY 2013  Org 0708

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$113,943</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,780</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>50,840</td>
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<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>32,324</td>
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<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>8,000</td>
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<tr>
<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>50,000</td>
</tr>
</tbody>
</table>

*Clerk’s Note: The Governor reduced Item 226, line 4, Current Expenses, by $696,800, from $1,254,164 to $557,364.*
Any unexpended balance in the appropriation for Capital Outlay and Maintenance (fund 7351, activity 755) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

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

229-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2013 Org 0708

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>3,734,079</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>98,092</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,640,895</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>2,930,500</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>62,000</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>37,548</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>8,503,114</td>
</tr>
</tbody>
</table>

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

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

From the above appropriation an amount not less than $200,000 shall be used for the Tobacco/Alcohol Education Program.
There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor as provided by law.

**DEPARTMENT OF TRANSPORTATION**

*230-Division of Motor Vehicles - Dealer Recovery Fund*

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2013</th>
<th>Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1</td>
<td>Current Expenses</td>
<td>130</td>
</tr>
</tbody>
</table>

*231-Division of Motor Vehicles - Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2013</th>
<th>Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
</tr>
<tr>
<td>6</td>
<td>Other Assets</td>
<td>690</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

*232-Division of Highways - A. James Manchin Fund*

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2013</th>
<th>Org 0803</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1  Current Expenses. . . . . . . . . . . . . . . . . . 130  $ 1,600,000

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

(WV Code Chapter 17)

Fund 8254  FY 2013  Org 0806

1  Current Expenses. . . . . . . . . . . . . . . . . . 130  $ 8,000,000

DEPARTMENT OF VETERANS’ ASSISTANCE

234-Veterans’ Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703  FY 2013  Org 0613

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services. . . . . . . . . . . . . . . .</td>
<td>001</td>
<td>$ 65,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment. . . . . . . . . . . . . . . .</td>
<td>004</td>
<td>300</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits. . . . . . . . . . . . . . .</td>
<td>010</td>
<td>28,850</td>
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<tr>
<td>4</td>
<td>Unclassified. . . . . . . . . . . . . . . . . .</td>
<td>099</td>
<td>58,313</td>
</tr>
<tr>
<td>5</td>
<td>Current Expenses. . . . . . . . . . . . . . .</td>
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<td>5,744,097</td>
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<td>Total. . . . . . . . . . . . . . . . . . . . . .</td>
<td></td>
<td>$ 5,896,560</td>
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</tbody>
</table>

235-Department of Veterans’ Assistance -  
WV Veterans’ Home -  
Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754  FY 2013  Org 0618

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses. . . . . . . . . . . . . . . .</td>
<td>130</td>
<td>$ 712,000</td>
</tr>
<tr>
<td>2</td>
<td>Repairs and Alterations. . . . . . . . . . . . .</td>
<td>064</td>
<td>38,000</td>
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<tr>
<td>3</td>
<td>Total. . . . . . . . . . . . . . . . . . . . . .</td>
<td></td>
<td>$ 750,000</td>
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</table>
### BUREAU OF SENIOR SERVICES

**236-Bureau of Senior Services - Community Based Service Fund**

(WV Code Chapter 22)

**Fund 5409 FY 2013 Org 0508**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$110,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$38,267</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>130</td>
<td>$10,350,733</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$10,500,000</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation is funded from annual table game license fees to enable the aged and disabled citizens of West Virginia to stay in their homes through the provision of home and community-based services.

### HIGHER EDUCATION

**237-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 2013 Org 0442**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Capital Expenditures (R)</td>
<td>306</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for General Capital Expenditures (fund 4902, activity 306, fiscal year 2012) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
The total amount of this appropriation shall be paid from the special capital improvements fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1 of each year.

The above appropriation for General Capital Expenditures (activity 306) may be transferred to special revenue funds for capital improvement projects at the institutions.

238-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 2013  Org 0442

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>040</td>
<td>$28,906,457</td>
</tr>
<tr>
<td>General Capital Expenditures</td>
<td>306</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Facilities Planning and Administration (R)</td>
<td>386</td>
<td>421,082</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$32,327,539</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Facilities Planning and Administration (fund 4903, activity 386) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

The total amount of this appropriation shall be paid from the special capital improvement fund created in W.Va. Code §18B-10-8. 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.

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

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2013 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

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 W.Va. Code §18-12B-8, which have since been refunded.

240-Higher Education Policy Commission - Community and Technical College Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2013 Org 0442

Any unexpended balance remaining in the appropriation for Capital Improvements - Total (fund 4908, activity 958) at
the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

The total amount of this appropriation shall be paid from the sale of the 2009 Series A Community and Technical College Capital Improvement Revenue Bonds and anticipated interest earnings.

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

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2013 Org 0463

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2013 Activity 096 FY 2013</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>100,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>4,174,340</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>4,524,300</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>425,000</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>512,000</td>
</tr>
<tr>
<td>7</td>
<td>Buildings</td>
<td>258</td>
<td>150,000</td>
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<tr>
<td>8</td>
<td>Other Assets</td>
<td>690</td>
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<tr>
<td>9</td>
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<td></td>
<td>$15,935,640</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4179, activity 096) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.


(WV Code Chapter 18B)
Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4270, activity 096) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

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.

243-Higher Education Policy Commission - West Liberty University - West Liberty University Land Sales Account

(WV Code Chapter 18B)

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4566, activity 096) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

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.

244-WV Council for Community and Technical College Education - West Virginia Northern Community and Technical College - WVNCC Land Sale Account

(WV Code Chapter 18B)
Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4732, activity 096) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

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.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

245-Board of Barbers and Cosmetologists

(WV Code Chapter 16 and 30)

Fund 5425  FY 2013  Org 0505

1 Personal Services. . . . . . . . . . . . . . 001 $ 329,906
2 Annual Increment. . . . . . . . . . . . . . 004 6,500
3 Employee Benefits. . . . . . . . . . . . . . 010 138,060
4 Current Expenses. . . . . . . . . . . . . . 130 270,000
5 Total. . . . . . . . . . . . . . . . . . . . . . . . . $ 744,466

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

246-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475  FY 2013  Org 0509

1 Personal Services. . . . . . . . . . . . . . 001 $ 49,410
2 Annual Increment. . . . . . . . . . . . . . 004 1,360
3 Employee Benefits. . . . . . . . . . . . . . 010 21,862
4 Unclassified. . . . . . . . . . . . . . . . . . 099 900
The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

247-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2013 Org 0906

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$306,518</td>
</tr>
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<td>Annual Increment</td>
<td>004</td>
<td>$4,260</td>
</tr>
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<td>Employee Benefits</td>
<td>010</td>
<td>$73,305</td>
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<tr>
<td>Current Expenses</td>
<td>130</td>
<td>$25,773</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>064</td>
<td>$1</td>
</tr>
<tr>
<td>Other Assets</td>
<td>690</td>
<td>$30,100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$439,957</strong></td>
</tr>
</tbody>
</table>

248-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2013 Org 0907

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$661,029</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$6,570</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$247,550</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>130</td>
<td>$185,900</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>064</td>
<td>$3,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>070</td>
<td>$22,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,126,049</strong></td>
</tr>
</tbody>
</table>
### 249-Public Service Commission

(WV Code Chapter 24)

**Fund 8623 FY 2013 Org 0926**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$8,500,587</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>161,734</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,144,993</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>2,857,041</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>55,000</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>45,000</td>
</tr>
<tr>
<td>7</td>
<td>PSC Weight Enforcement</td>
<td>345</td>
<td>4,405,884</td>
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<tr>
<td>8</td>
<td>Debt Payment/Capital Outlay</td>
<td>520</td>
<td>350,000</td>
</tr>
<tr>
<td>9</td>
<td>BRIM Premium</td>
<td>913</td>
<td>114,609</td>
</tr>
<tr>
<td>10</td>
<td><strong>Total.</strong></td>
<td></td>
<td><strong>$19,634,848</strong></td>
</tr>
</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 W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

### 250-Public Service Commission - Gas Pipeline Division — Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

**Fund 8624 FY 2013 Org 0926**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$166,481</td>
</tr>
<tr>
<td>Item Description</td>
<td>Code</td>
<td>Amount</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td>------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>6,890</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>69,616</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>130</td>
<td>81,966</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>064</td>
<td>4,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 328,953</strong></td>
<td></td>
</tr>
</tbody>
</table>

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

---

**251-Public Service Commission - Motor Carrier Division**

(WV Code Chapter 24A)

Fund **8625 FY 2013 Org 0926**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td><strong>$ 1,575,837</strong></td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>49,647</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>618,042</td>
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<tr>
<td>Current Expenses</td>
<td>130</td>
<td>656,790</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>064</td>
<td>23,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 2,923,316</strong></td>
</tr>
</tbody>
</table>

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

---

**252-Public Service Commission - Consumer Advocate**

(WV Code Chapter 24)

Fund **8627 FY 2013 Org 0926**
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$542,658</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,692</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>192,022</td>
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<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>276,472</td>
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<td>5</td>
<td>Equipment</td>
<td>070</td>
<td>10,000</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>4,532</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$1,034,376</td>
</tr>
</tbody>
</table>

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

#### 253-Real Estate Commission

(WV Code Chapter 30)

<table>
<thead>
<tr>
<th></th>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$423,477</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,828</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>150,108</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>285,622</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>5,000</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>070</td>
<td>10,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$883,035</td>
</tr>
</tbody>
</table>

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

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

(WV Code Chapter 30)

<table>
<thead>
<tr>
<th></th>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$57,540</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Code</td>
<td>Amount</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------</td>
<td>------</td>
<td>----------</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>180</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>14,933</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>42,160</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 114,813</td>
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</tbody>
</table>

255-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676  FY 2013  Org 0935

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 48,843</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>840</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>28,874</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>130</td>
<td>49,913</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>500</td>
</tr>
<tr>
<td>6</td>
<td>Other Assets</td>
<td>690</td>
<td>2,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$ 130,970</td>
</tr>
</tbody>
</table>

256-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680  FY 2013  Org 0936

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 5,000</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>010</td>
<td>766</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>130</td>
<td>14,734</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$ 20,500</td>
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</table>

257-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671  FY 2013  Org 0938

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 72,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>960</td>
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</table>
## 258-Board of Medicine

(WV Code Chapter 30)

<table>
<thead>
<tr>
<th>Fund 9070 FY 2013 Org 0945</th>
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</thead>
<tbody>
<tr>
<td><strong>1</strong> Personal Services.................. 001</td>
</tr>
<tr>
<td><strong>2</strong> Annual Increment.................. 004</td>
</tr>
<tr>
<td><strong>3</strong> Employee Benefits.................. 010</td>
</tr>
<tr>
<td><strong>4</strong> Current Expenses.................... 130</td>
</tr>
<tr>
<td><strong>5</strong> Repairs and Alterations............. 064</td>
</tr>
<tr>
<td><strong>6</strong> Other Assets....................... 690</td>
</tr>
<tr>
<td><strong>7</strong> Total. ................................</td>
</tr>
</tbody>
</table>

## 259-West Virginia Enterprise Resource Planning Board

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund 9080 FY 2013 Org 0947</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Personal Services........... 001</td>
</tr>
<tr>
<td><strong>2</strong> Annual Increment............... 004</td>
</tr>
<tr>
<td><strong>3</strong> Employee Benefits............ 010</td>
</tr>
<tr>
<td><strong>4</strong> Unclassified.................... 099</td>
</tr>
<tr>
<td><strong>5</strong> Current Expenses.............. 130</td>
</tr>
<tr>
<td><strong>6</strong> Repairs and Alterations........ 064</td>
</tr>
<tr>
<td><strong>7</strong> Equipment....................... 070</td>
</tr>
<tr>
<td><strong>8</strong> Buildings....................... 258</td>
</tr>
<tr>
<td><strong>9</strong> Other Assets.................... 690</td>
</tr>
<tr>
<td><strong>10</strong> Total............................</td>
</tr>
</tbody>
</table>
### Appropriations

#### 260-Board of Treasury Investments

(WV Code Chapter 12)

Fund 9152 FY 2013 Org 0950

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$515,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,580</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>183,526</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>12,667</td>
</tr>
<tr>
<td>5</td>
<td>Current Expenses</td>
<td>130</td>
<td>390,434</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>159,500</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$1,266,707</td>
</tr>
</tbody>
</table>

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 Article 6C, Chapter 12 of the Code.

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

Total TITLE II, Section 3 - Other Funds

(Including claims against the state) $1,656,354,880

**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 W.Va. Code §29-22-
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.

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

(WV Code Chapter 5)

Fund 2252 FY 2013 Org 0211

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

262-West Virginia Development Office - Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2013 Org 0304

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism - Telemarketing Center.</td>
<td>$ 82,080</td>
</tr>
<tr>
<td>WV Film Office</td>
<td>$ 338,018</td>
</tr>
<tr>
<td>Tourism - Advertising (R)</td>
<td>$ 2,938,284</td>
</tr>
<tr>
<td>Tourism - Operations (R)</td>
<td>$ 4,005,623</td>
</tr>
<tr>
<td>Total.</td>
<td>$ 7,364,005</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capitol Complex - Capital Outlay (fund
appropriations

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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

263-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2013 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,437,886</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>004</td>
<td>50,340</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>010</td>
<td>801,071</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>20,829</td>
</tr>
<tr>
<td>130</td>
<td>Current Expenses</td>
<td>130</td>
<td>500</td>
</tr>
<tr>
<td>064</td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>600</td>
</tr>
<tr>
<td>070</td>
<td>Equipment</td>
<td>070</td>
<td>500</td>
</tr>
<tr>
<td>258</td>
<td>Buildings</td>
<td>258</td>
<td>400</td>
</tr>
<tr>
<td>324</td>
<td>Pricketts Fort State Park</td>
<td>324</td>
<td>120,000</td>
</tr>
<tr>
<td>527</td>
<td>Non-Game Wildlife (R)</td>
<td>527</td>
<td>417,285</td>
</tr>
<tr>
<td>619</td>
<td>State Parks and Recreation Advertising (R)</td>
<td>619</td>
<td>548,733</td>
</tr>
<tr>
<td>690</td>
<td>Other Assets</td>
<td>690</td>
<td>200</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td>14</td>
<td>$3,398,344</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Gypsy Moth Suppression Program for State Parks (fund 3267, activity 017), Unclassified (fund 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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.
264-State Department of Education
(WV Code Chapters 18 and 18A)

Fund 3951 FY 2013 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Current Expenses</th>
<th>$ 3,950,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>FBI Checks</td>
<td>$ 173,198</td>
</tr>
<tr>
<td>3</td>
<td>Vocational Education</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Equipment Replacement</td>
<td>$ 1,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Assessment Program (R)</td>
<td>$ 3,433,036</td>
</tr>
<tr>
<td>6</td>
<td>21st Century Technology Infrastructure</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Network Tools and Support (R)</td>
<td>$ 22,111,271</td>
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<tr>
<td>8</td>
<td>Total.</td>
<td>$ 30,611,626</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, activity 099), Assessment Program (fund 3951, activity 396), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, activity 933) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

265-State Department of Education -
School Building Authority -
Debt Service Fund
(WV Code Chapter 18)

Fund 3963 FY 2013 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Debt Service - Total</th>
<th>$ 18,000,000</th>
</tr>
</thead>
</table>

266-Department of Education and the Arts -
Office of the Secretary -
Control Account -
Lottery Education Fund
## Appropriations

(WV Code Chapter 5F)

### Fund 3508 FY 2013 Org 0431

<table>
<thead>
<tr>
<th>Line</th>
<th>Program</th>
<th>Activity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R).</td>
<td>099</td>
<td>$18,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses.</td>
<td>130</td>
<td>102,000</td>
</tr>
<tr>
<td>3</td>
<td>Commission for National and Community Service</td>
<td>193</td>
<td>435,050</td>
</tr>
<tr>
<td>4</td>
<td>Governor’s Honor Academy.</td>
<td>478</td>
<td>400,000</td>
</tr>
<tr>
<td>5</td>
<td>Arts Programs (R).</td>
<td>500</td>
<td>81,165</td>
</tr>
<tr>
<td>6</td>
<td>College Readiness.</td>
<td>579</td>
<td>184,689</td>
</tr>
<tr>
<td>7</td>
<td>Challenger Learning Center.</td>
<td>862</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 3508, activity 099), Arts Programs (fund 3508, activity 500), and Literacy Project (fund 3508, activity 899) at the close of fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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267-Division of Culture and History - Lottery Education Fund

(WV Code Chapter 29)

### Fund 3534 FY 2013 Org 0432

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Any unexpended balances remaining in the appropriations for Unclassified (fund 3534, activity 099), Fairs and Festivals (fund 3534, activity 122), 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 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

From the above appropriation for Preservation West Virginia (fund 3534) funding shall be provided to Aracoma Story (Logan) $47,500, Barbour County Arts and Humanities Council $1,425, Beckley Main Street (Raleigh) $4,750, Belle Boyd House (Berkeley) $1,900, Buffalo Creek Memorial (Logan) $4,750, Carnegie Hall (Greenbrier) $75,000, Ceredo
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<td>Chuck Mathena Center (Mercer)</td>
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<td>Hardy County Tour and Crafts Association $19,000, Heritage Craft Center of the Eastern Panhandle (Berkeley) $6,650</td>
<td>Heritage Farm Museum &amp; Village (Cabell) $47,500, Historic Fayette Theater (Fayette) $5,225, Historic Middleway Conservancy (Jefferson) $950, Jefferson County Black History Preservation Society $4,750, Jefferson County Historical Landmark Commission $7,600, Maddie Carroll House (Cabell) $7,125, Marshall County Historical Society $8,075, McCoy Theater (Hardy) $19,000, Morgantown Theater Company (Monongalia) $19,000, Mountaineer Boys’ State (Lewis) $9,500, Nicholas Old Main Foundation (Nicholas) $1,900, Norman Dillon Farm Museum (Berkeley) $9,500, Old Opera House Theater Company (Jefferson) $14,250, Parkersburg Arts Center (Wood) $19,000, Pocahontas Historic Opera House $5,700, Raleigh County All Wars Museum $9,500, Rhododendron Girl’s State (Ohio) $9,500, Roane County 4-H and FFA Youth Livestock Program $4,750, Scottish Heritage Society/N. Central WV (Harrison) $4,750, Society for the Preservation of McGrew House (Preston) $3,325, Soldiers’ Memorial Theater (Raleigh) $9,500, Southern WV Veterans’ Museum $4,275, Summers County Historic Landmark Commission $4,750, Those Who Served War Museum (Mercer) $3,800, Three Rivers Avian Center (Summers) $14,250, Tug Valley Arts Council (Mingo) $4,750, Tug Valley Chamber of Commerce Coal</td>
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Ch. 10] APPROPRIATIONS

81 House (Mingo) $1,900, Tunnelton Historical Society
82 (Preston) $1,900, Veterans Committee for Civic
83 Improvement of Huntington (Wayne) $4,750, Webb Chapel
84 Cemetery Association Event (Preston) $1,900, West Virginia
85 Museum of Glass (Lewis) $4,750, West Virginia Music Hall
86 of Fame (Kanawha) $33,250, YMCA Camp Horseshoe
87 (Ohio) $95,000, Youth Museum of Southern WV (Raleigh)
88 $11,400.

89 From the above appropriation for Fairs and Festivals
90 (fund 3534, activity 122) funding shall be provided to the
91 African-American Cultural Heritage Festival (Jefferson)
92 $4,750, African-American Heritage Family Tree Museum
93 (Fayette) $4,275, Alderson 4th of July Celebration
94 (Greenbrier) $4,750, Allegheny Echo (Pocahontas) $7,125,
95 Alpine Festival/Leaf Peepers Festival (Tucker) $10,688,
96 Angus Beef and Cattle Show (Lewis) $1,425, Antique
97 Market Fair (Lewis) $1,900, Apollo Theater-Summer
98 Program (Berkeley) $1,900, Appalachian Autumn Festival
99 (Braxton) $3,325, Appalachian Mountain Bike Race
100 (Calhoun) $1,425, Apple Butter Festival (Morgan) $5,700,
101 Arkansaw Homemaker’s Heritage Weekend (Hardy) $3,325,
102 Armed Forces Day-South Charleston (Kanawha) $2,850,
103 Arthurdale Heritage New Deal Festival (Preston) $4,750,
104 Arts Monongahela (Monongalia) $19,000, Athens Town Fair
105 (Mercer) $1,900, Augusta Fair (Randolph) $4,750, Barbour
106 County Fair $23,750, Barboursville Octoberfest (Cabell)
107 $4,750, Bass Festival (Pleasants) $1,758, Battelle District
108 Fair (Monongalia) $4,750, Battle of Dry Creek (Greenbrier)
109 $1,425, Battle of Lewisburg Civil War Days (Greenbrier)
110 $2,850, Battle of Point Pleasant Memorial Committee
111 (Mason) $4,750, Belle Town Fair (Kanawha) $4,275,
112 Belleville Homecoming (Wood) $19,000, Bergoo Down
113 Home Days (Webster) $2,375, Berkeley County Youth Fair
114 $17,575, Black Bear 4K Mountain Bike Race (Kanawha)
115 $950, Black Heritage Festival (Harrison) $5,700, Black
116 Walnut Festival (Roane) $9,500, Blue-Gray Reunion
228  APPROPRIATIONS  [Ch. 10

117  (Barbour) $3,325, Boone County Fair $9,500, Boone County Labor Day Celebration $3,800, Bradshaw Fall Festival (McDowell) $1,900, Bramwell Street Fair (Mercer) $3,325, Braxton County Fairs and Festivals Association $10,925, Braxton County Monster Fest / WV Autumn Festival $2,375, Brooke County Fair $3,325, Bruceton Mills Good Neighbor Days (Preston) $1,900, Buckwheat Festival (Preston) $8,075, Buffalo 4th of July Celebration (Putnam) $475, Burlington Apple Harvest Festival (Mineral) $28,500, Burlington Pumpkin Harvest Festival (Raleigh) $4,750, Burnsville Harvest Festival (Braxton) $2,500, Cabell County Fair $9,500, Calhoun County Wood Festival $1,900, Campbell’s Creek Community Fair (Kanawha) $2,375, Cape Coalwood Festival Association (McDowell) $2,375, Capon Bridge Annual VFD Celebration (Hampshire) $950, Capon Bridge Founders Day Festival (Hampshire) $1,900, Capon Springs Ruritan 4th of July (Hampshire) $950, Cass Homecoming (Pocahontas) $1,900, Cedarville Town Festival (Gilmer) $950, Celebration in the Park (Wood) $3,800, Celebration of America (Monongalia) $5,700, Chapmanville Apple Butter Festival (Logan) $950, Chapmanville Fire Department 4th of July (Logan) $2,850, Charles Town Christmas Festival (Jefferson) $4,750, Charles Town Heritage Festival (Jefferson) $4,750, Charlie West Blues Festival (Kanawha) $9,500, Cherry River Festival (Nicholas) $6,175, Chester Fireworks (Hancock) $1,425, Chester Fourth of July Festivities (Hancock) $4,750, Chief Logan State Park-Civil War Celebration (Logan) $7,600, Christmas in Shepherdstown (Jefferson) $3,800, Christmas in the Park (Brooke) $4,750, Christmas in the Park (Logan) $23,750, City of Dunbar Critter Dinner (Kanawha) $9,500, City of New Martinsville Festival of Memories (Wetzel) $10,450, City of Pleasant Valley Celebration (Marion) $2,375, City of Romney Fair (Hampshire) $3,000, Civil War Horse Cavalry Race (Barbour) $950, Clay County Golden Delicious Apple Festival $6,650, Coal Field Jamboree (Logan) $33,250, Coalton Days Fair (Randolph) $6,650, Cole Chevy Mountain
154 Festival $1,000, Country Roads Festival (Fayette) $1,900, Cowen Railroad Festival (Webster) $3,325, Craigsville Fall Festival (Nicholas) $3,325, Delbarton Homecoming (Mingo) $3,325, Doddridge County Fair $6,650, Durbin Days (Pocahontas) $4,750, Elbert/Filbert Reunion Festival (McDowell) $1,425, Elizabethtown Festival (Marshall) $4,750, Elkins Randolph County 4th of July Car Show (Randolph) $1,900, Fairview 4th of July Celebration (Marion) $950, Farm Safety Day (Preston) $1,900, Fayette American Legion 4th of July (Fayette) $950, FestivALL Charleston (Kanawha) $19,000, First Stage Children’s Theater Company (Cabell) $1,900, Flemington Day Fair and Festival (Taylor) $3,325, Follansbee Community Days (Brooke) $7,838, Fort Gay Mountain Heritage Days (Wayne) $4,750, Fort Henry Days (Ohio) $5,035, Frankford Autumnfest (Greenbrier) $4,750, Franklin Fishing Derby (Pendleton) $7,125, Franklins Fireman Carnival (Pendleton) $4,750, Freshwater Folk Festival (Greenbrier) $4,750, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) $4,750, Frontier Days (Harrison) $2,850, Frontier Fest/Canaan Valley (Taylor) $4,750, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) $2,375, Gassaway Days Celebration (Braxton) $4,750, Gilbert Kiwanis Harvest Festival (Mingo) $3,800, Gilbert Spring Fling (Mingo) $4,750, Gilmer County Farm Show $3,800, Grant County Arts Council $1,900, Grape Stomping Wine Festival (Nicholas) $1,900, Great Greenbrier River Race (Pocahontas) $9,500, Greater Quinwood Days (Greenbrier) $1,250, Green Spring Days (Hampshire) $950, Guyandotte Civil War Days (Cabell) $9,500, Hamlin 4th of July Celebration (Lincoln) $4,750, Hampshire Civil War Celebration Days (Hampshire) $950, Hampshire County 4th of July Celebration $19,000, Hampshire County Fair $8,000, Hampshire Heritage Days $3,800, Hancock County Oldtime Fair $4,750, Hardy County Commission - 4th of July $9,500, Hatfield McCoy Matewan Reunion Festival (Mingo) $4,750, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) $4,750,
Heritage Craft Festival (Monroe) $950, Heritage Days Festival (Roane) $1,425, Hicks Festival (Tucker) $1,900, Hilltop Festival (Cabell) $950, Hilltop Festival of Lights (McDowell) $1,900, Hinton Railroad Days (Summers) $5,225, Holly River Festival (Webster) $1,425, Hundred 4th of July (Wetzel) $6,888, Hundred American Legion Earl Kiger Post Bluegrass Festival (Wetzel) $1,900, Hurricane 4th of July Celebration (Putnam) $4,750, Iaeger Lions Club Annual Golf Show (McDowell) $1,425, Iaeger Town Fair (McDowell) $1,425, Irish Heritage Festival of WV (Raleigh) $4,750, Irish Spring Festival (Lewis) $950, Italian Heritage Festival-Clarksburg (Harrison) $28,500, Jackson County Fair $4,750, Jacksonburg Homecoming (Wetzel) $950, Jane Lew Arts and Crafts Fair (Lewis) $950, Jefferson County Fair Association $23,750, Jersey Mountain Ruritan Pioneer Days (Hampshire) $950, John Henry Days Festival (Monroe) $4,750, Johnnie Johnson Blues and Jazz Festival (Marion) $4,750, Johnstown Community Fair (Harrison) $2,375, Junior Heifer Preview Show (Lewis) $1,900, Kanawha Coal Riverfest-St. Albans 4th of July Festival (Kanawha) $4,750, Kanawha County Fair $4,750, Kayford Reunion (Kanawha) $2,375, Kermit Fall Festival (Mingo) $2,850, Keyser Old Fashioned 4th of July Celebration (Mineral) $950, Keystone Reunion Gala (McDowell) $2,500, King Coal Festival (Mingo) $4,750, Kingwood Downtown Street Fair and Heritage Days (Preston) $1,900, L.Z. Rainelle WV Veterans Reunion (Greenbrier) $4,750, Lady of Agriculture (Preston) $950, Lamb and Steer Show (Grant) $8,550, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) $9,500, Larry Joe Harless Community Center Spring Middle School Event (Mingo) $4,750, Last Blast of Summer (McDowell) $4,750, Laurel Mt. Re-enactment Committee (Barbour) $3,088, Lewis County Fair Association $3,325, Lewisburg Shanghai (Greenbrier) $1,900, Lincoln County Fall Festival $7,600, Lincoln County Winterfest $4,750, Lincoln District Fair (Marion) $2,375, Little Birch Days Celebration (Braxton) $475, Little Levels Heritage Festival
Ch. 10 | APPROPRIATIONS 231

228 (Pocahontas) $1,900, Logan County Arts and Crafts Fair
229 $3,800, Logan Freedom Festival $14,250, Lost Creek
230 Community Festival (Harrison) $6,650, Mannington District
231 Fair (Marion) $5,700, Maple Syrup Festival (Randolph)
232 $950, Marion County FFA Farm Fest $2,375, Marmet
233 Annual Labor Day Celebration (Kanawha) $5,000, Marshall
234 County Antique Power Show $2,375, Marshall County Fair
235 $7,125, Mason County Fair $4,750, Mason Dixon Festival
236 (Mingo) $5,700, Matewan-Magnolia Fair (Mingo) $42,750,
237 McARTS-McDowell County $19,000, McDowell County
238 Fair $2,375, McGrew House History Day (Preston) $1,900,
239 McNeill’s Rangers (Mineral) $7,600, Meadow Bridge
240 Hometown Festival (Fayette) $1,188, Meadow River Days
241 Festival (Greenbrier) $2,850, Mercer Bluestone Valley Fair
242 (Mercer) $1,900, Mercer County Fair $1,900, Mid Ohio
243 Valley Antique Engine Festival (Wood) $2,850, Milton
244 Christmas in the Park (Cabell) $2,375, Milton Fourth of July
245 Celebration (Cabell) $2,375, Mineral County Fair $1,663,
246 Mineral County Veterans Day Parade $1,425, Molasses
247 Festival (Calhoun) $1,900, Monongahfest (Marion) $6,000,
248 Monroe County Harvest Festival $1,900, Moon Over
249 Mountwood Fishing Festival (Wood) $2,850, Morgan County
250 Fair-History Wagon $1,425, Moundsville Bass Festival
251 (Marshall) $3,800, Moundsville July 4th Celebration
252 (Marshall) $4,750, Mount Liberty Fall Festival (Barbour)
253 $2,375, Mountain Fest (Monongalia) $19,000, Mountain
254 Festival (Mercer) $4,394, Mountain Heritage Arts and Crafts
255 Festival (Jefferson) $4,750, Mountain Music Festival
256 (McDowell) $2,375, Mountain State Apple Harvest Festival
257 (Berkeley) $7,125, Mountain State Arts Crafts Fair Cedar
258 Lakes (Jackson) $42,750, Mountaineer Hot Air Balloon
259 Festival (Monongalia) $3,800, Mud River Festival (Lincoln)
260 $7,600, Mullens Dogwood Festival (Wyoming) $6,650,
261 Multi-Cultural Festival of West Virginia (Kanawha) $19,000,
262 Nettle Festival (Pocahontas) $4,750, New Cumberland
263 Christmas Parade (Hancock) $2,850, New Cumberland
Fourth of July Fireworks (Hancock) $4,750, New River Bridge Day Festival (Fayette) $38,000, Newburg Volunteer Fireman’s Field Day (Preston) $950, Newell Annual Clay Festival (Hancock) $2,850, Nicholas County Fair $4,750, Nicholas County Potato Festival $3,325, North Preston Farmers Club - Civil War Times (Preston) $950, North River Valley Festival (Hampshire) $950, Northern Preston Mule Pull and Farmers Days (Preston) $3,800, Oak Leaf Festival (Fayette) $10,000, Oceana Heritage Festival (Wyoming) $5,700, Oglebay City Park - Festival of Lights (Ohio) $76,000, Oglebay Festival (Ohio) $9,500, Ohio County Country Fair $8,550, Ohio Valley Beef Association (Wood) $2,375, Ohio Valley Black Heritage Festival (Ohio) $5,225, Old Central City Fair (Cabell) $4,750, Old Tyme Christmas (Jefferson) $2,280, Paden City Labor Day Festival (Wetzel) $6,175, Parkersburg Homecoming (Wood) $14,000, Patty Fest (Monongalia) $1,900, Paw Paw District Fair (Marion) $3,325, Pax Reunion Committee (Fayette) $4,750, Pendleton County 4-H Weekend $1,900, Pendleton County Committee for Arts $14,250, Pennsboro Country Road Festival (Ritchie) $1,900, Petersburg Fourth of July Celebration (Grant) $19,000, Petersburg HS Celebration (Grant) $9,500, Piedmont-Annual Back Street Festival (Mineral) $3,800, Pinch Reunion (Kanawha) $1,425, Pine Bluff Fall Festival (Harrison) $3,800, Pine Grove 4th of July Festival (Wetzel) $6,650, Pineville Festival (Wyoming) $5,700, Pleasants County Agriculture Youth Fair $4,750, Poca Heritage Days (Putnam) $2,850, Pocahontas County Pioneer Days $6,650, Point Pleasant Stern Wheel Regatta (Mason) $4,750, Potomac Highlands Maple Festival (Grant) $5,700, Pratt Fall Festival (Kanawha) $2,375, Princeton Street Fair (Mercer) $4,750, Putnam County Fair $4,750, Quartets on Parade (Hardy) $3,800, Rand Community Center Festival (Kanawha) $2,375, Randolph County Community Arts Council $2,850, Randolph County Fair $6,650, Randolph County Ramp and Rails $1,900, Ranson Christmas Festival (Jefferson) $4,750, Ranson Festival (Jefferson) $4,750, Ravenswood Octoberfest
Ch. 10] APPROPRIATIONS

302  (Jackson) $7,600, Reedsville VFD Fair (Preston) $3,325,
303  Renick Liberty Festival (Greenbrier) $950, Riders of the
304  Flood (Greenbrier) $2,850, Ripley 4th of July (Jackson)
305  $14,250, Ritchie County Fair and Exposition $4,750, Ritchie
306  County Pioneer Days $950, River City Festival (Preston)
307  $950, Riverfest (Marion) $1,900, Roane County Agriculture
308  Field Day $2,850, Ronceverte River Festival (Greenbrier)
309  $4,750, Rowlesburg Labor Day Festival (Preston) $950,
310  Rupert Country Fling (Greenbrier) $2,850, Saint Spyridon
311  Greek Festival (Harrison) $2,375, Salem Apple Butter
312  Festival (Harrison) $3,800, Sistersville 4th of July Fireworks
313  (Wetzel) $5,225, Smoke on the Water (Kanawha) $1,900,
314  Smoke on the Water (Wetzel) $2,850, South Charleston
315  Summerfest (Kanawha) $9,500, Southern Wayne County Fall
316  Festival $950, Spirit of Grafton Celebration (Taylor) $9,500,
317  Spring Mountain Festival (Grant) $3,800, Springfield Peach
318  Festival (Hampshire) $1,140, St. Albans City of Lights -
319  December (Kanawha) $4,750, Sternwheel Festival (Wood)
320  $2,850, Stoco Reunion (Raleigh) $2,375, Stonewall Jackson
321  Heritage Arts & Crafts Jubilee $10,450, Storytelling Festival
322  (Lewis) $475, Strawberry Festival (Upshur) $28,500, Tacy
323  Fair (Barbour) $950, Taste of Parkersburg (Wood) $4,750,
324  Taylor County Fair $5,225, Terra Alta VFD 4th of July
325  Celebration (Preston) $950, The Gathering at Sweet Creek
326  (Wood) $2,850, Three Rivers Coal Festival (Marion) $7,363,
327  Thunder on the Tygart - Mothers’ Day Celebration (Taylor)
328  $14,250, Town of Anawalt Celebration (McDowell) $1,425,
329  Town of Delbarton 4th of July Celebration (Mingo) $2,850,
330  Town of Fayetteville Heritage Festival (Fayette) $7,125,
331  Town of Matoaka Hog Roast (Mercer) $950, Treasure
332  Mountain Festival (Pendleton) $23,750, Tri-County Fair
333  (Grant) $14,250, Tucker County Arts Festival and
334  Celebration $17,100, Tucker County Fair $4,513, Tucker
335  County Health Fair $1,900, Tunnelton Depot Days (Preston)
336  $950, Tunnelton Volunteer Fire Department Festival
337  (Preston) $950, Turkey Festival (Hardy) $2,850, Tyler
338  County Fair $4,940, Tyler County Fourth of July $475,
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<td>344</td>
<td>Veterans Welcome Home Celebration (Cabell)</td>
<td>$6,650</td>
</tr>
<tr>
<td>345</td>
<td>(Cabell) $950, Volcano Days at Mountwood Park (Wood)</td>
<td></td>
</tr>
<tr>
<td>346</td>
<td>$4,750, War Homecoming Fall Festival (McDowell)</td>
<td>$1,425</td>
</tr>
<tr>
<td>347</td>
<td>Wardensville Fall Festival (Hardy)</td>
<td>$4,750</td>
</tr>
<tr>
<td>348</td>
<td>Fair $4,750, Wayne County Fall Festival $4,750, Webster</td>
<td></td>
</tr>
<tr>
<td>349</td>
<td>County Wood Chopping Festival $14,250, Webster Wild</td>
<td></td>
</tr>
<tr>
<td>350</td>
<td>Water Weekend $1,900, Weirton July 4th Celebration (Hancock)</td>
<td>$19,000</td>
</tr>
<tr>
<td>351</td>
<td>$3,040, Wellsburg 4th of July Celebration (Brooke) $7,125,</td>
<td></td>
</tr>
<tr>
<td>352</td>
<td>Wellsburg Apple Festival of Brooke County $4,750, West</td>
<td></td>
</tr>
<tr>
<td>353</td>
<td>Virginia Blackberry Festival (Harrison) $4,750, West</td>
<td></td>
</tr>
<tr>
<td>354</td>
<td>Virginia Chestnut Festival (Preston) $950, West Virginia</td>
<td></td>
</tr>
<tr>
<td>355</td>
<td>Coal Festival (Boone) $9,500, West Virginia Coal Show (Mercer)</td>
<td>$2,500</td>
</tr>
<tr>
<td>356</td>
<td>$9,500, West Virginia Dandelion Festival (Greenbrier)</td>
<td></td>
</tr>
<tr>
<td>357</td>
<td>$4,750, West Virginia Fair and Exposition (Wood) $7,695,</td>
<td></td>
</tr>
<tr>
<td>358</td>
<td>West Virginia Fireman’s Rodeo (Fayette) $2,375, West</td>
<td></td>
</tr>
<tr>
<td>359</td>
<td>Virginia Honey Festival (Wood) $1,900, West Virginia Oil</td>
<td></td>
</tr>
<tr>
<td>360</td>
<td>and Gas Festival (Tyler) $10,450, West Virginia Polled</td>
<td></td>
</tr>
<tr>
<td>361</td>
<td>Hereford Association (Braxton) $1,425, West Virginia</td>
<td></td>
</tr>
<tr>
<td>362</td>
<td>Poultry Festival (Hardy) $4,750, West Virginia Pumpkin Festival (Cabell) $9,500, West Virginia State Folk Festival (Gilmer) $4,750, West Virginia State Monarch Butterfly Festival (Brooke) $4,750, West Virginia Water Festival - City of Hinton (Summers) $15,200, West Virginia Wine &amp; Jazz Festival (Monongalia) $8,550, Weston VFD 4th of July Firemen Festival (Lewis) $1,900, Wetzel County Autumnfest $5,225, Wetzel County Town and Country Days $16,150, Wheeling Celtic Festival (Ohio) $1,900, Wheeling City of Lights (Ohio) $7,600, Wheeling Sternwheel Regatta (Ohio) $9,500, Wheeling Vintage Raceboat Regatta (Ohio) $19,000,</td>
<td></td>
</tr>
</tbody>
</table>
Whipple Community Action (Fayette) $2,375, Widen Days Festival (Calhoun) $1,900, Wileyville Homecoming (Wetzel) $3,800, Wine Festival and Mountain Music Event (Harrison) $4,750, Winter Festival of the Waters (Berkeley) $4,750, Wirt County Fair $2,375, Wirt County Pioneer Days $1,900, Youth Stockman Beef Expo. (Lewis) $1,900.

Any Fairs & Festivals 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.

268-Library Commission - Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2013 Org 0433

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Books and Films</td>
<td>$427,500</td>
</tr>
<tr>
<td>2</td>
<td>Services to Libraries</td>
<td>$550,000</td>
</tr>
<tr>
<td>3</td>
<td>Grants to Public Libraries</td>
<td>$9,264,970</td>
</tr>
<tr>
<td>4</td>
<td>Digital Resources</td>
<td>$219,992</td>
</tr>
<tr>
<td>5</td>
<td>Libraries - Special Projects (R)</td>
<td>$850,000</td>
</tr>
<tr>
<td>6</td>
<td>Infomine Network</td>
<td>$873,422</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$12,185,884</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Libraries-Special Projects (fund 3559, activity 625) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

269-Bureau of Senior Services - Lottery Senior Citizens Fund

(WV Code Chapter 29)
<table>
<thead>
<tr>
<th>Fund</th>
<th>Item Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5405</td>
<td>Personal Services</td>
<td>001</td>
<td>$138,628</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>3,000</td>
</tr>
<tr>
<td></td>
<td>West Virginia Helpline</td>
<td>006</td>
<td>200,000</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>65,157</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>130</td>
<td>380,543</td>
</tr>
<tr>
<td></td>
<td>Repairs and Alterations</td>
<td>064</td>
<td>3,000</td>
</tr>
<tr>
<td></td>
<td>Local Programs Service Delivery Costs</td>
<td>200</td>
<td>2,475,250</td>
</tr>
<tr>
<td></td>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>20,000</td>
</tr>
<tr>
<td></td>
<td>Area Agencies Administration</td>
<td>203</td>
<td>38,684</td>
</tr>
<tr>
<td></td>
<td>Senior Citizen Centers and Programs (R)</td>
<td>462</td>
<td>2,470,000</td>
</tr>
<tr>
<td></td>
<td>Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens</td>
<td>539</td>
<td>10,264,882</td>
</tr>
<tr>
<td></td>
<td>Roger Tompkins Alzheimers Respite Care</td>
<td>643</td>
<td>2,296,137</td>
</tr>
<tr>
<td></td>
<td>Regional Aged and Disabled Resource Center</td>
<td>767</td>
<td>935,000</td>
</tr>
<tr>
<td></td>
<td>Senior Services Medicaid Transfer</td>
<td>871</td>
<td>8,670,000</td>
</tr>
<tr>
<td></td>
<td>WV Alzheimer’s Hotline</td>
<td>724</td>
<td>45,000</td>
</tr>
<tr>
<td></td>
<td>Legislative Initiatives for the Elderly</td>
<td>904</td>
<td>10,000,000</td>
</tr>
<tr>
<td></td>
<td>Long Term Care Ombudsman</td>
<td>905</td>
<td>321,325</td>
</tr>
<tr>
<td></td>
<td>BRIM Premium</td>
<td>913</td>
<td>7,243</td>
</tr>
<tr>
<td></td>
<td>In-Home Services and Nutrition for Senior Citizens</td>
<td>917</td>
<td>4,500,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$42,833,849</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, activity 462), at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
Included in the above appropriation for Current Expenses (fund 5405, activity 130), is $50,000 for an in-home direct care workforce registry.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (activity 539) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

In addition to the above appropriations, funding is available in the special revenue Community Based Service Fund (fund 5409) to provide in-home and community-based services for the eligible aged and disabled citizens of West Virginia that provides funding at a comparable level with FY 2012.

270-Community and Technical College — Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2013 Org 0442

1 Debt Service - Total.................. 310 $5,000,000

Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements - Total (fund 4908, activity 847) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.


(WV Code Chapters 18B and 18C)
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Marshall Medical School - RHI</td>
<td>033</td>
<td>$471,258</td>
</tr>
<tr>
<td>2</td>
<td>Program and Site Support (R)</td>
<td>035</td>
<td>$1,294,995</td>
</tr>
<tr>
<td>3</td>
<td>WVU Health Sciences - RHI</td>
<td>036</td>
<td>$2,213,469</td>
</tr>
<tr>
<td>4</td>
<td>RHI Program and Site Support (R)  - RHEP Program</td>
<td>037</td>
<td>$169,731</td>
</tr>
<tr>
<td>5</td>
<td>RHI Program and Site Support - Grad Med Ed and Fiscal</td>
<td>038</td>
<td>$98,709</td>
</tr>
<tr>
<td>6</td>
<td>Higher Education Grant</td>
<td>039</td>
<td>$0</td>
</tr>
<tr>
<td>7</td>
<td>Program (R)</td>
<td>040</td>
<td>$150,000</td>
</tr>
<tr>
<td>8</td>
<td>Minority Doctoral Fellowship (R)</td>
<td>041</td>
<td>$141,142</td>
</tr>
<tr>
<td>9</td>
<td>Underwood—Smith Scholarship</td>
<td>042</td>
<td>$251,542</td>
</tr>
<tr>
<td>10</td>
<td>Vice Chancellor for Health Sciences - Rural Health</td>
<td>043</td>
<td>$267,882</td>
</tr>
<tr>
<td>11</td>
<td>MA Public Health Program and Health Science Technology (R)</td>
<td>044</td>
<td>$62,483</td>
</tr>
<tr>
<td>12</td>
<td>Marshall University Graduate</td>
<td>045</td>
<td>$25,000</td>
</tr>
<tr>
<td>13</td>
<td>College Writing Project (R)</td>
<td>046</td>
<td>$470,473</td>
</tr>
<tr>
<td>14</td>
<td>Health Sciences Career</td>
<td>047</td>
<td>$378,192</td>
</tr>
<tr>
<td>15</td>
<td>HSTA Program (R)</td>
<td>048</td>
<td>$1,543,868</td>
</tr>
<tr>
<td>16</td>
<td>Center for Excellence in Disabilities (R)</td>
<td>049</td>
<td>$350,000</td>
</tr>
<tr>
<td>17</td>
<td>Total</td>
<td></td>
<td>$7,888,744</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations at the close of fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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 W.Va. Code §18C-4-1.

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 W.Va. Code §18C-6-1.

Total TITLE II, Section 4 - Lottery Revenue............. $145,025,203

Sec. 5. Appropriations from state excess lottery revenue fund. - In accordance with W.Va. Code §29-22-18a, 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.Va. 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 700 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 5365, activity 189 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.

272-Lottery Commission - Refundable Credit

Fund 7207 FY 2013 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Excess Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>700</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. 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.

273-Lottery Commission - General Purpose Account

Fund 7206 FY 2013 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>700</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directed Transfer. . . . . . . . . . . . . . .</td>
<td>$ 65,000,000</td>
</tr>
</tbody>
</table>
The above appropriation shall be transferred to the General Revenue Fund as determined by the director of the lottery in accordance with W.Va. Code §29-22-18a.

274-Education Improvement Fund

Fund 4295 FY 2013 Org 0441

Directed Transfer................. 700 $ 29,000,000

The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

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.

275-Economic Development Authority - Economic Development Project Fund

Fund 9065 FY 2013 Org 0944

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

Pursuant to W.Va. Code §29-22-18a, subsection (f), 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 W.Va. Code §29-22-18, subsection (f).

276-School Building Authority

Fund 3514 FY 2013 Org 0402

Debt Service - Total................. 310 $19,000,000
277-West Virginia Infrastructure Council

Fund 3390 FY 2013 Org 0316

1 Directed Transfer . . . . . . . . . . . . . . . . . 700 $ 46,000,000


278-Higher Education Improvement Fund

Fund 4297 FY 2013 Org 0441

1 Directed Transfer . . . . . . . . . . . . . . . . . 700 $ 15,000,000

The above appropriation shall be transferred to fund 4903, org 0442 as authorized by Senate Concurrent Resolution No. 41.

279-State Park Improvement Fund

Fund 3277 FY 2013 Org 0310

1 Unclassified . . . . . . . . . . . . . . . . . . . . 099 $ 50,000
2 Current Expenses . . . . . . . . . . . . . . . . . 130 2,438,300
3 Repairs and Alterations . . . . . . . . . . . . . 064 2,161,200
4 Equipment . . . . . . . . . . . . . . . . . . . . . 070 200,000
5 Buildings . . . . . . . . . . . . . . . . . . . . . 258 100,000
6 Other Assets . . . . . . . . . . . . . . . . . . . . 690 50,500
7 Total . . . . . . . . . . . . . . . . . . . . . . . . $ 5,000,000

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

Appropriations to the State Park Improvement Fund are not to be expended on personal services or employee benefits.
### 280—Racing Commission -

**Fund 7308 FY 2013 Org 0707**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Breeders Compensation</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

### 281—Lottery Commission -

*Excess Lottery Revenue Fund Surplus*

**Fund 7208 FY 2013 Org 0705**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Teachers’ Retirement Savings Realized</td>
<td>$28,061,000</td>
</tr>
<tr>
<td>2</td>
<td>Directed Transfer</td>
<td>$27,600,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$55,661,000</td>
</tr>
</tbody>
</table>

The above appropriation for Directed Transfer (fund 7208, activity 700) 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 (fund 2044).

### 282—Joint Expenses

*(WV Code Chapter 4)*

**Fund 1736 FY 2013 Org 2300**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>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 2012 is hereby reappropriated for expenditure during the fiscal year 2013.</td>
<td></td>
</tr>
</tbody>
</table>
283—Governor’s Office

(WV Code Chapter 5)

Fund 1046 FY 2013 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 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

284—West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2013 Org 0307

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

Any unexpended balances remaining in the appropriations for Unclassified - Total (fund 3170, activity 096), Recreational Grants or Economic Development Loans (fund 3170, activity 253), and Connectivity Research and Development - Lottery Surplus (fund 3170, activity 923) at the close of the fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

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 W.Va. Code §5A-6-4.

*Clerk’s Note: The Governor reduced Item 284, line 1, Unclassified - Total, by $410,000, from $810,000 to $400,000.*
285—Higher Education Policy Commission - Administration - Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2013 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, activity 028) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

286—Division of Health — Central Office

(WV Code Chapter 16)

Fund 5219 FY 2013 Org 0506

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 5219, activity 755) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

287—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2013 Org 0511

Medical Services. . . . . . . . . . . . . . . . . . . . . . . . . . . 189 $24,503,890

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

(WV Code Chapter 5F)
Any unexpended balance remaining in the appropriation for Interoperable Communications System (fund 6005, activity 303) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

289—Division of Corrections - Correctional Units

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

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, activity 755) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

Total TITLE II, Section 5 - Excess Lottery Funds $ 290,974,890

Sec. 6. Appropriations of federal funds. - In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2013.

LEGISLATIVE

290-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2013 Org 2300
## APPROPRIATIONS

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Economic Loss Claim Payment</td>
</tr>
<tr>
<td>2</td>
<td>Fund</td>
</tr>
</tbody>
</table>

### JUDICIAL

#### 291-Supreme Court

**Fund 8867 FY 2013 Org 2400**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
</tr>
</tbody>
</table>

### EXECUTIVE

#### 292-Governor’s Office - American Recovery and Reinvestment Act

*(WV Code Chapter 5)*

**Fund 8701 FY 2013 Org 0100**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Federal Economic Stimulus</td>
</tr>
</tbody>
</table>

#### 293-Governor’s Office - ARRA NTIA Broadband Infrastructure Grant Fund

*(WV Code Chapter 5)*

**Fund 8717 FY 2013 Org 0100**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Federal Economic Stimulus</td>
</tr>
</tbody>
</table>
## 294-Governor’s Office

(WV Code Chapter 5)

Fund 8742 FY 2013 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$90,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$39,500</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>130</td>
<td>$24,869,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$25,000,000</strong></td>
</tr>
</tbody>
</table>

## 295-Governor’s Office - Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2013 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$350,000</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,785</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$134,122</td>
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<tr>
<td>Current Expenses</td>
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## 296-Governor’s Office - Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2013 Org 0100

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### 297-Department of Agriculture
#### (WV Code Chapter 19)

**Fund 8736 FY 2013 Org 1400**

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### 298-Department of Agriculture - Meat Inspection
#### (WV Code Chapter 19)

**Fund 8737 FY 2013 Org 1400**

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### 299-Department of Agriculture - State Conservation Committee
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### 300—Department of Agriculture - Land Protection Authority

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### 301—Secretary of State - State Election Fund

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### DEPARTMENT OF ADMINISTRATION

302—Children’s Health Insurance Agency
Fund 8838  FY 2013  Org 0230

1  Personal Services. ................. 001  $ 373,310
2  Annual Increment .................. 004  7,140
3  Employee Benefits ................. 010  196,849
4  Current Expenses ................. 130  37,379,427
5  Total. .......................... $37,956,726

303—WV Retiree Health Benefits Trust Fund

Fund 8759  FY 2013  Org 0232

1  Current Expenses ................. 130  $10,000,000

DEPARTMENT OF COMMERCE

304-Division of Forestry

Fund 8703  FY 2013  Org 0305

1  Personal Services .................. 001  $ 648,400
2  Annual Increment ................. 004  12,500
3  Employee Benefits ................. 010  277,712
4  Unclassified ...................... 099  101,950
5  Current Expenses .................. 130  9,059,078
6  Repairs and Alterations .......... 064  100,000
7  Total. .......................... $10,199,640

305-Geological and Economic Survey

(WV Code Chapter 29)
### Fund 8704 FY 2013 Org 0306

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#### 306-West Virginia Development Office

(WV Code Chapter 5B)

### Fund 8705 FY 2013 Org 0307

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#### 307-Division of Labor

(WV Code Chapters 21 and 47)

### Fund 8706 FY 2013 Org 0308

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### 308-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2013 Org 0310

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<td>10. Land</td>
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### 309-Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2013 Org 0314

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### 310-WorkForce West Virginia

(WV Code Chapter 23)
### Appropriations

**Fund 8835 FY 2013 Org 0323**

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</table>

Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.Va. Code §21A-9-9, the above appropriation to Unclassified and Current Expenses shall be used by 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.

311-Division of Energy

(WV Code Chapter 5B)

**Fund 8892 FY 2013 Org 0328**

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### DEPARTMENT OF EDUCATION

#### 312-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2013 Org 0402

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<td>Other Assets</td>
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#### 313-State Department of Education - School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2013 Org 0402

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### 314-State Board of Education - Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714  FY 2013  Org 0402

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<td>7</td>
<td>Equipment</td>
<td>070</td>
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### 315-State Department of Education - Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715  FY 2013  Org 0402

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### 316-West Virginia Schools for the Deaf and the Blind
### DEPARTMENT OF EDUCATION AND THE ARTS

#### 317-Department of Education and the Arts -
*Office of the Secretary*

(WV Code Chapter 5F)

<table>
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<th>Org</th>
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#### 318-Division of Culture and History

(WV Code Chapter 29)

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<th>Org</th>
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### 319-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2013 Org 0433

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### 320-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2013 Org 0439

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

(WV Code Chapter 18)

Fund 8734 FY 2013 Org 0932

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

(WV Code Chapter 18)

Fund 8890  FY 2013  Org 0932

1  Personal Services. . . . . . . . . . . . . . 001  $ 9,781,700
2  Annual Increment. . . . . . . . . . . . . . 004  260,000
3  Employee Benefits. . . . . . . . . . . . . . 010  5,864,506
4  Current Expenses. . . . . . . . . . . . . . . 130  9,207,634
5  Repairs and Alterations. . . . . . . . . . . 064  1,100
6  Equipment. . . . . . . . . . . . . . . . . . . . 070  83,350
7  Total. . . . . . . . . . . . . . . . . . . . . . . . .  $ 25,198,290

DEPARTMENT OF ENVIRONMENTAL PROTECTION

323-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708  FY 2013  Org 0313

1  Personal Services. . . . . . . . . . . . . . 001  $ 19,212,824
2  Annual Increment. . . . . . . . . . . . . . 004  310,489
3  Employee Benefits. . . . . . . . . . . . . . 010  7,352,792
4  Current Expenses. . . . . . . . . . . . . . . 130  143,243,738
5  Repairs and Alterations. . . . . . . . . . . 064  231,750
6  Equipment. . . . . . . . . . . . . . . . . . . . 070  894,490
7  Other Assets. . . . . . . . . . . . . . . . . . . . 690  160,393
8  Federal Economic Stimulus. . . . . . . . . . 891  2,007,850
9  Total. . . . . . . . . . . . . . . . . . . . . . . . .  $ 173,414,326
### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

#### 324-Consolidated Medical Service Fund

(WV Code Chapter 16)

**Fund 8723 FY 2013 Org 0506**

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#### 325-Division of Health - Central Office

(WV Code Chapter 16)

**Fund 8802 FY 2013 Org 0506**

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#### 326-Division of Health - West Virginia Safe Drinking Water Treatment
### 327-West Virginia Health Care Authority

(WV Code Chapter 16)

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<th>Code</th>
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### 328-Human Rights Commission

(WV Code Chapter 5)

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### 329-Division of Human Services

(WV Code Chapters 9, 48 and 49)

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DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

330-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2013 Org 0601

1 Personal Services. . . . . . . . . . . . . . . . . . . . 001 $ 248,426
2 Annual Increment. . . . . . . . . . . . . . . . . . . . 004 4,040
3 Employee Benefits. . . . . . . . . . . . . . . . . . . . 010 113,033
4 Unclassified. . . . . . . . . . . . . . . . . . . . . . . . 099 250,053
5 Current Expenses. . . . . . . . . . . . . . . . . . . . . 130 24,375,774
6 Repairs and Alterations. . . . . . . . . . . . . . . . 064 6,500
7 Other assets. . . . . . . . . . . . . . . . . . . . . . . . 690 7,500
8 Total. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $ 25,005,326

331-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 8726 FY 2013 Org 0603

1 Unclassified. . . . . . . . . . . . . . . . . . . . . . . . 099 $ 969,296
2 Martinsburg Starbase . . . . . . . . . . . . . . . . . . . 742 350,000
The adjutant general shall have the authority to transfer between line items.

332-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2013 Org 0606

1 Personal Services. ................. 001 $ 483,630
2 Annual Increment. ................. 004 6,340
3 Employee Benefits. ............... 010 198,385
4 Current Expenses. ................. 130 20,567,576
5 Total. .......................... $ 21,255,931

333-Division of Corrections

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

Fund 8836 FY 2013 Org 0608

1 Unclassified. ................. 099 $1,100
2 Current Expenses. ................. 130 108,900
3 Total. .......................... $ 110,000

334-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2013 Org 0612
### APPROPRIATIONS

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#### 335-Fire Commission

(WV Code Chapter 29)

Fund **8819** FY **2013** Org **0619**

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#### 336-Division of Justice and Community Services

(WV Code Chapter 15)

Fund **8803** FY **2013** Org **0620**

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<td>2,000</td>
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<td>7</td>
<td>Equipment</td>
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<td>8</td>
<td>Buildings</td>
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<td>9</td>
<td>Other Assets</td>
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### DEPARTMENT OF REVENUE

#### 337-Tax Division - Consolidated Federal Fund
### Fund 8899 FY 2013 Org 0702

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**338-Insurance Commissioner**

(WV Code Chapter 33)

### Fund 8883 FY 2013 Org 0704

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### DEPARTMENT OF TRANSPORTATION

#### 339-Division of Motor Vehicles

(WV Code Chapter 17B)

### Fund 8787 FY 2013 Org 0802

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340 - State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2013 Org 0804

1 Current Expenses. . . . . . . . . . . . . . . 130 $ 250,000

341-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2013 Org 0805

1 Personal Services. . . . . . . . . . . . . . . 001 $ 442,232
2 Annual Increment. . . . . . . . . . . . . . . 004 7,560
3 Employee Benefits. . . . . . . . . . . . . . 010 183,257
4 Current Expenses. . . . . . . . . . . . . . 130 6,670,961
5 Repairs and Alterations. . . . . . . . . . 064 2,500
6 Equipment. . . . . . . . . . . . . . . . . . . 070 3,215,906
7 Buildings. . . . . . . . . . . . . . . . . . . 258 5,843,714
8 Other Assets. . . . . . . . . . . . . . . . . . 690 965,000
9 Federal Economic Stimulus. . . . . . . 891 2,000,000
10 Total. . . . . . . . . . . . . . . . . . . . . $ 19,331,130

342-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2013 Org 0806

1 Current Expenses. . . . . . . . . . . . . . . 130 $7,091,713

DEPARTMENT OF VETERANS’ ASSISTANCE

343-Department of Veterans’ Assistance
### APPROPRIATIONS

(WV Code Chapter 9A)

**Fund 8858 FY 2013 Org 0613**

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**344-Department of Veterans’ Assistance - Veterans’ Home**

(WV Code Chapter 9A)

**Fund 8728 FY 2013 Org 0618**

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</table>

### BUREAU OF SENIOR SERVICES

**345-Bureau of Senior Services**

(WV Code Chapter 29)

**Fund 8724 FY 2013 Org 0508**

<table>
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<tr>
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<td>APPROPRIATIONS</td>
<td>[Ch. 10]</td>
</tr>
<tr>
<td>-------------------------</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
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**MISCELLANEOUS BOARDS AND COMMISSIONS**

**346-Public Service Commission - Motor Carrier Division**

(WV Code Chapter 24A)

Fund 8743 FY 2013 Org 0926

<p>| | | |</p>
<table>
<thead>
<tr>
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<tr>
<td>1 Personal Services</td>
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**347-Public Service Commission - Gas Pipeline Division**

(WV Code Chapter 24B)

Fund 8744 FY 2013 Org 0926

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**348-National Coal Heritage Area Authority**
### Fund 8869 FY 2013 Org 0941

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349-Coal Heritage Highway Authority

(WV Code Chapter 29)

### Fund 8861 FY 2013 Org 0942

<table>
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5 Total TITLE II, Section 6 - Federal Funds $3,792,019,112

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 2013.

350-Governor’s Office -
Office of Economic Opportunity
Community Services

Fund 8799 FY 2013 Org 0100
### APPROPRIATIONS [Ch. 10]

1. Personal Services .................. 001   $ 250,000
2. Annual Increment .................... 004   4,000
3. Employee Benefits .................. 010   97,708
4. Current Expenses .................... 130   8,043,292
5. Repairs and Alterations ............. 064   1,000
6. Equipment .......................... 070   4,000
7. Total ................................ $ 8,400,000

#### 351-West Virginia Development Office - Community Development

**Fund 8746 FY 2013 Org 0307**

1. Personal Services .................. 001   $ 470,800
2. Annual Increment .................... 004   8,000
3. Employee Benefits .................. 010   166,924
4. Unclassified ........................ 099   533,500
5. Current Expenses .................... 130   47,169,388
6. Repairs and Alterations ............. 064   300
7. Equipment .......................... 070   10,000
8. Federal Economic Stimulus .......... 891   5,000,000
9. Total ................................ $ 53,358,912

#### 352-WorkForce West Virginia - Workforce Investment Act

**Fund 8749 FY 2013 Org 0323**

1. Personal Services .................. 001   $ 1,119,882
2. Annual Increment .................... 004   15,040
3. Employee Benefits .................. 010   376,286
4. Unclassified ........................ 099   203,023
5. Current Expenses .................... 130   18,584,909
6. Repairs and Alterations ............. 064   1,600
7. Equipment .......................... 070   500
8. Buildings ........................... 258   1,100
9. Federal Economic Stimulus .......... 891   1,100,000
10. Total ............................... $ 21,402,340
### 353-Division of Energy - Energy Efficiency and Conservation

**Fund 8702 FY 2013 Org 0328**

<table>
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<tbody>
<tr>
<td>1</td>
<td>Federal Economic Stimulus</td>
<td>891</td>
<td>$2,000,000</td>
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### 354-Division of Health - Maternal and Child Health

**Fund 8750 FY 2013 Org 0506**

<table>
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<td>3</td>
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### 355-Division of Health - Preventive Health

**Fund 8753 FY 2013 Org 0506**

<table>
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<td>2</td>
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<td>$2,245,785</td>
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### 356-Division of Health - Substance Abuse Prevention and Treatment

**Fund 8793 FY 2013 Org 0506**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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## Appropriations

### 357-Division of Health - Community Mental Health Services

**Fund 8794 FY 2013 Org 0506**

<table>
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<tr>
<th>Item Description</th>
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<tbody>
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### 358-Division of Health - Abstinence Education Program

**Fund 8825 FY 2013 Org 0506**

<table>
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</tr>
</thead>
<tbody>
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### 359-Division of Human Services - Energy Assistance

**Fund 8755 FY 2013 Org 0511**

<table>
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<th>Code</th>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>Unclassified</td>
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<td>Description</td>
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<td>Current Expenses</td>
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<td>Total</td>
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</table>

### 360-Division of Human Services - Social Services

Fund **8757** FY **2013** Org **0511**

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

### 361-Division of Human Services - Temporary Assistance for Needy Families

Fund **8816** FY **2013** Org **0511**

<table>
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<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
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### 362-Division of Human Services - Child Care and Development

Fund **8817** FY **2013** Org **0511**

<table>
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<tr>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>17,000</td>
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<td>Total</td>
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<td>40,043,287</td>
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</tbody>
</table>
Sec. 8. Awards for claims against the state. – There are hereby appropriated for fiscal year 2013, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $6,057,143, special revenue funds in the amount of $366,855, and state road funds in the amount of $2,093,948 for payment of claims against the state.

Sec. 9. Appropriations from surplus accrued. – The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2013 out of surplus funds only, accrued from the fiscal year ending June 30, 2012, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of July 31, 2012 from the fiscal year ending June 30, 2012.

In the event that surplus revenues available on July 31, 2012, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made
to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

364-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2013 Org 0506

1 Substance Abuse Continuum of
2 Care - Surplus. . . . . . . . . . . . 722 $ 2,500,000

From the above appropriation (fund 0525, *activity 354), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan. Prior to disbursement of funds, the Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities, shall submit a gap analysis of substance abuse services, and an outline of service provision costs to provide assistance to the Regional Task Forces and the Advisory Council for development and prioritization of recommendations.

365-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2013 Org 0511

1 Medical Services - Surplus. . . . . . 633 $33,920,831

*Clerk's Note:* In item 364, line 3, the Governor deleted a reference to an incorrect activity number, “activity 354”.
### 366-Division of Human Services

(WV Code Chapters 9, 48 and 49)

**Fund 0403 FY 2013 Org 0511**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Medical Services - Surplus. . . . . . 633</td>
<td>$20,000,000</td>
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### 367-Division of Human Services

(WV Code Chapters 9, 48 and 49)

**Fund 0403 FY 2013 Org 0511**

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Medical Services Trust Fund</td>
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<td>Transfer - Surplus. . . . . . . . 638</td>
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<tr>
<td>4</td>
<td>Surplus Accrued</td>
<td>$67,500,000</td>
</tr>
</tbody>
</table>

#### Sec. 10. Special revenue appropriations.

- There are hereby appropriated for expenditure during the fiscal year 2013 appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.Va. Code §12-2 and 3, and W.Va. Code §11b-2, 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.

In addition to the preceding provisions, any unencumbered balance in the Courtesy Patrol Fund (fund 3078), established
Sec. 11. State improvement fund appropriations. - Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year 2013, 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 2013 to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 12. Specific funds and collection accounts. - A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 13. Appropriations for refunding erroneous payment. - Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or
her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

**Sec. 14. Sinking fund deficiencies.** - There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by W.Va. Code §31-18-20b, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

**Sec. 15. Appropriations for local governments.** - There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.
Sec. 16. Total appropriations. - Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, buildings, equipment, other assets, land, and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I - GENERAL PROVISIONS, Sec. 3.

Sec. 17. General school fund. - The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.Va. Code §18-9A-16.

TITLE III - ADMINISTRATION.

Sec. 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 2, Chapter 11B 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. 650 - By Senators Kessler, Mr. President, and Hall)
[By Request of the Executive]

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 16, 2012.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2012, organization 0511, by supplementing and amending the appropriation for the fiscal year ending June 30, 2012.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Documents which included a statement of the State Fund, General Revenue, dated January 11, 2012, setting forth therein the cash balance as of July 1, 2011, and further included the estimate of revenues for fiscal year 2012, less net appropriation balances forwarded and regular appropriations for the fiscal year 2012; and

WHEREAS, It appears from the Governor’s Executive Budget Documents statement of the State Fund, General Revenue there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

*Be it enacted by the Legislature of West Virginia:*
That the total appropriation for the fiscal year ending June 30, 2012, to fund 0403, fiscal year 2012, organization 0511, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

67–Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2012 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>$27,315,518</td>
</tr>
<tr>
<td>004</td>
<td>771,638</td>
</tr>
<tr>
<td>010</td>
<td>12,354,350</td>
</tr>
<tr>
<td>099</td>
<td>15,452,857</td>
</tr>
<tr>
<td>144</td>
<td>775,933</td>
</tr>
<tr>
<td>183</td>
<td>1,835,469</td>
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<tr>
<td>189</td>
<td>230,550,319</td>
</tr>
<tr>
<td>195</td>
<td>75,571,254</td>
</tr>
<tr>
<td>196</td>
<td>1,565,000</td>
</tr>
<tr>
<td>274</td>
<td>1,905,367</td>
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<tr>
<td>384</td>
<td>400,000</td>
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<tr>
<td>455</td>
<td>698,797</td>
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<td>466</td>
<td>88,753,483</td>
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<td>468</td>
<td>19,142,591</td>
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<td></td>
<td>Appropriations</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
</tr>
<tr>
<td>19</td>
<td>OSCAR and RAPIDS</td>
</tr>
<tr>
<td>20</td>
<td>Title XIX Waiver for Seniors</td>
</tr>
<tr>
<td>21</td>
<td>Surplus</td>
</tr>
<tr>
<td>22</td>
<td>Title XIX Waiver for Seniors</td>
</tr>
<tr>
<td>23</td>
<td>WV Teaching Hospitals</td>
</tr>
<tr>
<td>24</td>
<td>Tertiary/Safety Net</td>
</tr>
<tr>
<td>25</td>
<td>Specialized Foster Care</td>
</tr>
<tr>
<td>26</td>
<td>Child Welfare System</td>
</tr>
<tr>
<td>27</td>
<td>Medical Services - Surplus</td>
</tr>
<tr>
<td>28</td>
<td>In-Home Family Education</td>
</tr>
<tr>
<td>29</td>
<td>WV Works Separate State Program</td>
</tr>
<tr>
<td>30</td>
<td>Child Support Enforcement</td>
</tr>
<tr>
<td>31</td>
<td>Medicaid Auditing</td>
</tr>
<tr>
<td>32</td>
<td>Temporary Assistance for Needy Families/Maintenance of Effort</td>
</tr>
<tr>
<td>33</td>
<td>Child Care Maintenance of Effort</td>
</tr>
<tr>
<td>34</td>
<td>Child and Family Services</td>
</tr>
<tr>
<td>35</td>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
</tr>
<tr>
<td>36</td>
<td>Capital Outlay and Maintenance (R)</td>
</tr>
<tr>
<td>37</td>
<td>Medical Services</td>
</tr>
<tr>
<td>38</td>
<td>Administrative Costs</td>
</tr>
<tr>
<td>39</td>
<td>Indigent Burials (R)</td>
</tr>
<tr>
<td>40</td>
<td>BRIM Premium</td>
</tr>
<tr>
<td>41</td>
<td>Rural Hospitals Under 150 Beds</td>
</tr>
<tr>
<td>42</td>
<td>Children’s Trust Fund - Transfer</td>
</tr>
<tr>
<td>43</td>
<td>Traumatic Brain Injury Waiver</td>
</tr>
<tr>
<td>44</td>
<td>Total</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Medical Services (fund 0403, activity...
189), Family Resource Networks (fund 0403, activity 274),
Capital Outlay and Maintenance (fund 0403, activity 755),
and Indigent Burials (fund 0403, activity 851) at the close of
the fiscal year 2011 are hereby reappropriated for expenditure
during the fiscal year 2012.

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 Article 5Q, Chapter 16 of the code.

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

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

From the above appropriation for 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), fifty percent of the total shall be divided
equally and distributed among the fourteen (14) licensed
programs and the West Virginia Coalition Against Domestic
Violence (WVCADV). The 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 above appropriation for Unclassified (fund 0403, activity 099) $100,000 is provided for a one-time pilot program for at-risk youth. The funds are to be administered as a reimbursement grant and may only be drawn down on a one-to-one matching basis.

Included in the above appropriation for Social Services fund 0403, activity 195) is an additional $78,365 for continuing education requirements relating to the practice of social work.

From the above appropriation for WV Works Separate State Program (activity 698), funding shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and to the WV Works Separate State Two-Parent Program Fund (fund 5468).
AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2012, in the amount of $212,859.85 from the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Legislature finds that the account balance in the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 11, 2012, which
included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2011; and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for fiscal year 2012; and

Whereas, It appears from the Governor’s Executive Budget document, statement of the State Fund, General Revenue, and this legislation there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2012, to the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, be decreased by expiring the amount of $212,859.85 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0450, fiscal year 2012, organization 0608, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

74-Division of Corrections - Correctional Units
The purpose of this bill is to expire funds into the unappropriated surplus balance in the state fund, general revenue, and to supplement, amend and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2012.

CHAPTER 13

(S. B. 677 - By Senators Prezioso, D. Facemire, Chafin, Edgell, Green, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Unger, Wells, Yost, Boley, Hall and Sypolt)

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 21, 2012.]

AN ACT expiring funds to the surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2012, in the amount of $3,700,000 from the Department of Health and Human Resources - Medicaid Fraud Control Fund, fund 5141, fiscal year 2012, organization 0511, and making a
supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as a surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2012, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Legislature finds that the account balance in the Department of Health and Human Resources - Medicaid Fraud Control Fund, fund 5141, fiscal year 2012, organization 0511, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 11, 2012, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2011; and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for fiscal year 2012; and

WHEREAS, It appears from the Governor’s Executive Budget document, statement of the State Fund, General Revenue, and this legislation there now remains a surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2012, Department of Health and Human Resources - Medicaid Fraud Control Fund, fund 5141, fiscal year 2012, organization 0511, be decreased by expiring the amount of $3,700,000 to the surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year 2012.
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0403, fiscal year 2012, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*67-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2012 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 8 Medical Services - Surplus (R)</td>
<td>$ 3,700,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire funds into the surplus balance in the State Fund, General Revenue, and to supplement, amend and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2012.
CHAPTER 14

(S. B. 678 - By Senators Prezioso, D. Facemire, Chafin, Edgell, Green, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Unger, Wells, Yost, Boley, Hall and Sypolt)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 21, 2012.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2012, organization 0209, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2012, organization 0221, to the Department of Commerce, Division of Forestry, fund 0250, fiscal year 2012, organization 0305, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2012, organization 0310, to the Department of Education, State Department of Education, fund 0313, fiscal year 2012, organization 0402, to the Department of Education and the Arts, Division of Culture and History, fund 0293, fiscal year 2012, organization 0432, to the Department of Environmental Protection, Division of Environmental Protection, fund 0273, fiscal year 2012, organization 0313, to the Department of Health and Human Resources, Division of Health - Central Office, fund 0407, fiscal year 2012, organization 0506, to the Department of Health and Human
Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2012, organization 0511, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, to the Department of Veterans’ Assistance, Department of Veterans’ Assistance, fund 0456, fiscal year 2012, organization 0613, to Higher Education, West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2012, organization 0420, and to Higher Education, Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2012, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Documents on January 11, 2012, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2011, and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for the fiscal year 2012; and

WHEREAS, It appears from the Executive Budget Document Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2012, to fund 0131, fiscal year 2012, organization 1400, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

10–Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2012 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>13a</td>
<td>Capital Outlay, Repairs and</td>
</tr>
<tr>
<td>13b</td>
<td>Equipment - Surplus (R) . . . 677 $1,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Capital Outlay, Repairs and Equipment - Surplus (fund 0131, activity 677) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0203, fiscal year 2012, organization 0209, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

20-Division of Finance
### Title II-- Appropriations

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF ADMINISTRATION**

**27-Public Defender Services**

(WV Code Chapter 29)

Fund 0226 FY 2012 Org 0221

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Appointed Counsel Fees -</td>
<td>$ 13,000,000</td>
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<tr>
<td>Surplus (R)</td>
<td>$435</td>
</tr>
</tbody>
</table>

The above appropriation for Enterprise Resource Planning System - Surplus (activity 872) shall be transferred to the West Virginia Enterprise Resource Planning Board, fund 9080, organization 0947.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0226, fiscal year 2012, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:
Any unexpended balance remaining in the above appropriation for the Appointed Counsel Fees - Surplus (fund 0226, activity 435) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0250, fiscal year 2012, organization 0305, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

34–Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2012 Org 0305

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>097</td>
<td>$ 375,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0250, activity 097) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0265, fiscal year 2012, organization 0310, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

39–Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2012 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a Canaan Valley Resort State Park</td>
<td></td>
</tr>
<tr>
<td>6b Operating - Surplus (R)</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Canaan Valley Resort State Park Operating - Surplus (fund 0265, activity 710) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0313, fiscal year 2012, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

48–State Department of Education
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0293, fiscal year 2012, organization 0432, be supplemented and amended by adding a new item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF EDUCATION AND THE ARTS**

55–Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2012 Org 0432

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 4a Capital Improvements - Surplus (R)</td>
<td>$ 304,000</td>
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</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Capital Improvements - Surplus (fund 0293,
activity 661) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0273, fiscal year 2012, organization 0313, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

60–Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2012 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>097</td>
<td>$1,300,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Surplus (activity 097) shall be transferred to the Underground Storage Tank Insurance Fund, fund 3218, organization 0313.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0407, fiscal year 2012, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

63–Division of Health - Central Office

(WV Code Chapter 16)

Fund 0407 FY 2012 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Surplus</td>
<td>$ 36,545</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0525, fiscal year 2012, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

64–Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2012 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay, Repairs and</td>
<td>$ 6,000,000</td>
</tr>
<tr>
<td>Equipment - Surplus (R) . 677</td>
<td>$ 6,000,000</td>
</tr>
</tbody>
</table>
3 Any unexpended balance remaining in the above appropriation for Capital Outlay, Repairs and Equipment - Surplus (fund 0525, activity 677) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

8 And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0403, fiscal year 2012, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

67–Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2012 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified - Surplus . . . . . . . 097</td>
</tr>
<tr>
<td>9</td>
<td>Social Services - Surplus . . . . . . . 082</td>
</tr>
<tr>
<td>27</td>
<td>Medical Services - Surplus (R) . . 633</td>
</tr>
</tbody>
</table>

4 The above appropriation for Unclassified - Surplus (activity 097) shall be transferred to the West Virginia Works Separate State Two-Parent Program Fund, fund 5468, organization 0511.
Any unexpended balance remaining in the above appropriation for Medical Services - Surplus (fund 0403, activity 633) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0450, fiscal year 2012, organization 0608, be supplemented and amended by adding new items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

74-Division of Corrections -
Correctional Units

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

Fund 0450 FY 2012 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Payments to Counties and/or</td>
<td></td>
</tr>
<tr>
<td>2 Regional Jails - Surplus (R) ...</td>
<td>$ 9,000,000</td>
</tr>
<tr>
<td>3c Payments for Voluntary Inmate</td>
<td></td>
</tr>
<tr>
<td>4 Placement - Surplus (R) .......</td>
<td>1,500,000</td>
</tr>
<tr>
<td>5 Capital Improvements -</td>
<td></td>
</tr>
<tr>
<td>Surplus (R) ....................</td>
<td>5,500,000</td>
</tr>
<tr>
<td>7 Capital Outlay, Repairs and</td>
<td></td>
</tr>
<tr>
<td>8 Equipment - Surplus (R) .......</td>
<td>5,000,000</td>
</tr>
<tr>
<td>9 Operational Expenses - Surplus</td>
<td>5,439,629</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the above appropriations for Payments to Counties and/or Regional Jails - Surplus (fund 0450, activity 348), Payments for Voluntary Inmate Placement - Surplus (fund 0450, activity 592), Capital Improvements - Surplus (fund 0450, activity 661), and Capital Outlay, Repairs and Equipment - Surplus (fund 0450, activity 677) at the close of fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0456, fiscal year 2012, organization 0613, be supplemented and amended by adding a new item of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF VETERANS’ ASSISTANCE**

*91-Department of Veterans’ Assistance (WV Code Chapter 9A)*

Fund **0456 FY 2012 Org 0613**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>9a</td>
<td>Veterans Bonus - Surplus (R) . . . 344 $1,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Veterans Bonus - Surplus (fund 0456, activity 344) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0596, fiscal year 2012, organization 0420, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

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

(WV Code Chapter 18B)

Fund 0596 FY 2012 Org 0420

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
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</thead>
<tbody>
<tr>
<td>18a Capital Improvements - Surplus (R)</td>
<td>$2,700,000</td>
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</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Capital Improvements - Surplus (fund 0596, activity 661) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0589, fiscal year 2012, organization 0441, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II -- APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

95-Higher Education Policy Commission -
Administration -
Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2012 Org 0441

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>097 Unclassified - Surplus (R)</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0589, activity 097) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

The purpose of this supplemental appropriation bill is to supplement, amend, increase and add items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2012.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11A-3-36a, relating to payment of amounts due to the land department of the Auditor’s office; permitting payments to be paid by credit, debit or charge card; and authorizing a fee to be assessed for the use of a credit, debit or charge card as a form of payment.

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 §11A-3-36a, to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATE AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-36a. Credit card approved form of payment in land department of Auditor’s office.

(a) The Auditor shall use the State Treasurer’s contracts and system for receiving payment by credit card for all redemption fees, publication fees, delinquent taxes or other charges collected by the Auditor in connection with the operations of the land department. The person using the
6 credit card as a form of payment is responsible for any
7 charges assessed by the credit company. Acceptance of a
8 credit card shall be in accordance with the rules and
9 requirements set forth by credit card provided.

10 (b) For the purposes of this section, the term “credit card”
11 means a credit card, debit card or charge card.

CHAPTER 16

(S. B. 224 - By Senators
Minard and Klempa)

[Passed February 29, 2012; in effect from passage.]
[Approved by the Governor on March 9, 2012.]

AN ACT to amend and reenact §31A-2-1 of the Code of West
Virginia, 1931, as amended, relating to the change of names of
the Division of Banking or the Department of Banking to the
Division of Financial Institutions; changing the names of the
Commissioner of Banking and the Deputy Commissioner of
Banking to the Commissioner of Financial Institutions and the
Deputy Commissioner of Financial Institutions, respectively;
providing that all references in this code to the Division of
Banking or the Department of Banking shall be read, construed
and understood to mean and have reference to the Division of
Financial Institutions; and providing that all references in this
code to the Commissioner of Banking and the Deputy
Commissioner of Banking shall be read, construed and
understood to mean and have reference to the Commissioner of
Financial Institutions and the Deputy Commissioner of
Financial Institutions, respectively.
Be it enacted by the Legislature of West Virginia:

That §31A-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-1. Department of Banking of West Virginia, offices of Commissioner and Deputy Commissioner of Banking continued.

1 The Department of Banking of West Virginia, the Office of Commissioner of Banking of West Virginia and the Office of Deputy Commissioner of Banking of West Virginia, heretofore created and existing in the state government, are continued and, after the date of the passage of the amendments to this section adopted in the regular Legislative Session of 2012, shall hereafter be referred to, respectively, as the Division of Financial Institutions, the Commissioner of Financial Institutions and the Deputy Commissioner of Financial Institutions.

11 All references in this code to the Department of Banking or the Division of Banking shall, after the effective date of the amendments to this section adopted in the regular Legislative Session of 2012, be read, construed and understood to mean and to have reference to the Division of Financial Institutions. All references in this code to the Commissioner of Banking and the Deputy Commissioner of Banking shall, after the effective date of the amendments to this section adopted in the regular Legislative Session of 2012, be read, construed and understood to mean and have reference, respectively, to the Commissioner of Financial Institutions and the Deputy Commissioner of Financial Institutions.
AN ACT to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the Commissioner of Banking; authorizing the Commissioner of Banking 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 related to criminal background investigations and fingerprinting for persons subject to this subsection; providing that the Commissioner of Banking 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; providing that the Commissioner of Banking 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; authorizing the Commissioner of Banking to conduct examinations of third-party providers of information technology services to financial institutions; creating a special revenue account to be known as the Consumer Education Fund, which may be expended by the commissioner to promote consumer awareness and understanding of issues related to residential mortgage lending; providing that ten percent of all civil administrative penalties collected by the Division of...
Banking during each fiscal year shall be deposited into that account, which may be invested and retain all earnings and interest; and providing that at the end of each fiscal year, any remaining balance less than $500,000, including accrued interest, shall remain in the account and that any balance exceeding $500,000 shall revert to the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

That §31A-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.

(a) Subject to the powers vested in the board by article three of this chapter, the commissioner has supervision and jurisdiction over state banks, regulated consumer lenders, residential mortgage lenders and brokers licensed pursuant to article seventeen, chapter thirty-one of this code, credit unions and all other persons now or hereafter made subject to his or her supervision or jurisdiction. All powers, duties, rights and privileges vested in the division are hereby vested in the commissioner. He or she shall be the chief executive officer of the Division of Banking and is responsible for the division's organization, services and personnel and for the orderly and efficient administration, enforcement and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the division or the commissioner.

(b) The commissioner shall:
(1) Maintain an office for the division and there keep a complete record of all the division's transactions, of the financial conditions of all financial institutions and records of the activities of other persons as the commissioner considers important. Notwithstanding any other provision of this code, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained in the records shall be confidential for the use of the commissioner and authorized personnel of the Division of Banking. No person shall divulge any information contained in any records except as authorized in this subdivision in response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information from the records for good cause, upon imposing terms and conditions considered necessary to protect the confidential nature of the records, the financial integrity of the financial institution or the person to which the records relate and the legitimate privacy interests of any individual named in the records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner has and may exercise reasonable discretion as to the time, manner and extent the other records in his or her office and the information contained in the records are available for public examination;

(2) Require all financial institutions to comply with all the provisions of this chapter and other applicable laws, or any rule promulgated or order issued thereunder;

(3) Investigate all alleged violations of this chapter and all other laws which he or she is required to enforce and of any rule promulgated or order issued thereunder; and
(4) Require a criminal background investigation, including requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check, of each: (A) Applicant seeking approval to charter and/or control a state bank, state credit union or a foreign bank state agency or representative office; (B) applicant seeking a license to engage in the business of money transmission, currency exchange or other activity regulated under article two, chapter thirty-two-a of this code; (C) applicant subject to the commissioner's supervision seeking a license to engage in the business of regulated consumer lending, mortgage lending or brokering; and (D) Division of Banking Financial Institutions regulatory employee applicant: Provided, That where the applicant is a company or entity already subject to supervision and regulation by the Federal Reserve Board or other federal bank, thrift or credit union regulator, or is a direct or indirect subsidiary of a company or entity subject to the supervision and regulation, or where the applicant is a company subject to the supervision and regulation of the federal Securities and Exchange Commission whose stock is publicly traded on a registered exchange or through the National Association of Securities Dealers automated quotation system, or the applicant is a direct or indirect subsidiary of such a company, the investigation into criminal background is not required. The provisions of this subdivision are not applicable to applicants seeking interim bank charters organized solely for the purpose of facilitating the acquisition of another bank pursuant to section five, article four of this chapter: Provided, however, That where a nonexempt applicant under this subdivision is not a natural person, the principals of the applicant are subject to the requirements of this subdivision. As used in this subdivision, the term "principals" means the chief executive officer, regardless of title, managing partner if a partnership, members of the organizing group if no chief executive officer has yet been appointed, trustee or other
88 person controlling the conduct of the affairs of a licensee. A
89 person controlling ten percent or more of the stock of any
90 corporate applicant shall be considered to be a principal
91 under this provision. The commissioner may establish
92 relationships or contracts with the Nationwide Mortgage
93 Licensing System and Registry or other entities designated by
94 the Nationwide Mortgage Licensing System and Registry to
95 collect and maintain records related to criminal background
96 investigations and fingerprints of persons subject to this
97 subsection.

98 (A) To reduce the points of contact which the Federal
99 Bureau of Investigation may have to maintain, the
100 commissioner may use the Nationwide Mortgage Licensing
101 System and Registry or its designated vendor as a channeling
102 agent for requesting information from and distributing
103 information to the Department of Justice or any governmental
104 agency.

105 (B) To reduce the points of contact which the
106 commissioner may have to maintain, the commissioner may
107 use the Nationwide Mortgage Licensing System and Registry
108 as a channeling agent for requesting and distributing
109 information to and from any source so directed by the
110 commissioner.

111 (c) In addition to all other authority and powers vested in
112 the commissioner by provisions of this chapter and other
113 applicable laws, the commissioner may:

114 (1) Provide for the organization of the division and the
115 procedures and practices of the division and implement the
116 procedures and practices by the promulgation of rules and
117 forms as appropriate and the rules shall be promulgated in
118 accordance with article three, chapter twenty-nine-a of this
119 code;
(2) Employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the division, including, but not limited to, examiners, assistant examiners, conservators and receivers, establish the amount and condition of bonds for the personnel he or she considers appropriate and pay the premiums on the bonds and, if he or she elects, have all personnel subject to and under the classified service of the state personnel division;

(3) Cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, inspect, examine and audit the books, records, accounts and papers of all financial institutions and any third-party vendor providing information technology services to financial institutions at such times as circumstances in his or her opinion may warrant;

(5) Call for and require any data, reports and information from financial institutions under his or her jurisdiction, at such times and in such form, content and detail considered necessary by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision of financial institutions, require financial institutions to:

(A) Maintain their accounts consistent with rules prescribed by the commissioner and in accordance with generally accepted accounting practices;
(B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his or her action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against other risks as he or she may determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take other action that in his or her judgment is required of the institution in order to maintain its stability, integrity and security as required by law and all rules promulgated by him or her; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by article three of this chapter, receive from any person or persons and consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act on the request, petition or application in accordance with any provisions of law applicable thereto;
(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;

(9) Issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) Study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state and compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

(11) Implement all of the provisions of this chapter, except the provisions of article three of this chapter, and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) Implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as long as the rules do not conflict with any rules promulgated by the state’s Attorney General;

(13) Foster and encourage a working relationship between the Division of Banking and financial institutions,
credit, consumer, mercantile and other commercial and
finance groups and interests in the state in order to make
current appraisals of the quality, stability and availability of
the services and facilities of financial institutions;

(14) Provide to financial institutions and the public copies
of the West Virginia statutes relating to financial institutions,
suggested drafts of bylaws commonly used by financial
institutions and any other forms and printed materials found
by him or her to be helpful to financial institutions, their
shareholders, depositors and patrons and make reasonable
charges for the copies;

(15) Delegate the powers and duties of his or her office,
other than the powers and duties excepted in this subdivision,
to qualified division personnel who shall act under the
direction and supervision of the commissioner and for whose
acts he or she is responsible, but the commissioner may
delegate to the deputy commissioner of banking and to no
other division personnel the following powers, duties and
responsibilities, all of which are hereby granted to and vested
in the commissioner and for all of which the commissioner
also is responsible. The commissioner shall:

(A) Order any person to cease violating any provision or
provisions of this chapter or other applicable law or any rule
promulgated or order issued thereunder;

(B) Order any person to cease engaging in any unsound
practice or procedure which may detrimentally affect any
financial institution or depositor of the financial institution;

(C) Revoke the certificate of authority, permit or license
of any financial institution except a banking institution in
accordance with the provisions of section thirteen of this
article; and
(D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is prima facie evidence that prior to this assurance the person engaged in conduct described in the assurance;

(16) Seek and obtain civil administrative penalties against any person who violates this chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the commissioner or board of banking and financial institutions in an amount not more than $5,000 per day for each violation: Provided, That all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to any assessment of a penalty under this subsection;

(17) Receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove these applications;

(18) Expend funds in order to promote consumer awareness and understanding of issues related to residential mortgage lending. In furtherance of this duty, there is established in the State Treasury a special revenue account to be known as the Consumer Education Fund, which shall be administered by the Commissioner of Banking. Ten percent of all civil administrative penalties collected by the Division of Banking during each fiscal year shall be deposited into the fund and may be expended by the commissioner to promote consumer awareness and understanding of issues related to residential mortgage lending. The account shall be a special revenue account, and may be invested and retain all earnings and interest. Any remaining balance less than $500,000, 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. Any balance which exceeds $500,000
as of June 30, 2012, and each year thereafter, shall revert to
the General Revenue Fund; and

(19) Take other action as he or she may consider
necessary to enforce and administer the provisions of this
chapter, except the provisions of article three of this chapter,
and all other laws which he or she is empowered to
administer and enforce and apply to any court of competent
jurisdiction for appropriate orders, writs, processes and
remedies.

CHAPTER 18

(H. B. 4274 - By Delegates Moore,
Reynolds and Azinger)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §46A-4-103 of the Code of West
Virginia, 1931, as amended, relating to the authority of the
Commissioner of Banking over regulated consumer lender
licensees; authorizing the commissioner to impose a fine or
penalty upon a licensee for violation of chapter forty-six-a or
chapter thirty-one-a of this code or any other law or rule that
the Division of Banking is authorized to enforce that is
applicable to regulated consumer lenders; and providing for an
administrative hearing to contest a fine or penalty.

Be it enacted by the Legislature of West Virginia:
That §46A-4-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-103. Revocation, suspension or forfeiture of license.

(a) The commissioner may issue to a person licensed to make regulated consumer loans an order to show cause why his or her license should not be revoked or should not be suspended for a period not in excess of six months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. After the hearing the commissioner shall revoke or suspend the license if he or she finds that:

(1) The licensee has repeatedly and willfully violated this chapter or any rule or order lawfully made or issued pursuant to this article;

(2) The licensee has failed to remit their required annual assessment, or to maintain their status as a business in good standing with the office of the Secretary of State, notwithstanding notification in writing by the commissioner sent by certified mail to the licensee’s last known address providing for thirty days to rectify such failure;

(3) The licensee has forfeited their license by failing to remain open for regulated consumer lending business in conformity with the rules or order of the commissioner; or

(4) Facts or conditions exist which would clearly have justified the commissioner in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(b) No revocation or suspension of a license under this article is lawful unless prior to institution of proceedings by
the commissioner notice is given to the licensee of the facts
or conduct which warrant the intended action, and the
licensee is given an opportunity to show compliance with all
lawful requirements for retention of the license.

(c) If the commissioner finds that probable cause for
revocation of a license exists and that enforcement of this
article requires immediate suspension of the license pending
investigation, he or she may, after a hearing upon five days’
written notice, enter an order suspending the license for not
more than thirty days.

(d) Nothing in this section limits the authority of the
commissioner to take action against a regulated consumer
lender pursuant to chapter thirty-one-a of this code.

(e) Whenever the commissioner revokes or suspends a
license, he or she shall enter an order to that effect and
forthwith notify the licensee of the revocation or suspension.
Within five days after the entry of the order he or she shall
mail by registered or certified mail or deliver to the licensee
a copy of the order and the findings supporting the order.

(f) Any person holding a license to make regulated
consumer loans may relinquish the license by notifying the
commissioner in writing of its relinquishment, but this
relinquishment shall not affect his or her liability for acts
previously committed.

(g) No revocation, suspension, forfeiture or
relinquishment of a license shall impair or affect the
obligation of any preexisting lawful contract between the
licensee and any consumer.

(h) The commissioner may reinstate a license, terminate
a suspension or grant a new license to a person whose license
has been revoked or suspended if no fact or condition then
exists which clearly would have justified the commissioner in refusing to grant a license.

(i) In addition to the authority authorized by this section, the commissioner may impose a fine or penalty not exceeding $2,000 upon any regulated consumer lender required to be licensed under this article who violates this chapter, chapter thirty-one-a or any other law or rule that the Division of Banking is authorized to enforce with respect to companies licensed under this article. For the purposes of this section, each day, excluding Sundays and holidays, that an unlicensed person engages in the business or holds himself or herself out to the general public as a licensed consumer lender is a separate violation and, as such, each day is subject to the maximum fine of $2,000 per day. Any fine or penalty imposed under this subsection may be contested by the licensee pursuant to article five, chapter twenty-nine-a of this code.

CHAPTER 19

(Com. Sub. for H. B. 4012 - By Delegates Morgan, Manypenny, Martin and Swartzmiller)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §16-1-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-16-4 of said code; to amend and reenact §30-23-5 of said code; and to amend and reenact §30-26-3 and §30-26-4 of said code, all relating to boards; changing the membership of boards;
removing the Commissioner of the Bureau for Public Health from certain boards; removing the requirement that the commissioner provide support to certain boards; allowing certain boards to receive compensation not to exceed the amount paid to legislators; and updating the name of certain boards.

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

That §16-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §30-16-4 of said code be amended and reenacted; that §30-23-5 of said code be amended and reenacted; and that §30-26-3 and §30-26-4 of said code be amended and reenacted, all to read as follows:

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

§16-1-7. Duties and powers of the commissioner; service on advisory councils; boards and commissions; authority to designate a representative to serve in his or her place on certain boards and commissions.

1 (a) Effective July 1, 2012, the commissioner serves on the following licensing boards:

3 (1) The West Virginia Board of Medicine, provided in article three, chapter thirty; and

5 (2) The State Board of Sanitarians, as provided in article seventeen, chapter thirty.

7 (b) Effective July 1, 2012, the commissioner serves on the following advisory councils, boards and commissions:
(1) The Advisory Committee on Cancer (Cancer Registry);
(2) The Air Quality Board;
(3) The Appalachian States Low-level Radioactive Waste Commission;
(4) The Child Fatality Review Team;
(5) The Childhood Immunization Advisory Committee;
(6) The Early Intervention Coordinating Council;
(7) The Interagency Council on Osteoporosis;
(8) The Sewage Advisory Board;
(9) The State Emergency Response Commission;
(10) The State Groundwater Coordinating Committee;
(11) The Water Development Authority;
(12) The West Virginia Commission for the Deaf and Hard of Hearing;
(13) The West Virginia Infrastructure and Jobs Development Council; and
(14) Any other advisory council, board or commission as assigned by the secretary except for business, professional or occupational licensing boards.
(c) Notwithstanding any other provision of this code to the contrary, the commissioner may, at his or her discretion,
designate, in writing, a representative to serve in his or her
stead at the meetings and in the duties of all boards and
commissions on which the commissioner is designated as an
ex officio member. The appropriately designated
representative or proxy acts with the full power and authority
of the commissioner in voting, acting upon matters
concerning the public health and welfare and other business
that is properly the duty of any board or commission. The
representative serves as proxy at the commissioner's will and
pleasure. The provisions of this section do not apply to the
West Virginia Board of Medicine, the Air Quality Board or
other board, commission or body on which the commissioner
is designated by this code as chairman ex officio, secretary ex
officio or a board, commission or body on which the
commissioner is designated by this code as being that person
whose signature must appear on licenses, minutes or other
documents necessary to carry out the intents and purposes of
the board, commission or body.

ARTICLE 16. CHIROPRACTORS.

§30-16-4. West Virginia Board of Chiropractic; establishment
and composition.

(a) The “West Virginia Board of Chiropractic” is
continued. Effective July 1, 2012, the board is composed of
four licensed chiropractors and one person to represent the
interest of the public. All are appointed by the Governor,
with the advice and consent of the Senate, from a list of three
names recommended by the West Virginia Chiropractic
Society, Incorporated. Each chiropractic member of the
board shall have been a resident of and engaged in the active
practice of chiropractic in the state for a period of at least five
years preceding his or her appointment.

(b) As existing board members’ terms expire, newly
appointed board members are appointed by the Governor for
a term of office of three years. No member may serve more than two full consecutive three-year terms. When a vacancy in the membership of the board occurs for a cause other than the expiration of a term, the Governor shall appoint a new member from a list of three names recommended by West Virginia Chiropractic Society, Incorporated, to fill the unexpired portion of the term of office.

(c) The Governor may remove any member of the board in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(d) The board shall conduct an annual training program to familiarize new board members with their duties.

(e) Each member of the board is entitled to receive compensation in the amount paid to members of the Legislature for interim duties for each day or substantial portion that he or she is engaged in the work of the board or of its committees. Members are entitled to be reimbursed for actual and necessary expenses incurred in carrying out his or her duties.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.

(a) The West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners is continued. The members of the board in office, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.
(b) The board shall consist of the following nine members, appointed by the Governor by and with the advice and consent of the Senate:

(1) Three licensed practitioners, two of whom shall be Radiologists;

(2) Three licensed Radiologic Technologists, one of whom shall be an active medical imaging educator;

(3) One licensed Nuclear Medicine Technologist;

(4) One licensed Magnetic Resonance Imaging; and

(5) One citizen member, who is not licensed under the provisions of this article and does not perform any services related to the practice licensed under the provisions of this article.

(c) Each member shall be appointed for a term of three years and may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member continues to serve until a successor has been appointed and has qualified. The terms shall be staggered in accordance with the initial appointments under prior enactments of this article.

(d) Each member of the board shall be a resident of West Virginia during the appointment term.

(e) The Radiologic Technologists, Nuclear Medicine Technologists and the Magnetic Resonance Imaging Technologists serving on the board shall maintain an active license with the board.
(f) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(g) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(h) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice has been suspended or revoked. A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any state or the United States, or becomes a nonresident of this state.

(i) The board shall designate one of its members as chairperson and one member as secretary who shall serve at the will of the board.

(j) Each member of the board shall receive compensation and expense reimbursement in accordance with article one of this chapter.

(k) A majority of the members serving on the board shall constitute a quorum.

(l) The board shall hold at least two annual meetings. Other meetings shall be held at the call of the chairperson or upon the written request of two members, at such time and place as designated in the call or request.

(m) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.
ARTICLE 26. HEARING-AID DEALERS AND FITTERS.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

(a) There is continued the West Virginia board of hearing-aid dealers, which is composed of five members to be appointed by the Governor, with the advice and consent of the Senate. The members of the board shall be residents of this state. One member shall be a person licensed to practice medicine in this state and one member shall hold a degree in audiology from an accredited college or university. The remaining three members shall be persons having no less than five years’ experience as hearing-aid dealers or fitters and shall hold a valid license under the provisions of this article.

(b) The terms of office of each member of the board shall be four years, staggered in accordance with initial appointments under prior enactments of this act. A board member shall serve until his or her successor has been appointed and qualified and any vacancy in the office of a member shall be filled by appointment for the unexpired term of such member. Any member of the board shall be eligible for reappointment.

(c) The board shall annually at its meeting first succeeding May 1 elect from its own members a chairman and vice chairman.

(d) Each member of the board is entitled to receive for each day actually engaged in the duties of his or her office, an amount not to exceed the amount paid to legislators for their interim duties, and is entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of such board.
(e) All fees and other moneys collected by the board, pursuant to the provisions of this article, shall be kept in a separate fund and shall be expended solely for the purposes of this article. The compensation for the members of the board and all expenses incurred under this article shall be paid from this special fund and no such compensation or expenses shall be paid from the General Revenue Fund of this state. All disbursements of funds necessary to carry out the provisions of this article shall be so disbursed only upon the authority of the board.

(f) The board shall regulate and control the practice of dealing in or fitting of hearing aids in this state, and shall administer qualifying examinations in accordance with the provisions of this article to test the knowledge and proficiency of all prospective licensees or trainees.

(g) The board may purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants as provided in this article and may purchase such other equipment and supplies and employ such persons as it deems appropriate to carry out the provisions of this article.

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

(1) For the proper performance of its duties;

(2) To define and prescribe the ethical practice of dealing in or fitting of hearing aids for the safety, protection and welfare of the public;

(3) To govern the time, place and manner of conducting the examinations required by this article and the standard, scope and subject of such examinations, which examinations
shall, as a minimum, conform with the standards, scope and
subjects set forth in section six of this article and manner, and
the form in which applications for such examinations shall be
filed;

(4) To establish procedures for determining whether
persons holding similar valid licenses from other states or
jurisdictions shall be required to take and successfully pass
the appropriate qualifying examination as a condition for
such licensing in this state; and

(5) To establish such fees for such examinations, permits,
licenses and renewals as may be necessary to cover the costs
of administration.

§30-26-4. Administrative duties; examinations; register; use of
fees.

(a) Effective July 1, 2012, the administrative work of the
board shall be performed by the board. The board shall keep
full and complete records of all of their proceedings and
accounts, which said records and accounts shall be open to
public inspection at all reasonable times.

(b) The board is authorized to conduct, supervise, and
administer the qualifying examinations authorized and
required by this article, to maintain for a register or record of
persons who apply for a license or a temporary trainee permit
as well as a register or record of the name and last-known
business address of all persons to whom a license or trainee
permit is issued pursuant to this article.

(c) Effective July 1, 2012, the board shall bear the costs
of carrying out the powers and duties granted to it by this
article from the fees collected by it for these purposes.
CHAPTER 20

(Com. Sub. for S. B. 110 - By Senators Unger, Beach and Klempa)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §31-15C-3 and §31-15C-4 of the Code of West Virginia, 1931, as amended, all relating to modifying and increasing the membership of the Broadband Deployment Council; increasing the number of members required for a quorum; and expanding the powers and duties of the Broadband Deployment Council.

Be it enacted by the Legislature of West Virginia:

That §31-15C-3 and §31-15C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-3. Broadband Deployment Council established; members of council; administrative support.

1   (a) The Broadband Deployment Council is continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council is created under the Department of Commerce for administrative, personnel and technical support services only.
(b) The council shall consist of fifteen voting members, designated as follows:

(1) The Governor or his or her designee;

(2) The Secretary of Commerce or his or her designee;

(3) The Secretary of Administration or his or her designee;

(4) The Director of Homeland Security and Emergency Management or his or her designee;

(5) The State Superintendent of Schools or his or her designee; and

(6) Ten public members that serve at the will and pleasure of the Governor and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing employees of communications and cable providers who is a member or representative of a union representing communications workers;

(ii) One member representing the interests of the business community in this state;

(iii) One member representing incumbent local exchange carriers who provide broadband services in this state;

(iv) One member representing cable operators who provide broadband services in this state;

(v) One member representing competitive local exchange carriers who provide broadband services in this state;
(vi) One member representing broadband equipment or device manufacturers;

(vii) One member representing higher education or secondary education; and

(viii) Three members representing the general public who are residents of the state, one of whom shall represent rural communities, and who may not reside in the same congressional district.

(7) In addition to the fifteen voting members of the council, the President of the Senate shall name two senators from the West Virginia Senate and the Speaker of the House shall name two delegates from the West Virginia House of Delegates, each to serve in the capacity of an ex officio, nonvoting advisory member of the council.

(c) The Secretary of Commerce or his or her designee shall chair the council and appoint one of the other council members to serve as vice chair. In the absence of the Secretary of Commerce or his or her designee, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(d) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.

(e) Eight voting members of the council constitute a quorum and the affirmative vote of at least the majority of those members present is necessary for any action taken by vote of the council.
(f) The council is part time. Public members appointed by the Governor may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in or otherwise associated with a broadband deployment project, project sponsor or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited under section five, article two, chapter six-b of this code and is not subject to prosecution for violation of said section when the violation is created solely as a result of his or her relationship with the broadband deployment project, project sponsor or project participant so long as the member recuses himself or herself from board participation regarding the conflicting issue in the manner set forth in legislative rules promulgated by the West Virginia Ethics Commission.

(g) No member of the council who serves by virtue of his or her office receives any compensation or reimbursement of expenses for serving as a member. The public members and members of any committees or subcommittees are entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of his or her official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

§31-15C-4. Powers and duties of the council generally.

(a) The council shall:

(1) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(2) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband
services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

(3) Cooperate and assist in the expansion of electronic instruction and distance education services by July, 2014.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;

(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access, and that all public entities stream audio and video of all public meetings;

(4) To make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state, categorization of areas within the state and evaluation of project applications: Provided, That the provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article;
(5) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and

(7) Perform any and all other activities in furtherance of its purpose.

(c) The council shall exercise its powers and authority to bring broadband service to unserved areas. The council may not duplicate or displace broadband service in areas already served or where private industry feasibly can be expected to offer services in the reasonably foreseeable future.

CHAPTER 21

(Com. Sub. for H. B. 4263 - By Delegates Barker, Caputo, Martin, Hamilton, Butcher and Stowers)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-57, relating to creating a “Buy American Task Force”; setting forth legislative findings; declaring state policy; requiring the Purchasing Division and the Division of Labor to convene a
task force to study the use of American made construction materials and goods; setting forth the membership of the task force; specifying areas of study; and requiring report to Legislature by December 31, 2012.

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 §5A-3-57, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-57. Buy American task force; study; report.

(a) Findings. -- The Legislature finds that:

(1) The production of iron, steel, manufactured goods, coal and timber provides jobs and family income to many individuals in this state and, in turn, the jobs and family incomes of millions of persons in the United States;

(2) The taxes paid to the state and its political subdivisions by employers and employees engaged in the production and sale of iron, steel, manufactured goods, coal and timber are a large source of public revenues for West Virginia;

(3) The economy and general welfare of West Virginia and its people and the economy and general welfare of the United States are inseparably linked to the preservation and development of manufacturing, harvesting and mineral extraction industries in this state, as well as all the other states of this nation;

(4) The state’s taxpayer dollars are better spent if reinvested with its individual and employer taxpayers in order to foster job retention and growth, particularly within
the manufacturing, harvesting and mineral extraction sectors,  
and to ensure a broad and healthy tax base for future  
investments vital to the state’s infrastructure; and  

(5) West Virginia’s procurement policies should reflect  
the state’s and the nation’s principles ensuring that the  
products of those companies and workers who abide by  
workplace safety and environmental laws, rules and  
regulations should be rewarded with a commonsense  
preference in government contracting.  

(b) Declaration of policy. -- It is the policy of West  
Virginia that the state and its political subdivisions should aid  
and promote the economy of this state and the United States  
by requiring a preference for the procurement of iron, steel,  
manufactured goods, coal and timber produced in the United  
States in all contracts for the construction, reconstruction,  
repair, improvement or maintenance of public buildings and  
public works projects.  

(c) The Purchasing Division and the Division of Labor  
shall jointly convene the task force created in subsection (d)  
of this section to study the use of American-made  
construction materials and manufactured goods in the various  
aspects of the construction and maintenance of public  
bUILDINGS and public works projects of the state and its  
political subdivisions which are funded in part by state  
grants, state loans or state appropriations.  

(d) A task force is hereby created to assist the divisions  
with this study. The task force shall consist of:  

(1) An architect, an engineer and a contractor, each  
designated by his or her respective licensing board;  

(2) One representative of the largest organization  
representing West Virginia manufacturers;  

...
(3) One representative each from the Division of Highways, the School Building Authority, the Water Development Authority, the General Services Division and the Higher Education Policy Commission; and

(4) Four labor representatives chosen by the largest labor organization in the state.

e) The study shall include, but not be limited to:

(1) The need to maintain a list of all suppliers qualified to provide construction materials and manufactured goods produced in the United States;

(2) The percentage of domestically produced construction materials and manufactured goods to be included in a construction project to qualify it as built with American made construction materials and manufactured goods; and

(3) Possible changes to the bid process, including waiver requirements.

(f) The directors of the Purchasing Division and the Division of Labor shall report to the Joint Committee on Government and Finance, by December 31, 2012, on the task force’s findings on the best methods of promoting the American production of iron, steel, manufactured goods, coal and timber and creating jobs through a buy American mandate, as well as the burdens and benefits of such mandate on the construction industry in West Virginia and the state’s public building and public works projects.
AN ACT to amend and reenact §29-3-16a of the Code of West Virginia, 1931, as amended, relating to carbon monoxide detectors, smoke detectors and sprinkler systems; requiring smoke detectors and sprinkler systems meet and be installed according to current edition of national standard requirements; requiring carbon monoxide detectors be installed in certain public facilities on and after certain effective date; requiring carbon monoxide detectors be hardwired into alternating current on and after certain date; allowing the installation of either single station carbon monoxide detector or combination smoke detector and carbon monoxide detector; providing certain exception for installing carbon monoxide detectors in certain long-term care facilities; providing for minimum specification requirements and testing, maintaining, repairing and replacing carbon monoxide detectors; and providing for certain penalties.

Be it enacted by the Legislature of West Virginia:

That §29-3-16a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.

(a) An operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one and two family dwellings, including any “manufactured home” as that term is defined in subsection (j), section two, article nine, chapter twenty-one of this code. The smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided in the current edition of the National Fire Protection Association Standard 72, “Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment” and in the manufacturer’s specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install and replace the operational smoke detectors required by this section. So as to assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) of this section which is not occupied by the owner thereof, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the current edition of the National Fire Protection Association Standard 13D, “Standard for the
Installation of Sprinkler Systems in Residential Occupancies” may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered, either plugged directly in to an electrical outlet that is not controlled by a switch or hardwired into an alternating current (AC) electrical source, with battery back up, and be installed, maintained, tested, repaired or replaced, if necessary, in accordance with the manufacturer’s direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove;

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed or barn, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove;

(3) Effective September 1, 2012, in either a common area where the general public has access or all rooms in which a person will be sleeping that are adjoining to and being directly below and above all areas or rooms that contain permanently installed fuel-burning appliances and equipment that emit carbon monoxide as a byproduct of combustion located within all apartment buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels and motels.
(g) Effective January 1, 2013, all single station carbon monoxide detectors with a suitable alarm or a combination smoke detector and carbon monoxide detectors shall be hardwired into an alternating current (AC) electrical source, with battery backup, when installed in all newly constructed apartment buildings, boarding houses, dormitories, hospitals, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels and motels.

(h) In any long-term care facility that is staffed on a twenty-four hour, seven day a week basis, the single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector shall only be required to be installed in an area of the facility that permits the detector to be audible to the staff on duty.

(i) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.

(j) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(k) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined $250. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $750. For a third and subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $2000.
(l) A violation of this section may not be considered by virtue of the violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(m) A violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

(n) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

CHAPTER 23

(S. B. 676 - By Senators Prezioso, D. Facemire, Chafin, Edgell, Green, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Unger, Wells, Yost, Boley, Hall and Sypolt)

[Passed March 9, 2012; in effect from passage.]
[Approved by the Governor on March 19, 2012.]

AN ACT to amend and reenact §31-15A-17b of the Code of West Virginia, 1931, as amended, relating to Chesapeake Bay watershed compliance projects; and specifying dates by which eligible projects may apply for grant funding.

Be it enacted by the Legislature of West Virginia:
That §31-15A-17b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.**

§31-15A-17b. Infrastructure lottery revenue bonds for watershed compliance projects.

(a)(1) The Chesapeake Bay has been identified as an impaired water body due to excessive nutrients entering the Bay from various sources in six states, including wastewater facilities in West Virginia. To restore the Chesapeake Bay, the states have agreed to reduce their respective nutrient contributions to the Chesapeake Bay.

(2) The Greenbrier River Watershed in southeastern West Virginia which encompasses approximately 1,646 square miles, the majority of which lies within Pocahontas, Greenbrier, Monroe and Summers counties, has been identified as an impaired water body due to excessive levels of fecal coliform and phosphorus entering the Watershed from various sources, including wastewater facilities in West Virginia. To restore the Greenbrier River Watershed, the state agrees to reduce the fecal coliform and phosphorus contributions to the Greenbrier River Watershed.

(b) Notwithstanding any other provision of this code to the contrary, the Water Development Authority may issue, in accordance with the provisions of section seventeen of this article, infrastructure lottery revenue bonds payable from the West Virginia infrastructure lottery revenue debt service fund created by section nine of this article and such other sources as may be legally pledged for such purposes other than the West Virginia infrastructure revenue debt service fund created by section seventeen of this article.
(c) The council shall direct the Water Development Authority to issue bonds in one or more series when it has approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects with an authorized permitted flow of four hundred thousand gallons per day or more. The proceeds of the bonds shall be used solely to pay costs of issuance, fund a debt service reserve account, capitalize interest, pay for security instruments necessary to market the bonds and to make grants to governmental instrumentalities of the state for the construction of approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects. To the extent funds are available in the West Virginia Infrastructure Lottery Revenue Debt Service Fund that are not needed for debt service, the council may direct the Water Development Authority to make grants to project sponsors for the design or construction of approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects: Provided, that the council shall direct the Water Development Authority to provide from monies in the Lottery Revenue Debt Service Fund not needed to pay debt service in fiscal year 2013 a grant of $6 million to a Chesapeake Bay watershed compliance project which opened bids on December 28, 2011 and further provided that such Chesapeake Bay watershed compliance project shall receive no further grant funding under this section after receipt of the $6 million grant.

(d) No later than June 30, 2012, each publicly owned facility with an authorized permitted flow of 400,000 gallons per day or more that is subject to meeting Chesapeake Bay compliance standards or Greenbrier River watershed compliance standards shall submit to the council a ten year projected capital funding plan for Chesapeake Bay watershed compliance projects or Greenbrier River watershed
compliance projects, as the case may be, including a general
project description, cost estimate and estimated or actual
project start date and project completion date, if any. The
council shall timely review the submitted capital funding
plans and forward approved plans to the Water Development
Authority for further processing and implementation pursuant
to this article. If the council finds a plan to be incomplete,
inadequate or otherwise problematic, it shall return the plan
to the applicant with comment on the plan shortcomings. The
applicant may then resubmit to council an amended capital
funding plan for further consideration pursuant to the terms
of this subsection.

(e) Upon approval, each proposed Chesapeake Bay
watershed compliance project or Greenbrier River watershed
compliance project, or portion of a larger project, which
portion is dedicated to compliance with nutrient standards, or
fecal coliform and phosphorus standards, established for the
protection and restoration of the Chesapeake Bay or the
Greenbrier River Watershed, as the case may be, shall be
eligible for grant funding by funds generated by the
infrastructure lottery revenue bonds described in section (b)
of this section. At the request of the applicant, the remaining
percentage of project funding not otherwise funded by grant
under the provisions of this article may be reviewed as a
standard project funding application.

(f) No later than December 1, 2012, the Water
Development Authority shall report to the Joint Committee
on Government and Finance the total cost of Chesapeake Bay
watershed compliance projects and the Greenbrier River
watershed compliance projects and the proposed grant awards
for each eligible project. Grant awards shall be of equal ratio
among all applicants of the total cost of each eligible project.

(g) Eligible projects that have obtained project financing
prior to December 31, 2012, may apply to the council for
funding under the provisions of this section. These
applications shall be processed and considered as all other
eligible projects, and a grant funding awarded shall, to the
extent allowed by law, be dedicated to prepay all or a portion
of debt previously incurred by governmental instrumentalities
of the state for required Chesapeake Bay nutrient removal
projects or Greenbrier River watershed fecal coliform and
phosphorus removal projects, subject to the bond covenants
and contractual obligations of the borrowing governmental
entity. However, any private portion of funding provided by
agreement between a political subdivision and one or more
private entities, either by direct capital investment or debt
service obligation, shall not be eligible for grant funding
under the provisions of this article.

CHAPTER 24

(H. B. 4521 - By Delegates Poore,
Hunt, Moore, Mahan, Guthrie,
Ireland, Wells, Miley, Michael,
Frazier and White)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and the Code of West Virginia, 1931, as
amended, by adding thereto a new section, designated §48-13-
703, relating to permitting the restructuring of child support
payments of an inmate who is released from the custody of the
Division of Corrections or United States Bureau of Prisons
under certain circumstances; providing that one judge within
the circuit may assume jurisdiction over all child support
obligations of the former inmate; and providing a minimum amount of child support which is to be paid each month in each case.

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 §48-13-703, to read as follows:

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48-13-703. Restructuring of payments upon release of inmate.

Upon his or her release from the custody of the Division of Corrections or the United States Bureau of Prisons, a person who is gainfully employed and is subject to a child support obligation or obligations and from whose weekly disposable earnings an amount in excess of forty percent is being withheld for the child support obligation or obligations may, within eighteen months of his or her release, petition the court having jurisdiction over the case or cases to restructure the payments to an amount that allows the person to pay his or her necessary living expenses. In order to achieve consistency and fairness, one judge may assume jurisdiction over all the cases the person may have within that circuit of the court. In apportioning the available funds, the court shall give priority to the person’s current child support obligations:

Provided, That a minimum of $50 per month shall be paid in each case.
CHAPTER 25

(H. B. 4523 - By Delegates Poore, Moore, Mahan, Guthrie, Wells, Michael, Frazier, White and Miley)

[Passed March 7, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §48-18-125 of the Code of West Virginia, 1931, as amended, relating to the Bureau for Child Support enforcement; reporting employment and income; providing definition of independent contractor; and reporting income of an independent contractor if the contract for services is over $2500.

Be it enacted by the Legislature of West Virginia:

That §48-18-125 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-125. Employment and income reporting.

(a) For purposes of this section:

(1) “Employee” means an individual who is an “employee” for purposes of federal income tax withholding, as defined in 26 U.S.C. §3401;

(2) “Employer” means the person or entity for whom an individual performs or performed any service of whatever
nature and who has control of the payment of the individual’s wages for performance of the service or services, as defined in 26 U.S.C. §3401;

(3) “Independent Contractor” means an individual who is not an employee of the employer and who receives compensation or executes a contract for services performed for that employer. Independent contractor does not include a direct seller as defined in 26 U. S. C. §3508(b)(2).

(4) An individual is considered a “new hire” on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the Bureau for Child Support enforcement:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings;

(2) The rehiring or return to work of any employee or independent contractor who resides or works in this state; and

(3) The contracting for services in the state with an independent contractor when payment for the services is $2500 or more. Payment for the services shall be reported within fourteen days of the earlier of first making payments that in the aggregate equal or exceed $2500 in any year or contracts with an independent contractor providing for payments that in the aggregate equal or exceed $2500 in any year.

(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee or independent contractor of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting could
endanger the safety of the employee or independent contractor or compromise an ongoing investigation or intelligence mission.

(d) An employer that has employees or independent contractors in states other than this state and that transmits reports magnetically or electronically is not required to report to the Bureau for Child Support enforcement the hiring, rehiring or return to work of any employee or independent contractor if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written designation of another state in which it has employees or independent contractors as the reporting state.

(e) Employers shall report by mailing the required information to the Bureau for Child Support enforcement or may transmit the information through another means if approved in writing by the Bureau for Child Support enforcement prior to the transmittal. The report shall include the employee’s or independent contractor’s name, address and social security number, start date, the employer’s name and address, any different address of the payroll office and the employer’s federal tax identification number. The employer may report other information, such as date of birth or income information, if desired.

(f) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee or independent contractor. However, if the employer transmits the reports magnetically or electronically by two monthly submissions, the reports shall be submitted not less than twelve days nor more than sixteen days apart.

(g) An employer shall provide to the Bureau for Child Support enforcement, upon its written request, information regarding an obligor’s employment, wages or salary, medical insurance, start date and location of employment.
(h) Any employer who fails to report in accordance with the provisions of this section shall be assessed a civil penalty of no more than $25 per failure. If the failure to report is the result of a conspiracy between the employer and the employee or independent contractor not to supply the required report or to supply a false or incomplete report, the employer shall be assessed a civil penalty of no more than $500.

(i) Employers required to report under this section may assess each employee or independent contractor reported $1 for the administrative costs of reporting.

(j) Uses for the new hire information include, but are not limited to, the following:

(1) The state directory of new hires shall furnish the information to the national directory of new hires;

(2) The Bureau for Child Support enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and of establishing, modifying and enforcing child support obligations and may disclose the information to any agent of the agency that is under contract with the bureau to carry out those purposes;

(3) State agencies responsible for administering a program specified in 42 U.S.C. §1320b-7(b) shall have access to information reported by employers for purposes of verifying eligibility for the program; and

(4) The Bureau of Employment Programs and the Workers’ Compensation Commission shall have access to information reported by employers for purposes of administering employment security and Workers’ Compensation Programs.
AN ACT to repeal §49-5-21 of the Code of West Virginia, 1931, as amended; to repeal §49-6-5a of said code; to amend and reenact §49-1-3 of said code; to amend and reenact §49-2-17 of said code; to amend and reenact §49-5-13 of said code; to amend and reenact §49-5D-2, §49-5D-3 and §49-5D-3a of said code; to amend said code by adding thereto two new sections, designated §49-5D-3b and §49-5D-3c; to amend and reenact §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code; to amend and reenact §49-6A-5 of said code; to amend and reenact §49-6D-3 of said code; to amend and reenact §49-7-1 of said code; and to amend said code by adding thereto a new section, designated §49-7-36, all relating generally to child welfare; defining “court appointed special advocate program”; establishing a system of assistance from funds appropriated to the Department of Health and Human Resources for facilitating the adoption or legal guardianship of children who are dependents of the department or of a child welfare agency licenced to place children for adoption; providing when a juvenile is ordered into out-of-state placement, the reasons why the juvenile was not placed in state be included in the court order; adding additional members to the multidisciplinary team; providing a process for multidisciplinary treatment planning in cases involving child
be imparted a process for multidisciplinary treatment planning in cases involving status offense or delinquency; increasing the continuing education hours required for attorneys appointed in child abuse and neglect cases; providing that reasonable efforts to preserve the family are not required when a person is required by state or federal law to register with a sex offender registry; providing that the court may modify a dispositional order when it finds a material change of circumstances has occurred and such modification is in the child’s best interests; clarifying that the circuit court of origin has exclusive jurisdiction over placement of a child in a child abuse and neglect case; providing a process for permanency hearings and permanent placement reviews; providing that any combination of improvement periods cannot cause a child to be in foster care more than fifteen months of the most recent twenty-two months unless the court finds that it is in the child’s best interests; providing for modifications and requests for expunging of records; requiring the secretary to promulgate legislative rules; providing guidelines for unified child and family case plans; confidentiality of records; and requiring a quarterly status review hearing and yearly permanency hearings for transitioning adults.

Be it enacted by the Legislature of West Virginia:

That §49-5-21 of the Code of West Virginia, 1931, as amended, be repealed; that §49-6-5a of said code be repealed; that §49-1-3 of said code be amended and reenacted; that §49-2-17 of said code be amended and reenacted; that §49-5-13 of said code be amended and reenacted; that §49-5D-2, §49-5D-3 and §49-5D-3a of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §49-5D-3b and §49-5D-3c; that §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code be amended and reenacted; that §49-6A-5 of said code be amended and reenacted; that §49-6D-3 of said code be amended and reenacted; that §49-7-1 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-7-36, all to read as follows:
ARTICLE 1. PURPOSES AND DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

(1) “Abused child” means a child whose health or welfare is harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(2) “Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(3) “Battered parent” means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code.
code, which domestic violence was perpetrated by the person
or persons determined to have abused or neglected the child
or children.

(4) “Child abuse and neglect” or “child abuse or neglect”
means physical injury, mental or emotional injury, sexual
abuse, sexual exploitation, sale or attempted sale or negligent
treatment or maltreatment of a child by a parent, guardian or
custodian who is responsible for the child’s welfare, under
circumstances which harm or threaten the health and welfare
of the child.

(5) “Child abuse and neglect services” means social
services which are directed toward:

(A) Protecting and promoting the welfare of children who
are abused or neglected;

(B) Identifying, preventing and remedying conditions
which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from
their families by identifying family problems and assisting
families in resolving problems which could lead to a removal
of children and a breakup of the family;

(D) In cases where children have been removed from
their families, providing services to the children and the
families so as to reunify such children with their families or
some portion thereof;

(E) Placing children in suitable adoptive homes when
reunifying the children with their families, or some portion
thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children who have been
placed in the custody of the department or third parties.
(6) “Child advocacy center (CAC)” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., and is working to implement the following program components:

(A) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients.

(B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center.

(C) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices.

(D) Cultural competency and diversity: The CAC promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing.

(F) Medical evaluation: Specialized medical evaluation and treatment are to be made available to CAC clients as part of the team response, either at the CAC or through coordination and referral with other specialized medical providers.
(G) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the CAC or through coordination and referral with other appropriate treatment providers.

(H) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the CAC or through coordination with other providers, throughout the investigation and subsequent legal proceedings.

(I) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis.

(J) Case tracking: CACs must develop and implement a system for monitoring case progress and tracking case outcomes for team components: Provided, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location.

(7) “Court appointed special advocate (CASA) program” means a community organization that screens, trains and supervises CASA volunteers to advocate for the best interests of children who are involved in abuse and neglect proceedings. Court appointed special advocate programs will be operated under the following guidelines:

(A) Standards: CASA programs shall be members in good standing with the West Virginia Court Appointed Special Advocate Association, Inc., and the National Court Appointed Special Advocates Association and adhere to all standards set forth by these entities.

(B) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been
established and implements basic sound administrative practice.

(C) Cultural competency and diversity: CASA programs promote policies, practices and procedures that are culturally competent. “Cultural competency” is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(D) Case management: CASA programs must utilize a uniform case management system to monitor case progress and track outcomes.

(E) Case review: CASA volunteers meet with CASA staff on a routine basis to discuss case status and outcomes.

(F) Training: Court appointed special advocates shall serve as volunteers without compensation and shall receive training consistent with state and nationally developed standards.

(8) “Imminent danger to the physical well being of the child” means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;
(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian; or

(H) The parent, guardian or custodian abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child’s health or safety.

(9) “Legal guardianship” means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of this chapter and chapter forty-eight of this code.

(10) “Multidisciplinary team” means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and followup for both parents and children. “Community team” means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and
may consist of several multidisciplinary teams with different functions.

(11) (A) “Neglected child” means a child:

(i) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(ii) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child’s parent or custodian;

(B) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(12) “Parent” means an individual defined has a parent by law or on the basis of a biological relationship, marriage to a person with a biological relationship, legal adoption or other recognized grounds.

(13) “Parental rights” means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(14) “Parenting skills” means a parent’s competencies in providing physical care, protection, supervision and psychological support appropriate to a child’s age and state of development.

(15) “Sexual abuse” means:
(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.
(16) “Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(17) “Sexual exploitation” means an act whereby:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.

(18) “Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(19) “Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(20) “Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

(21) “Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.
(22) “Siblings” means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

(23) “Time-limited reunification services” means individual, group and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child is removed from home.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-17. Subsidized adoption and legal guardianship.

(a) From funds appropriated to the Department of Health and Human Resources, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children. An adoption subsidy shall be available for children who are legally free for adoption and who are dependents of the department or a child welfare agency licensed to place children for adoption. A legal guardianship subsidy shall not require the surrender or termination of parental rights. For either subsidy, the children must be in special circumstances because one or more of the following conditions inhibit their adoption or legal guardianship placement:

(1) They have a physical or mental disability;
They are emotionally disturbed;
(3) They are older children;
(4) They are a part of a sibling group; or
(5) They are a member of a racial or ethnic minority.

(b) The department shall provide assistance in the form of subsidies or other services to parents who are found and approved for adoption or legal guardianship of a child certified as eligible for subsidy by the department, but before the final decree of adoption or order of legal guardianship is entered, there must be a written agreement between the family entering into the subsidized adoption or legal guardianship and the department. Adoption or legal guardianship subsidies in individual cases may commence with the adoption or legal guardianship placement, and will vary with the needs of the child as well as the availability of other resources to meet the child’s needs. The subsidy may be for special services only, or for money payments, and either for a limited period, or for a long term, or for any combination of the foregoing. The specific financial terms of the subsidy shall be included in the agreement between the department and the adoptive parents or legal guardians. The agreement may recognize and provide for direct payment by the department of attorney’s fees to an attorney representing the adoptive parent. The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for such child under foster family care or, in the case of a special service, the reasonable fee for the service rendered. In addition, the department shall provide either Medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement between the department and the adoptive parent or legal guardian and who the department determines cannot be placed with an adoptive
parent or legal guardian without medical assistance because the child has special needs for medical, mental health or rehabilitative care.

(c) After reasonable efforts have been made without the use of subsidy and no appropriate adoptive family or legal guardian has been found for the child, the department shall certify the child as eligible for a subsidy in the event of adoption or a legal guardianship: Provided, that reasonable efforts to place a child without a subsidy shall not be required if it is in the best interest of the child because of such factors as the existence of significant emotional ties developed between the child and the prospective parent or guardian while in care as a foster child.

(d) If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of the inability to place the child for adoption or legal guardianship without the use of subsidy or evidence that such efforts would not be in the best interests of the child. In no event shall the value of the services and assistance provided by the department under an agreement pursuant to this section exceed the value of assistance available to foster families in similar circumstances. All records regarding subsidized adoptions or legal guardianships shall be held in confidence; however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or persons receiving funds for such child.

ARTICLE 5. JUVENILE PROCEEDINGS.


(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the court shall, upon
request of the court, make an investigation of the
environment of the juvenile and the alternative dispositions
possible. The court, upon its own motion, or upon request of
counsel, may order a psychological examination of the
juvenile. The report of such examination and other
investigative and social reports shall not be made available to
the court until after the adjudicatory hearing. Unless waived,
copies of the report shall be provided to counsel for the
petitioner and counsel for the juvenile no later than seventy-
two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct
the dispositional proceeding, giving all parties an opportunity
to be heard. In disposition the court shall not be limited to
the relief sought in the petition and shall, in electing from the
following alternatives, consider the best interests of the
juvenile and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile’s parent or
custodian to a community agency for needed assistance and
dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-
parental supervision: (A) Place the juvenile under the
supervision of a probation officer of the court or of the court
of the county where the juvenile has his or her usual place of
abode or other person while leaving the juvenile in custody
of his or her parent or custodian; and (B) prescribe a program
of treatment or therapy or limit the juvenile’s activities under
terms which are reasonable and within the child’s ability to
perform, including participation in the litter control program
established pursuant to section three, article fifteen-a, chapter
twenty-two of this code or other appropriate programs of
community service;
(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter and guidelines promulgated by the Supreme Court of Appeals;

(5) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency pursuant to subdivision (1), section four, article one of this chapter, the court may commit the juvenile to the custody of the Director of the Division of Juvenile Services for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles: Provided, That the court maintains discretion to consider alternative sentencing arrangements. Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile’s best interests or required by the public welfare to place the juvenile in the custody of the Division of Juvenile Services, the court shall provide the Division of Juvenile Services with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations,
medical reports and evaluations or any other such records as may be in the court’s possession as would enable the Division of Juvenile Services to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender. Commitments shall not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable sentence to be served in a juvenile correctional facility may take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in subsections (c) and (d), section four, article five, chapter twenty-seven of this code, commit the juvenile to a mental health facility in accordance with the juvenile’s treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

(d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a
plea of denial. Any dispositional order is subject to appeal to the Supreme Court of Appeals.

(e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(f) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing such person as an adult.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

(a) The prosecuting attorney shall establish a multidisciplinary investigative team in each county. The multidisciplinary team shall be headed and directed by the prosecuting attorney or his or her designee and shall include as permanent members the prosecuting attorney or his or her designee, a local child protective services caseworker from the Department of Health and Human Resources; a local law-enforcement officer employed by a law-enforcement agency in the county; a child advocacy center representative, where available; a health care provider with pediatric and child abuse expertise, where available; a mental health professional with pediatric and child abuse expertise, where available; an educator and a representative from a licensed domestic
violence program serving the county. The Department of
Health and Human Resources and any local law-enforcement
agency or agencies selected by the prosecuting attorney shall
appoint their representatives to the team by submitting a
written designation of the team to the prosecuting attorney of
each county within thirty days of the prosecutor’s request that
the appointment be made. Within fifteen days of the
appointment, the prosecuting attorney shall notify the chief
deputy of each circuit within which the county is situated of
the names of the representatives so appointed. Any other
person or any other appointee of an agency who may
contribute to the team’s efforts to assist a minor child as may
be determined by the permanent members of the team may
also be appointed as a member of the team by the prosecutor
with notification to the chief judge.

(b) Any permanent member of the multidisciplinary
investigative team shall refer all cases of accidental death of
any child reported to their agency and all cases when a child
dies while in the custody of the state for investigation and
review by the team. The multidisciplinary investigative team
shall meet at regular intervals at least once every calendar
month.

(c) The investigative team shall be responsible for
coordinating or cooperating in the initial and ongoing
investigation of all civil and criminal allegations pertinent to
cases involving child sexual assault, child sexual abuse, child
abuse and neglect and shall make a recommendation to the
county prosecuting attorney as to the initiation or
commencement of a civil petition and/or criminal
prosecution.

(d) State, county and local agencies shall provide the
multidisciplinary investigative team with any information
requested in writing by the team as allowable by law or upon
receipt of a certified copy of the circuit court’s order
directing said agencies to release information in its
possession relating to the child. The team shall assure that all
information received and developed in connection with the
provisions of this article remains confidential. For purposes
of this section, the term “confidential” shall be construed in
accordance with the provisions of section one, article seven
of this chapter.

§49-5D-3. Multidisciplinary treatment planning process.

(a) (1) A multidisciplinary treatment planning process for
cases initiated pursuant to articles five and six of this chapter
shall be established within each county of the state, either
separately or in conjunction with a contiguous county, by the
secretary of the department with advice and assistance from
the prosecutor's advisory council as set forth in section four,
article four, chapter seven of this code. The Division of
Juvenile Services shall establish a similar treatment planning
process for delinquency cases in which the juvenile has been
committed to its custody, including those cases in which the
juvenile has been committed for examination and diagnosis.

(2) The provisions of this section do not require a
multidisciplinary team meeting to be held prior to temporarily
placing a child or juvenile out-of-home under exigent
circumstances or upon a court order placing a juvenile in a
facility operated by the Division of Juvenile Services.

(b) The case manager in the Department of Health and
Human Resources for the child, family or juvenile or the case
manager in the Division of Juvenile Services for a juvenile
shall convene a treatment team in each case when it is
required pursuant to this article.

Prior to disposition, in each case in which a treatment
planning team has been convened, the team shall advise the
court as to the types of services the team has determined are
needed and the type of placement, if any, which will best
serve the needs of the child. If the team determines that an
out-of-home placement will best serve the needs of the child,
the team shall first consider placement with appropriate
relatives then with foster care homes, facilities or programs
located within the state. The team may only recommend
placement in an out-of-state facility if it concludes, after
considering the best interests and overall needs of the child,
that there are no available and suitable in-state facilities
which can satisfactorily meet the specific needs of the child.

Any person authorized by the provisions of this chapter
to convene a multidisciplinary team meeting may seek and
receive an order of the circuit court setting such meeting and
directing attendance. Members of the multidisciplinary team
may participate in team meetings by telephone or video
conferencing: Provided, That the provisions of this
subsection do not prevent the respective agencies from
designating a person other than the case manager as a
facilitator for treatment team meetings.

(c) The treatment team shall coordinate its activities and
membership with local family resource networks and
coordinate with other local and regional child and family
service planning committees to assure the efficient planning
and delivery of child and family services on a local and
regional level.

(d) The multidisciplinary treatment team shall be afforded
access to information in the possession of the Department of
Health and Human Services, Division of Juvenile Services,
and other state, county and local
cities; and the agencies shall cooperate in the sharing of
information, as may be provided in sections three(d) and six,
article five-D and section one, article seven, all of chapter
forty-nine, and any other relevant provision of law. Any
multidisciplinary team member who acquires confidential
information shall not disclose such information except as permitted by the provisions of this code or court rules.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

(a) In any case in which a multidisciplinary treatment team develops an individualized service plan for a child or family pursuant to the provisions of this article, the court shall review the proposed service plan to determine if implementation of the plan is in the child’s best interests. If the multidisciplinary team cannot agree on a plan or if the court determines not to adopt the team’s recommendations, it shall, upon motion or sua sponte, schedule and hold within ten days of such determination, and prior to the entry of an order placing the child in the custody of the department or in an out-of-home setting, a hearing to consider evidence from the team as to its rationale for the proposed service plan. If, after a hearing held pursuant to the provisions of this section, the court does not adopt the teams’s recommended service plan, it shall make specific written findings as to why the team’s recommended service plan was not adopted.

(b) In any case in which the court decides to order the child placed in an out-of-state facility or program it shall set forth in the order directing the placement the reasons why the child was not placed in an in-state facility or program.

(c) Any member of the multidisciplinary treatment team who disagrees with recommendations of the team may inform the court of his or her own recommendations and objections to the team’s recommendations. The recommendations and objections of the dissenting team member may be made in a hearing on the record, made in writing and served upon each team member and filed with the court and indicated in the case plan, or both made in writing and indicated in the case
plan. Upon receiving objections, the court will conduct a hearing pursuant to paragraph (a) of this section.

§49-5D-3b. Multidisciplinary treatment planning process involving child abuse and neglect.

(a) Within thirty days of the initiation of a judicial proceeding pursuant to article six of this chapter, the Department of Health and Human Services shall convene a multidisciplinary treatment team to assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of such a plan.

(b) In a case initiated pursuant to article six of this chapter, the treatment team shall consist of the child or family’s case manager in the Department of Health and Human Resources, the adult respondent or respondents, the child’s parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents, any attorney representing an adult respondent or other member of the treatment team, the child’s counsel or the guardian ad litem, the prosecuting attorney or his or her designee, a member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate, any court-appointed special advocate assigned to a case, any other person entitled to notice and the right to be heard, an appropriate school official and any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers. The child may participate in multidisciplinary treatment team meetings if the
child’s participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney shall not be given notice of a multidisciplinary treatment team meeting and does not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court, and shall meet as often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or copetitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.
§49-5D-3c. Multidisciplinary treatment process for status offenders or delinquents.

(a) (1) When a juvenile is adjudicated as a status offender pursuant to section eleven-d, article five of this chapter, the Department of Health and Human Resources shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile’s mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(2) When a juvenile is adjudicated as a delinquent or has been granted an improvement period pursuant to section nine, article five of this chapter, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile’s mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department’s custody or placing the juvenile out-of-home at the department’s expense pursuant to section thirteen, article five of this chapter. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least fifteen working days before the court proceeding in order to allow...
the department sufficient time to convene and develop an
individualized service plan for the juvenile.

(3) When a juvenile has been adjudicated and committed
to the custody of the Director of the Division of Juvenile
Services, including those cases in which the juvenile has been
committed for examination and diagnosis, the Division of
Juvenile Services shall promptly convene a multidisciplinary
treatment team and conduct an assessment, utilizing a
standard uniform comprehensive assessment instrument or
protocol, to determine the juvenile’s mental and physical
condition, maturity and education level, home and family
environment, rehabilitative needs and recommended service
plan. Upon completion of the assessment, the treatment team
shall prepare and implement a comprehensive, individualized
service plan for the juvenile.

(4) (A) The rules of juvenile procedure shall govern the
procedure for obtaining an assessment of a juvenile,
preparing an individualized service plan and submitting the
plan and assessment to the court.

(B) In juvenile proceedings conducted pursuant to article
five of this chapter, the treatment team shall consist of the
juvenile, the juvenile’s case manager in the Department of
Health and Human Resources or the Division of Juvenile
Services, the juvenile’s parent or parents, guardian or
guardians or custodial relatives, the juvenile’s attorney, any
attorney representing a member of the treatment team, the
prosecuting attorney or his or her designee, an appropriate
school official and any other person or agency representative
who may assist in providing recommendations for the
particular needs of the juvenile and family, including
domestic violence service providers. In delinquency
proceedings, the probation officer shall be a member of a
treatment team. When appropriate, the juvenile case manager
in the Department of Health and Human Resources and the
Division of Juvenile Services shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile’s best interest.

(C) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(D) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court.

(E) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and section twenty, article five, chapter forty-nine of the code shall govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(F) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to article five, chapter forty-nine of this code in the multidisciplinary
treatment planning process, his or her statements shall not be
used in any juvenile or criminal proceedings against the
juvenile, except for perjury or false swearing.

ARTICLE 6. PROCEDURE IN CASES OF CHILD
NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or
abused -- Right to counsel; improvement period;
hearing; priority of proceeding; transcript.

    (a) In any proceeding under the provisions of this article,
the child, his or her or parents and his or her legally
established custodian or other persons standing in loco
parentis to him or her shall have the right to be represented
by counsel at every stage of the proceedings and shall be
informed by the court of their right to be so represented and
that if they cannot pay for the services of counsel, that
counsel will be appointed. Counsel of the child shall be
appointed in the initial order. If the order gives physical
custody of the child to the state, the initial order shall appoint
counsel for the parents or, if the parents are separated or
divorced, the parents or parent or other person or persons
standing in loco parentis who had physical custody of the
child for the majority of the time in the period immediately
preceding the petition: Provided, That such representation
shall only continue after the first appearance if the parent or
other persons standing in loco parentis cannot pay for the
services of counsel. Counsel for other parties shall only be
appointed upon request for appointment of counsel. If the
requesting parties have not retained counsel and cannot pay
for the services of counsel, the court shall, by order entered
of record, appoint an attorney or attorneys to represent the
other party or parties and so inform the parties. Under no
circumstances may the same attorney represent both the child
and the other party or parties, nor shall the same attorney
represent both parents or custodians. However, one attorney
may represent both parents or custodians where both parents or guardians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney assures the court that she or he is able to represent each client without impairing her or his professional judgment; however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children. A parent who has been judicially determined to be battered shall be entitled to his or her own attorney. The court may allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases. Effective July 1, 2012, any attorney appointed pursuant to this section shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, after July 1, 2013, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures for approval and certification of training required under this section by July 1, 2012: Provided, however, That where no attorney who has completed this training is available for such appointment, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the parent or child. Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia.

(b) In any proceeding brought pursuant to the provisions of this article, the court may grant any respondent an improvement period in accord with the provisions of this article. During such period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children or the state department or other agency during the
improvement period. An order granting such improvement period shall require the department to prepare and submit to the court a family case plan in accordance with the provisions of section three, article six-d of this chapter.

(c) In any proceeding pursuant to the provisions of this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. The petition shall not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Where relevant, the court shall consider the efforts of the state department to remedy the alleged circumstances. At the conclusion of the hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected and, if applicable, whether the parent, guardian, or custodian is a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing proof.

(d) Any petition filed and any proceeding held under the provisions of this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under article two-a, chapter forty-eight of this code and actions in which trial is in progress. Any petition filed under the provisions of this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under the provisions of this article shall be held as nearly as practicable on successive days and, with respect to said hearing to be held at the end of an improvement period, shall be held as close in time as
possible after the end of said improvement period and shall be held within sixty days of the termination of such improvement period.

(e) Following the court’s determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response shall not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay therefor.

§49-6-3. Petition to court when child believed neglected or abused -- temporary custody.

(a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible person found by the court to be a fit and proper person for the temporary care of the child pending a preliminary hearing, if it finds that:

(1) There exists imminent danger to the physical well being of the child; and

(2) There are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child’s present custody: Provided, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been
precluded from visiting or residing in said home by judicial
order. In a case where there is more than one child in the
home, or in the temporary care, custody or control of the
alleged offending parent, the petition shall so state, and
notwithstanding the fact that the allegations of abuse or
neglect may pertain to less than all of such children, each
child in the home for whom relief is sought shall be made a
party to the proceeding. Even though the acts of abuse or
neglect alleged in the petition were not directed against a
specific child who is named in the petition, the court shall
order the removal of such child, pending final disposition, if
it finds that there exists imminent danger to the physical well
being of the child and a lack of reasonable available
alternatives to removal. The initial order directing such
custody shall contain an order appointing counsel and
scheduling the preliminary hearing, and upon its service shall
require the immediate transfer of custody of such child or
children to the department or a responsible relative which
may include any parent, guardian, or other custodian. The
court order shall state:

(A) That continuation in the home is contrary to the best
interests of the child and why; and

(B) Whether or not the department made reasonable
efforts to preserve the family and prevent the placement or
that the emergency situation made such efforts unreasonable
or impossible. The order may also direct any party or the
department to initiate or become involved in services to
facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of
custody as provided in subsection (a) of this section, if the
facts alleged in the petition demonstrate to the court that there
exists imminent danger to the child, the court may schedule
a preliminary hearing giving the respondents at least five
days’ actual notice. If the court finds at the preliminary
hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: Provided, 

(1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor;

(2) Whether or not the department made reasonable efforts to preserve the family and to prevent the child’s removal from his or her home;

(3) Whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and

(4) What efforts should be made by the department, if any, to facilitate the child’s return home: Provided, however, That if the court grants an improvement period as provided in section twelve of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody
without a court order: *Provided,* That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the department until the expiration of the next two judicial days, at which time any such child
120 taken into emergency custody shall be returned to the custody
121 of his or her parent or guardian or custodian unless a petition
122 has been filed and custody of the child has been transferred
123 under the provisions of section three of this article.

124 (d) For purposes of the court’s consideration of
125 temporary custody pursuant to the provisions of subsection
126 (a) or (b) of this section, the department is not required to
127 make reasonable efforts to preserve the family if the court
128 determines:

129 (1) The parent has subjected the child, another child of
130 the parent or any other child residing in the same household
131 or under the temporary or permanent custody of the parent to
132 aggravated circumstances which include, but are not limited
133 to, abandonment, torture, chronic abuse and sexual abuse;

134 (2) The parent has:

135 (A) Committed murder of the child’s other parent,
136 guardian or custodian, another child of the parent or any
137 other child residing in the same household or under the
138 temporary or permanent custody of the parent;

139 (B) Committed voluntary manslaughter of the child’s
140 other parent, guardian or custodian, another child of the
141 parent or any other child residing in the same household or
142 under the temporary or permanent custody of the parent;

143 (C) Attempted or conspired to commit such a murder or
144 voluntary manslaughter or been an accessory before or after
145 the fact to either such crime;

146 (D) Committed unlawful or malicious wounding that
147 results in serious bodily injury to the child, the child’s other
148 parent, guardian or custodian, to another child of the parent
or any other child residing in the same household or under the
temporary or permanent custody of the parent;

(E) Committed sexual assault or sexual abuse of the child,
the child’s other parent, guardian or custodian, another child
of the parent or any other child residing in the same
household or under the temporary or permanent custody of
the parent; or

(F) Has been required by state or federal law to register
with a sex offender registry; or

(3) The parental rights of the parent to another child have
been terminated involuntarily.

§49-6-5. Disposition of neglected or abused children.

(a) Following a determination pursuant to section two of
this article wherein the court finds a child to be abused or
neglected, the department shall file with the court a copy of
the child’s case plan, including the permanency plan for the
child. The term case plan means a written document that
includes, where applicable, the requirements of the family
case plan as provided for in section three, article six-d of this
chapter and that also includes at least the following: A
description of the type of home or institution in which the
child is to be placed, including a discussion of the
appropriateness of the placement and how the agency which
is responsible for the child plans to assure that the child
receives proper care and that services are provided to the
parents, child and foster parents in order to improve the
conditions in the parent(s) home; facilitate return of the child
to his or her own home or the permanent placement of the
child; and address the needs of the child while in foster care,
including a discussion of the appropriateness of the services
that have been provided to the child. The term “permanency
plan” refers to that part of the case plan which is designed to
achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time reasonable efforts are made to prevent removal or to make it possible for a child to safely return home. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;
(5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why;

(B) Whether or not the department has made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home;

(C) What efforts were made or that the emergency situation made such efforts unreasonable or impossible; and

(D) The specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child’s commitment to the department shall continue. Considerations pertinent to the determination include whether the child should:

(i) Be continued in foster care for a specified period;

(ii) Be considered for adoption;

(iii) Be considered for legal guardianship;

(iv) Be considered for permanent placement with a fit and willing relative; or
(v) Be placed in another planned permanent living arrangement, but only in cases where the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (I), (ii), (iii) or (iv) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child’s need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the
permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(7) For purposes of the court’s consideration of the disposition custody of a child pursuant to the provisions of this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household
or under the temporary or permanent custody of the parent to
aggravated circumstances which include, but are not limited
to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of the child’s other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child’s other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime;

(iv) Committed a felonious assault that results in serious bodily injury to the child, the child’s other parent, guardian or custodian, to another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(v) Committed sexual assault or sexual abuse of the child, the child’s other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(vi) Has been required by state or federal law to register with a sex offender registry; or

(C) The parental rights of the parent to another child have been terminated involuntarily; or
(D) A parent has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child’s interests would not be promoted by a preservation of the family.

(b) As used in this section, “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected” shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child’s return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;
(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child;

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills; or

(7) The battered parent’s parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(c) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.
§49-6-6. Modification of dispositional orders.

(a) Upon motion of a child, a child’s parent or custodian or the department alleging a change of circumstances requiring a different disposition, the court shall conduct a hearing pursuant to section two of this article and may modify a dispositional order if the court finds by clear and convincing evidence a material change of circumstances and that such modification is in the child’s best interests: Provided, That a dispositional order pursuant to subdivision (6), subsection (a) of section five shall not be modified after the child has been adopted, except as provided in subsections (b) and (c) of this section. Adequate and timely notice of any motion for modification shall be given to the child’s counsel, counsel for the child’s parent or custodian, the department and any person entitled to notice and the right to be heard. The circuit court of origin has exclusive jurisdiction over placement of the child, and such placement shall not be disrupted or delayed by any administrative process of the department.

(b) If the child is removed or relinquished from an adoptive home or other permanent placement after the case has been dismissed, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the department and the child’s counsel, and the court shall schedule a permanency hearing within sixty days of the report to the circuit court, with notice given to any appropriate parties and persons entitled to notice and the right to be heard. The department shall convene a multidisciplinary treatment team meeting within thirty days of the receipt of notice of permanent placement disruption.

(c) If a child has not been adopted, the child or department may move the court to place the child with a parent or custodian whose rights have been terminated and/or restore such parent’s or guardian’s rights. Under these
circumstances, the court may order such placement and/or restoration of a parent’s or guardian’s rights if it finds by clear and convincing evidence a material change of circumstances and that such placement and/or restoration is in the child’s best interests.

§49-6-8. Permanency hearing and permanent placement review.

(a) If the court finds, pursuant to any provision of this article, that the department is not required to make reasonable efforts to preserve the family, then, notwithstanding any other provision, a permanency hearing must be held within thirty days following the entry of the court order so finding, and a permanent placement review hearing must be conducted at least once every three calendar months thereafter until a permanent placement is achieved.

(b) If, twelve months after receipt by the department or its authorized agent of physical custody of a child either by a court ordered placement or by a voluntary agreement, the department has not placed a child in an adoptive home or placed the child with a natural parent or placed the child in legal guardianship or permanently placed the child with a fit and willing relative, the court shall hold a permanency hearing. The department shall file a report with the court detailing the efforts that have been made to place the child in a permanent home and copies of the child’s case plan, including the permanency plan as defined in section five, article six of this chapter. Copies of the report shall be sent to the parties and all persons entitled to notice and the right to be heard. The court shall schedule a hearing, giving notice and the right to be present to: The child’s attorney; the child, if twelve years of age or older; the child’s parents; the child’s guardians; the child’s foster parents; any preadoptive parent or any relative providing care for the child; any person entitled to notice and the right to be heard; and such other
persons as the court may, in its discretion, direct. The child’s presence may be waived by the child’s attorney at the request of the child or if the child would suffer emotional harm. The purpose of the hearing is to review the child’s case, to determine whether and under what conditions the child’s commitment to the department shall continue and to determine what efforts are necessary to provide the child with a permanent home. In the case of a child who will not be returned to his or her parent, the court shall consider in-state and out-of-state placement options, and, if the court considers an out-of-state placement, the court shall determine whether such placement is in the best interests of the child; in the case of a child who has attained sixteen years of age, the court shall determine the services needed to assist the child to make the transition from foster care to independent living. In any case in which the court decides to order the child placed in an out-of-state facility or program it shall set forth in the order directing the placement the reasons why the child was not placed in an in-state facility or program. At the conclusion of the hearing the court shall, in accordance with the best interests of the child, enter an order containing all such appropriate findings. The court order shall state: (1) Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made such effort unreasonable; (2) whether or not the department made reasonable efforts to finalize the permanency plan for the child; and (3) identify services required to meet the child’s needs.

(c) The court shall conduct another permanency hearing within twelve months thereafter for each child who remains in the physical or legal custody of the department until the child is placed in an adoptive home or returned to his or her parents or placed in legal guardianship or permanently placed with a fit and willing relative.
(d) The state department shall annually report to the court the current status of the placements of children in permanent care and custody of the state department who have not been adopted.

(e) The state department shall file a report with the court in any case where any child in the temporary or permanent custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and persons entitled to notice and the right to be heard. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a permanent home: Provided, That no report shall be provided to any parent or parent’s attorney whose parental rights have been terminated pursuant to this article.

(f) The state department shall notify, in writing, the court, the child, if over the age of twelve, the child’s attorney, the parents and the parents’ attorney forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if this is an emergency move, except where such notification would endanger the child or the foster family. This notice shall not be required in any case where the child is in imminent danger in the child’s current placement. The location of the child need not be disclosed, but the purpose of the move should be. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice shall be provided pursuant to this provision to any parent or parent’s attorney whose parental rights have been terminated pursuant to this article.

(g) Nothing in this article precludes any party from petitioning the court for review of the child’s case at any time. The court shall grant such petition upon a showing that
there is a change in circumstance or needs of the child that warrants court review.

(h) Any foster parent, preadoptive parent or relative providing care for the child shall be given notice of and the right to be heard at the permanency hearing provided in this section.

§49-6-12. Improvement period in cases of child neglect or abuse.

(a) A court may grant a respondent an improvement period of a period not to exceed three months prior to making a finding that a child is abused or neglected pursuant to section two of this article only when:

(1) The respondent files a written motion requesting the improvement period;

(2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(3) In the order granting the improvement period, the court (A) orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or (B) orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondents progress in the improvement period within sixty days of the order granting the improvement period; and

(4) The order granting the improvement period requires the department to prepare and submit to the court an
individualized family case plan in accordance with the provisions of section three, article six-d of this chapter;

(b) After finding that a child is an abused or neglected child pursuant to section two of this article, a court may grant a respondent an improvement period of a period not to exceed six months when:

(1) The respondent files a written motion requesting the improvement period;

(2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(3) In the order granting the improvement period, the court (A) orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or (B) orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent’s progress in the improvement period within sixty days of the order granting the improvement period;

(4) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances the respondent is likely to fully participate in a further improvement period; and

(5) The order granting the improvement period requires the department to prepare and submit to the court an
individualized family case plan in accordance with the provisions of section three, article six-d of this chapter.

(c) The court may grant an improvement period not to exceed six months as a disposition pursuant to section five of this article when:

(1) The respondent moves in writing for the improvement period;

(2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(3) In the order granting the improvement period, the court:

(A) Orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or

(B) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent’s progress in the improvement period within sixty days of the order granting the improvement period;

(4) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances, the respondent is likely to fully participate in the improvement period; and
(5) The order granting the improvement period shall require the department to prepare and submit to the court an individualized family case plan in accordance with the provisions of section three, article six-d of this chapter.

(d) When any improvement period is granted to a respondent pursuant to the provisions of this section, the respondent shall be responsible for the initiation and completion of all terms of the improvement period. The court may order the state department to pay expenses associated with the services provided during the improvement period when the respondent has demonstrated that he or she is unable to bear such expenses.

(e) When any improvement period is granted to a respondent pursuant to the provisions of this section, the respondent shall execute a release of all medical information regarding that respondent, including, but not limited to, information provided by mental health and substance abuse professionals and facilities. Such release shall be accepted by any such professional or facility regardless of whether the release conforms to any standard required by that facility.

(f) When any respondent is granted an improvement period pursuant to the provisions of this article, the department shall monitor the progress of such person in the improvement period. When the respondent fails to participate in any service mandated by the improvement period, the state department shall initiate action to inform the court of that failure. When the department demonstrates that the respondent has failed to participate in any provision of the improvement period, the court shall forthwith terminate the improvement period.

(g) A court may extend any improvement period granted pursuant to subsections (b) or (c) of this section for a period not to exceed three months when the court finds that the
respondent has substantially complied with the terms of the improvement period; that the continuation of the improvement period will not substantially impair the ability of the department to permanently place the child; and that such extension is otherwise consistent with the best interest of the child.

(h) Upon the motion by any party, the court shall terminate any improvement period granted pursuant to this section when the court finds that respondent has failed to fully participate in the terms of the improvement period.

(i) This section may not be construed to prohibit a court from ordering a respondent to participate in services designed to reunify a family or to relieve the department of any duty to make reasonable efforts to reunify a family required by state or federal law.

(j) Any hearing scheduled pursuant to the provisions of this section may be continued only for good cause upon a written motion properly served on all parties. When a court grants such continuance, the court shall enter an order granting the continuance which shall specify a future date when the hearing will be held.

(k) Any hearing to be held at the end of an improvement period shall be held as nearly as practicable on successive days and shall be held as close in time as possible after the end of said improvement period and shall be held no later than sixty days of the termination of such improvement period.

(l) Notwithstanding any other provision of this section, no combination of any improvement periods or extensions thereto may cause a child to be in foster care more than fifteen months of the most recent twenty-two months, unless the court finds compelling circumstances by clear and
convincing evidence that it is in the child’s best interests to extend the time limits contained in this paragraph.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED OF BEING ABUSED OR NEGLECTED.

§49-6A-5. Reporting procedures.

(a) Reports of child abuse and neglect pursuant to this article shall be made immediately by telephone to the local state department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department shall establish and maintain a twenty-four hour, seven-day-a-week telephone number to receive such calls reporting suspected or known child abuse or neglect.

(b) A copy of any report of serious physical abuse, sexual abuse or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner’s office. All reports under this article shall be confidential. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.

§49-6D-3. Unified child and family case plans.

(a) The Department of Health and Human Resources shall develop a unified child and family case plan for every family wherein a person has been referred to the department after being allowed an improvement period or where the child is placed in foster care. The case plan must be filed within sixty days of the child coming into foster care or within thirty days
of the inception of the improvement period, whichever occurs first. The department may also prepare a case plan for any person who voluntarily seeks child abuse and neglect services from the department, or who is referred to the department by another public agency or private organization. The case plan provisions shall comply with federal law and the rules of procedure for child abuse and neglect proceedings.

(b) The department shall convene a multidisciplinary treatment team, which shall develop the case plan. Parents, guardians or custodians shall participate fully in the development of the case plan, and the child shall also fully participate if sufficiently mature and the child’s participation is otherwise appropriate. The case plan may be modified from time to time to allow for flexibility in goal development, and in each such case the modifications shall be submitted to the court in writing. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time as reasonable efforts are being made to prevent removal or to make it possible for a child to return safely home. The court shall examine the proposed case plan or any modification thereof, and upon a finding by the court that the plan or modified plan can be easily communicated, explained and discussed so as to make the participants accountable and able to understand the reasons for any success or failure under the plan, the court shall inform the participants of the probable action of the court if goals are met or not met.

(c) In furtherance of the provisions of this article, the department shall, within the limits of available funds, establish programs and services for the following purposes:

(1) For the development and establishment of training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification and treatment of child
abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;

(2) For the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams and community teams of personnel trained in the prevention, identification and treatment of child abuse and neglect cases, to provide a broad range of services related to child abuse and neglect, including direct support as well as providing advice and consultation to individuals, agencies and organizations which request such services;

(3) For furnishing services of multidisciplinary teams and community teams, trained in the prevention, identification and treatment of child abuse and neglect cases, on a consulting basis to small communities where such services are not available;

(4) For other innovative programs and projects that show promise of successfully identifying, preventing or remedying the causes of child abuse and neglect, including, but not limited to, programs and services designed to improve and maintain parenting skills, programs and projects for parent self help, and for prevention and treatment of drug-related child abuse and neglect; and

(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the Secretary of the federal Department of Health and Human Services for demonstration programs and projects designed to identify, prevent and treat child abuse and neglect.

(d) Agencies, organizations and programs funded to carry out the purposes of this section shall be structured so as to comply with any applicable federal law, any regulation of the
federal Department of Health and Human Services or the secretary thereof, and any final comprehensive plan of the federal advisory board on child abuse and neglect. In funding organizations, the department shall, to the extent feasible, ensure that parental organizations combating child abuse and neglect receive preferential treatment.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Juvenile Services, the Department of Health and Human Resources, a child agency or facility, court or law-enforcement agency shall be kept confidential and shall not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect shall be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated; or

(C) The attorney of the child or parent;
(3) With the written consent of the child or of someone authorized to act on the child’s behalf; or

(4) Pursuant to an order of a court of record: Provided, That the court shall review such record or records for relevancy and materiality to the issues in the proceeding and safety, and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available, upon request, to:

(1) Federal, state or local government entities, or any agent of such entities, including law-enforcement agencies and prosecuting attorneys, having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams;

or

(5) A grand jury, circuit court or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family court.

(d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to such fatality or near fatality shall be made public by the Department of
Health and Human Resources and to the entities described in subsection (c) of this section, all under the circumstances described in that subsection: Provided, That information released by the Department of Health and Human Resources pursuant to this subsection shall not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to the provisions of sections seventeen and eighteen, article five of this chapter.

(f) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in the county or regional jail for not more than six months, or be both fined and confined. A person convicted of violating the provisions of this section shall also be liable for damages in the amount of $300 or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public.

§49-7-36. Quarterly status review and yearly permanency hearings.

(a) For each child who remains in foster care as a result of a juvenile proceeding or as a result of a child abuse and
neglect proceeding, the circuit court with the assistance of the multidisciplinary treatment team shall conduct quarterly status reviews in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safety maintained in the home or placed for adoption or legal guardianship. Quarterly status reviews shall commence three months after the entry of the placement order. The permanency hearing provided for in subsection (c) of this section may be considered a quarterly status review.

(b) For each transitioning adult as that term is defined in §49-2B-2(x) who remains in foster care, the circuit court shall conduct status review hearings as described in subsection (a) of this section once every three months until permanency is achieved.

(c) For each child or transitioning adult who continues to remain in foster care, the circuit court shall conduct a permanency hearing no later that twelve months after the date the child or transitioning adult is considered to have entered foster care, and at least once every twelve months thereafter until permanency is achieved. For purposes of permanency planning for transitioning adults, the circuit court shall make factual findings and conclusions of law as to whether the department made reasonable efforts to finalize a permanency plan to prepare a transitioning adult for emancipation or independence or another approved permanency option such as, but not limited to, adoption or legal guardianship pursuant to the West Virginia Guardianship and Conservatorship Act.

(d) Nothing in this section shall be construed to abrogate the responsibilities of the circuit court from conducting
required hearings as provided in other provisions of this code, procedural court rules, or setting required hearings at the same time.

CHAPTER 27

(Com. Sub. for S. B. 161 - By Senators Foster, Palumbo, Klempa, Fanning, Unger, Kessler, Mr. President, Jenkins, Browning, Kirkendoll, Wills, Yost, Stollings and McCabe)

[Passed March 10, 2012; in effect ninety days from passage.] [Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of West Virginia, 1931, as amended, all relating to mandatory reporting of abuse and neglect of children; adding promoting adult responsibility and prevention to the purpose; adding certain persons to the mandatory reporting list for all abuse or neglect of children; creating a requirement that certain adults report sexual abuse of children when observed or when received credible reports; allowing for exceptions; requiring law enforcement who receive a report of sexual abuse to alert the Department of Health and Human Resources; encouraging law-enforcement agencies to coordinate in investigating a report; increasing the criminal penalties for failure to report; creating a crime and criminal penalties for all adults who fail to report sexual abuse of children; and requiring and amending certain educational programs and trainings.

Be it enacted by the Legislature of West Virginia:
That §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-1. Purpose.

It is the purpose of this article, through the complete reporting of child abuse and neglect, to protect the best interests of the child, to offer protective services in order to prevent any further harm to the child or any other children living in the home, to stabilize the home environment, to preserve family life whenever possible, to promote adult responsibility for protecting children and to encourage cooperation among the states to prevent future incidents of child abuse and neglect and in dealing with the problems of child abuse and neglect.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

(a) Any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or
neglect shall immediately, and not more than forty-eight
hours after suspecting this abuse or neglect, report the
circumstances or cause a report to be made to the Department
of Health and Human Resources: Provided, That in any case
where the reporter believes that the child suffered serious
physical abuse or sexual abuse or sexual assault, the reporter
shall also immediately report, or cause a report to be made, to
the State Police and any law-enforcement agency having
jurisdiction to investigate the complaint: Provided, however,
That any person required to report under this article who is a
member of the staff or volunteer of a public or private
institution, school, entity that provides organized activities
for children, facility or agency shall also immediately notify
the person in charge of the institution, school, entity that
provides organized activities for children, facility or agency,
or a designated agent thereof, who may supplement the report
or cause an additional report to be made.

(b) Any person over the age of eighteen who receives a
disclosure from a credible witness or observes any sexual
abuse or sexual assault of a child, shall immediately, and not
more than forty-eight hours after receiving such a disclosure
or observing the sexual abuse or sexual assault, report the
circumstances or cause a report to be made to the Department
of Health and Human Resources or the State Police or other
law-enforcement agency having jurisdiction to investigate the
report. In the event that the individual receiving the
disclosure or observing the sexual abuse or sexual assault has
a good faith belief that the reporting of the event to the police
would expose either the reporter, the subject child, the
reporter’s children or other children in the subject child’s
household to an increased threat of serious bodily injury, the
individual may delay making the report while he or she
undertakes measures to remove themselves or the affected
children from the perceived threat of additional harm:
Provided, That the individual makes the report as soon as
practicable after the threat of harm has been reduced. The law-enforcement agency that receives a report under this subsection shall report the allegations to the Department of Health and Human Resources and coordinate with any other law-enforcement agency, as necessary to investigate the report.

(c) Nothing in this article is intended to prevent individuals from reporting suspected abuse or neglect on their own behalf. In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

§49-6A-8. Failure to report; penalty.

Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section five of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than thirty days or fined not more than $1,000, or both.

§49-6A-10. Educational programs.

Subject to appropriation in the budget bill, the state department shall conduct educational and training programs for persons required to report suspected abuse or neglect, and the general public, as well as implement evidence-based
programs that reduce incidents of child maltreatment including sexual abuse. Training for persons required to report and the general public shall include indicators of child abuse and neglect, tactics used by sexual abusers, how and when to make a report, and protective factors that prevent abuse and neglect in order to promote adult responsibility for protecting children, encourage maximum reporting of child abuse and neglect, and to improve communication, cooperation and coordination among all agencies involved in the identification, prevention and treatment of the abuse and neglect of children.

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**CHAPTER 28**

(Com. Sub. for H. B. 4063 - By Delegates L. Phillips, Crosier, D. Poling, D. Campbell, M. Poling, Iaquinta, Ireland, O’Neal, Lane and Ellem)

[Passed March 9, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

*Clerk’s Note*: It has been determined that Com. Sub. for H. B. 4063, originally styled as Chapter 28 was enrolled and signed by the Governor in an incorrect form. Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, Com. Sub. for H. B. 4063 did not become law.
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 Board of Coal Mine Health and Safety; Department of Administration/Office of Technology; Department of Education; Division of Corrections; Division of Highways; Division of Tourism; Insurance Commission; Regional Jail Authority; State Fire Marshal; Tax Department and West Virginia State Senate to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the state and agencies thereof and in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the
state to pay each such claim in the amount specified below and directs the Auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) *Claim against the Board of Coal Mine Health and Safety:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Nicholas S. Preservati ............... $12,556.00

(b) *Claim against the Department of Administration/Office of Technology:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Infoprint Solutions Company ........ $83,174.39

(c) *Claim against the Department of Education:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AB Contracting Inc. ................. $20,000.00

(d) *Claims against the Division of Corrections:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Christopher Blackwell .............. $25.00
(2) Brandon Butler ..................... $25.00
(3) Merle Casto ......................... $12.95
(4) Ricoh Americas Corporation ......... $370.00
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158  (121) Steven Hardman ...................... $473.78
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163  (124) Daniel Harrington and
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(237) Joseph M. Peterson ................. $568.37
(238) Joy Pickens ................. $79.50
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434  CLAIMS  [Ch. 29
321 (275) Christina Skeens ..................... $380.20
322 (276) Gerald Slaughter ..................... $225.00
323 (277) Brian Smith ......................... $46.95
324 (278) Justin A. Smith ..................... $236.00
325 (279) M.E. Walker and
326       Megan Walker Smith .............. $1,000.00
327 (280) Michael A. Smith ................... $1,046.12
328 (281) Sandra K. Smolder .................. $1,000.00
329 (282) Ricky K. Snodgrass ................. $703.13
330 (283) Eric Spatafore ...................... $300.00
331 (284) Elizabeth Spaulding ................. $500.00
332 (285) Audrey L. Spearing .................. $127.20
333 (286) Darrell Spurlock ..................... $250.00
334 (287) Thomas F. Stark and Mary F. Stark .... $500.00
335 (288) Rebecca Staten ...................... $500.00
336 (289) Matthew R. Stefan ................... $135.68
337 (290) Carl Stein ......................... $130,000.00
338 (291) Faye J. Stephens ...................... $153.13
339 (292) Natasha Stephens and
340       Anthony P. Stephens .............. $675.54
| 341 | (293) Deborah Sterling | $178.00 |
| 342 | (294) Cheryl Sterner | $307.05 |
| 343 | (295) Samuel S. Stewart and Gertrude Stewart | $500.00 |
| 345 | (296) Shirley A. Stiltner | $426.90 |
| 346 | (297) Giget Stover | $200.29 |
| 347 | (298) Todd Strickland | $144.72 |
| 348 | (299) Timothy Sullivan and Rebecca A. Sullivan | $1,000.00 |
| 350 | (300) Jill Swan | $100.00 |
| 351 | (301) John E. Sweeney | $103.83 |
| 352 | (302) Charles Swiger and Sandra Swiger | $431.76 |
| 353 | (303) Araya Taupradist | $100.00 |
| 354 | (304) Wesley Lynn Taylor | $123.97 |
| 355 | (305) Tifney D. Terry-Franks | $174.19 |
| 356 | (306) Richard Thomas | $500.00 |
| 357 | (307) Samuel Thomas | $161.45 |
| 358 | (308) David Thompson | $500.00 |
| 359 | (309) Edna P. Thompson | $284.08 |
| 360 | (310) Brian Keith Tolley | $387.20 |
(311) Linda S. Totten ........................ $218.12
(312) David J. Troia .......................... $135.50
(313) Tonya Michelle Tucker, as Admin.
of the Estate of Jesse Tucker .... $600,000.00
(314) Larry D. Turner ...................... $500.00
(315) Charles L. Turner Jr. ............... $1,800.00
(316) Rebecca Tustin ....................... $150.00
(317) Charles L. Urling Jr. ............... $200.34
(318) Jonathan Burson and Donna Vaughan . $972.83
(319) Ronald Hambrick and Linda Vineyard . $269.00
(320) Dennis L. Ward and Terri Ward ...... $250.00
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(324) Amanda M. White .................... $79.50
(325) Lawrence White ..................... $739.70
(326) Sharon K. White .................... $416.17
(327) Andre Wilkinson ..................... $500.00
(328) Karen J. Wilkinson .................. $299.95
(329) Denise Williams ..................... $500.00
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<td>(346) Ralph Scarberry</td>
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(347) Earl S. Hescht .................... $195.36
(348) Valley Volunteer Fire Department Inc .. $500.00

(f) Claim against the Division of Tourism:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Temporary Employment Services Inc. .. $474.15

(g) Claim against the Insurance Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Greenbrooke Associates LLC ........ $269,026.62

(h) Claims against the Regional Jail Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Mary Balmer-Gage .................. $1,571.00
(2) Charles L. Chipley Jr. ............... $51.12
(3) James A. Clemens and Mary F. Clemens ... $87.00
(4) Brent M. Combs ..................... $15.45
(5) Ronald D. Deuley ................... $535.00
(6) Shane Elkins ....................... $250.00
(7) Ned Crouch and Renee Henline ........ $11.04
(8) Jason Allen Hensley ................. $140.00
(9) Jeffrey King ....................... $24.14
(10) Stacey A. Long ................... $95.00
(11) Robert W. Moats ........................................ $32.00
(12) William E. Smith ........................................ $299.00
(13) Timothy Thorne ......................................... $830.00

(i) Claim against the State Fire Marshal:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Ronceverte Volunteer Fire Department  . $10,238.49

(j) Claim against the Tax Department:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Greenbrooke Associates LLC ........ $119,461.89

(k) Claim against the State Senate:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT & T ...................................................... $526.23

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Court of Claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Court of Claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.
AN ACT to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to making West Virginia’s Water Pollution Control Act consistent with the federal Water Pollution Control Act, also known as the Clean Water Act, by clarifying that compliance with the effluent limits contained in a National Pollution Discharge Elimination System permit is deemed compliant with West Virginia’s Water Pollution Control Act.

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:

4 (1) Where necessary and proper, the secretary 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 secretary 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 secretary;

(2) Notwithstanding any rule or permit condition to the
contrary, and except for any standard imposed under section
307 of the federal Water Pollution Control Act for a toxic
pollutant injurious to human health, compliance with a permit
issued pursuant to this article shall be deemed compliance for
purposes of both this article and sections 301, 302, 306, 307
and 403 of the federal Water Pollution Control Act. Nothing
in this section, however, prevents the secretary from
modifying, reissuing or revoking a permit during its term.
The provisions of this section addressing compliance with a
permit are intended to apply to all existing and future
discharges and permits without the need for permit
modifications. However, should any such modification be
necessary under the terms of this article, then the secretary
shall immediately commence the process to effect such
modifications; and

(3) 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.

CHAPTER 31

(Com. Sub. for H. B. 4351 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §15-5B-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-5B-6; to amend and reenact §22A-1-4, §22A-1-14 and §22A-1-21 of said code; to amend said code by adding thereto two new sections, designated §22A-1-13a and §22A-1-40; to amend said code by
adding thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; to amend and reenact §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code; to amend said code by adding thereto a new section, designated §22A-2-43a; to amend and reenact §22A-6-4 of said code; to amend said code by adding thereto two new sections, designated §22A-6-13 and §22A-6-14; to amend and reenact §22A-7-5 of said code; to amend said code by adding thereto a new section, designated §22A-7-5a; and to amend said code by adding thereto a new article, designated §22A-12-1, all relating to mine safety generally; requiring coal mine operators to provide reports to and notify certain entities in the event of an emergency; establishing a mine safety anonymous tip hotline; exempting information provided to the hotline from the Freedom of Information Act; permitting the Director of the Office of Miners’ Health, Safety and Training to share information regarding certification suspensions or revocations with other states and to promulgate certain legislative rules; requiring a study be conducted regarding mine inspector qualifications, compensation, training and inspections; creating a criminal offense and establishing criminal penalties for providing advance notice of an inspection or an inspector’s presence at a mine; increasing civil and criminal penalties; requiring operator or employer to investigate complaints involving impaired miners; creating criminal offense and penalty for willful violation of mine safety laws, rules or standards causing a fatality; providing confidentiality of certain meetings relating to violations and mining accidents; excepting certain statements from release under freedom of information act; providing conditions relating to statements to director; allowing designation of certain persons by miner family members to attend interviews and hearings in certain circumstances and providing limitations thereto; providing that Director prepare and distribute list containing certain information of persons to assist families following accidents; providing for suspension of mining certificates in certain
circumstances; requiring coal mining operators and certain employers to implement substance abuse screening policy and program for certain persons; providing procedures and minimum requirements of substance abuse screening policy and program; requiring substance abuse screening upon preemployment, rehiring or transfer of miner; requiring coal mine operators to provide notification to the Director of the Office of Miners’ Health, Safety and Training of certain information at specified intervals and upon certain events related to substance abuse violations; allowing operator policies to be more restrictive than minimum statutory requirements; requiring substance abuse screening of all persons in safety sensitive positions; requiring immediate suspension of miner certificates as a result of suspensions or revocations for substance abuse in other jurisdictions and reciprocity; providing procedure for board of appeals hearings on certification suspensions and judicial review of board decisions; providing exemptions from and exceptions to the disclosure of substance abuse screening results; proving rule-making on thresholds and other protocols and requirements; providing internal effective dates; revising procedure for approval, review, comment and enforcement of mine ventilation plans; increasing the number of days an apprentice must work within sight and sound of mine foreman or experienced miner; authorizing additional training when certain conduct creating hazardous condition at mine; requiring methane detectors be maintained in accordance with manufacturer specifications; requiring periodic review copies of fire boss books by the mining superintendent or senior person at the mine, and duties thereto; requiring director to proscribe fire boss book; revising and expanding examination and reporting requirements relating to certain inspections; increasing the percentage of rock dust to be maintained in coal mines and providing certain information upon request; prescribing actions required to detect and respond to excess methane gas levels in coal mines; establishing safety levels and testing requirements relating to methane and providing for rules relating thereto and requiring certain action
at certain levels; prescribing requirements for persons to operate or repair mining machinery; providing for increased training regarding the use of self-contained self-rescue devices; providing additional notification by coal mine operators in the event of an accident; allowing reduction of civil penalties when mitigating circumstances exist; authorizing board to conduct investigation in accidents resulting in a fatality; requiring study of and report on the safety of working or traveling in bleeder or gob areas of certain coal mines; requiring studies of expanding certification and mandatory substance abuse program and authorizing emergency rule-making by the Board and Director relating thereto; directing additional education for certain miners rights and protections; requiring study of and report on education, training and examination associated with certifying miners; and requiring a study and report on enforcement procedures.

Be it enacted by the Legislature of West Virginia:

That §15-5B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §15-5B-6; that §22A-1-4, §22A-1-14 and §22A-1-21 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §22A-1-13a and §22A-1-40; that said code be amended by adding thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; that §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §22A-2-43a; that §22A-6-4 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §22A-6-13 and §22A-6-14; that §22A-7-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-7-5a; and that said code be amended by adding thereto a new article, designated §22A-12-1, all to read as follows:
CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.

§15-5B-3. Emergency mine response.

(a) To assist the Division of Homeland Security and Emergency Management in implementing and operating the Mine and Industrial Accident Rapid Response System, the Office of Miners’ Health, Safety and Training shall, on a quarterly basis, provide the emergency operations center with a mine emergency contact list. In the event of any change in the information contained in the mine emergency contact list, the changes shall be provided immediately to the emergency operations center. The mine emergency contact list shall include the following information:

(1) The names and telephone numbers of the Director of the Office of Miners’ Health, Safety and Training, or his or her designee, including at least one telephone number at which the director or designee may be reached at any time;

(2) The names and telephone numbers of all district mine inspectors, including at least one telephone number for each inspector at which each inspector may be reached at any time;

(3) A current listing of all regional offices or districts of the Office of Miners’ Health, Safety and Training, including a detailed description of the geographical areas served by each regional office or district; and

(4) The names, locations and telephone numbers of all mine rescue stations, including at least one telephone number for each station that may be called twenty-four hours a day and a listing of all mines that each mine rescue station serves.
in accordance with the provisions of section thirty-five, article one, chapter twenty-two-a of this code.

(b) Upon the receipt of an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, the emergency operations center shall immediately notify:

1. The Director of the Office of Miners’ Health, Safety and Training or his or her designee;

2. The district mine inspector assigned to the district or region in which the accident occurred; and

3. Local emergency service personnel in the area in which the accident occurred.

(c) The director or his or her designee shall determine the necessity for and contact all mine rescue stations that provide rescue coverage to the mine in question.

(d) In the event that an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, is initially received by a county answering point, as defined in article six, chapter twenty-four of this code, the call shall be immediately forwarded to the Mine and Industrial Accident Emergency Operations Center.

(e) Nothing in this section shall be construed to relieve an operator, as defined in section two, article one, chapter twenty-two-a of this code, from any reporting or notification obligation under section sixty-six, article two, chapter twenty-two-a of this code and under federal law.
(f) The Mine and Industrial Accident Rapid Response System and the emergency operations center are designed and intended to provide communications assistance to emergency responders and other responsible persons. Nothing in this section shall be construed to conflict with the responsibility and authority of an operator to provide mine rescue coverage in accordance with the provisions of section thirty-five, article one, chapter twenty-two-a of this code or the authority of the Director of the Office of Miners’ Health, Safety and Training to assign mine rescue teams under the provisions of subsection (d) of said section or to exercise any other authority provided in chapter twenty-two-a of this code.


The Director of the Division of Homeland Security and Emergency Management shall maintain a toll free number that allows callers to report mine safety violations and hazardous coal mining conditions and practices. The information collected shall be provided to the Office of Miners’ Health, Safety and Training. No information may be submitted to the Office of Miners’ Health, Safety and Training that would allow identification of the person placing the call. The calls are confidential and any documentation thereof or related thereto is not subject to release and is exempt from the provisions of article one, chapter twenty-nine-b of this code. The director shall distribute printed information to all state mining operations alerting miners to the existence of the toll free line. Each mining operation shall post this notice at the location used to post notices pursuant to section eighteen, article one, chapter twenty-two-a of this code.
CHAPTER 22A. MINER HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-4. Powers and duties of the Director of the Office of Miners’ Health, Safety and Training

(a) The Director of the Office of Miners’ Health, Safety and Training is hereby empowered and it is his or her duty to administer and enforce the provisions of this chapter relating to health and safety inspections and enforcement and training in coal mines, underground clay mines, open pit mines, cement manufacturing plants and underground limestone and sandstone mines.

(b) The Director of the Office of Miners’ Health, Safety and Training has full charge of the division. The director has the power and duty to:

(1) Supervise and direct the execution and enforcement of the provisions of this article.

(2) Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out his or her responsibilities and fix their compensation, except as otherwise provided in this article.

(3) Assign mine inspectors to divisions or districts in accordance with the provisions of section eight of this article as may be necessary to fully and effectively carry out the provisions of this law, including the training of inspectors for the specialized requirements of surface mining, shaft and slope sinking and surface installations and to supervise and direct the mine inspectors in the performance of their duties.
(4) Suspend, for good cause, any mine inspector without compensation for a period not exceeding thirty days in any calendar year.

(5) Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with this article.

(6) Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of this article.

(7) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(8) Make annually a full and complete written report of the administration of the office to the Governor and the Legislature of the state for the year ending June 30. The report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of individuals employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the office from all sources identifying each source of the funds, the expenditures of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the office, the number of inspections made by each inspector, the number and type of violations found by each inspector. However, no inspector may
be identified by name in this report. Such reports shall be filed
with the Governor and the Legislature on or before December 31
of the same year for which it was made, and shall upon proper
authority be printed and distributed to interested persons.

(9) Call or subpoena witnesses, for the purpose of
conducting hearings into mine fires, mine explosions or any
mine accident; to administer oaths and to require production
of any books, papers, records or other documents relevant or
material to any hearing, investigation or examination of any
mine permitted by this chapter. Any witness so called or
subpoenaed shall receive $40 per diem and shall receive
mileage at the rate of $.15 for each mile actually traveled,
which shall be paid out of the State Treasury upon a
requisition upon the State Auditor, properly certified by the
witness.

(10) Institute civil actions for relief, including permanent
or temporary injunctions, restraining orders, or any other
appropriate action in the appropriate federal or state court
whenever any operator or the operator’s agent violates or
fails or refuses to comply with any lawful order, notice or
decision issued by the director or his or her representative.

(11) Beginning January 1, 2013, the director shall share
information regarding suspension or revocation of a
certificate of a certified person, as defined in this article for
violation of the substance abuse provisions of article one-a of
this chapter with other states that subject similar persons to
disciplinary action for violation of a substance abuse policy.

(12) The director shall propose rules for legislative
approval pursuant to article three, chapter twenty-nine-a of
this code, a rule establishing a program for the sharing of
information between employers who employ certified persons
regarding the discharge of persons in safety sensitive
positions as defined in section one, article one-a of this
chapter for violation of an employer’s substance abuse policy.

(13) Perform all other duties which are expressly imposed upon him or her by the provisions of this chapter.

(14) Impose reasonable fees upon applicants taking tests administered pursuant to the requirements of this chapter.

(15) Impose reasonable fees for the issuance of certifications required under this chapter.

(16) Prepare study guides and other forms of publications relating to mine safety and charge a reasonable fee for the sale of the publications.

(17) Make all records of the office open for inspection of interested persons and the public.

(c) The Director of the Office of Miners’ Health, Safety and Training, or his or her designee, upon receipt of the list of approved innovative mine safety technologies from the Mine Safety Technology Task Force, has thirty days to approve or amend the list as provided in section four, article thirteen-bb, chapter eleven of this code. At the expiration of the time period, the director shall publish the list of approved innovative mine safety technologies as provided in section four, article thirteen-bb, chapter eleven of this code.

§22A-1-13a. Study of mine inspector qualification, compensation, training and inspection programs.

The director is directed to conduct a study of the minimum qualifications for mine inspectors, the minimum compensation paid to mine inspectors and the overall training program established for mine inspectors. The study shall identify ways to attract and retain new, qualified mine inspectors to minimize the effect of the anticipated retirement
of a significant number of current inspectors. Additionally, the study shall examine ways to improve the training programs for mine inspectors by focusing on technological advances in coal mining techniques, best practices used in modern coal mines and proper mine ventilation. Further, the director shall perform an assessment of the resources and qualification of inspectors necessary to approve mine ventilation plans. Finally, the study shall make recommendations on how to reassess mine inspection priorities to ensure that mines having a history of numerous safety violations are inspected more frequently than mines having a history of comparatively few safety violations while preserving the minimum number of inspections required by the code. By December 31, 2012, the Office of Miners’ Health, Safety and Training shall report to the Legislature’s Joint Committee on Government and Finance with recommendations regarding the implementation of its findings.

§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice of an inspection; reports after fatal accidents.

(a) The director, or his or her authorized representative, has authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director or his or her authorized representative proper facilities for entering the mine and making examination or obtaining information.

(b) If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they
may request the director to have an immediate investigation made.

(c) Mine inspectors shall devote their full-time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in the mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in the mine. No other person shall, with the intent of undermining the integrity of an unannounced mine inspection, provide advance notice of any inspection or of an inspector’s presence at a mine to any person at that mine. Any person who, with the requisite intent, knowingly causes or conspires to provide advance notice of any inspection or of an inspector’s presence at a mine is guilty of a felony and, upon conviction thereof, shall be fined not more than $15,000 or imprisoned in a state correctional facility not less than one year and not more than five years, or both fined and imprisoned.

(d) In addition to the other duties imposed by this article and article two of this chapter, it is the duty of each inspector to note each violation he or she finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has
clear and convincing evidence the violation has occurred or is occurring.

(e) On or after July 1, 2012, an inspector shall require the operator or other employer to investigate all complaints received by the Office of Miners’ Health, Safety and Training involving a certified person’s substance abuse or alcohol related impairment at a mine. Within thirty days following notification by the Office of Miners’ Health, Safety and Training to the operator or other employer of the complaint, the operator or other employer shall file with the Director a summary of its investigation into the alleged substance abuse or alcohol related impairment of a certified person.

(f) The mine inspector shall visit the scene of each fatal accident occurring in any mine within his or her district and shall make an examination into the particular facts of the accident; make a report to the director, setting forth the results of the examination, including the condition of the mine and the cause or causes of the fatal accident, if known, and all the reports shall be made available to the interested parties, upon written requests.

(g) At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine at the time of the inspection shall be given an opportunity to accompany the authorized representative of the director on the inspection.


(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than $5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of
subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator’s history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than $250 for each occurrence of the violation.

(4) A civil penalty under subdivision (1) or (2) of subsection (a) of this section or subdivision (1) or (2) of subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director’s findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall
designate the person against whom the order is sought to be
enforced as the respondent. A copy of the petition shall
immediately be sent by certified mail, return receipt
requested, to the respondent and to the representative of the
miners at the affected mine or the operator, as the case may
be. The director shall certify and file in the court the record
upon which the order sought to be enforced was issued. The
court has jurisdiction to enter a judgment enforcing,
modifying and enforcing as modified, or setting aside, in
whole or in part, the order and decision of the director or it
may remand the proceedings to the director for any further
action it may direct. The court shall consider and determine
de novo all relevant issues, except issues of fact which were
or could have been litigated in review proceedings before a
circuit court under section twenty of this article and, upon the
request of the respondent, those issues of fact which are in
dispute shall be submitted to a jury. On the basis of the jury’s
findings the court shall determine the amount of the penalty
to be imposed. Subject to the direction and control of the
Attorney General, attorneys appointed for the director may
appear for and represent the director in any action to enforce
an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or
safety provision of this chapter or health or safety rule
promulgated pursuant to this chapter, or knowingly violates or
fails or refuses to comply with any order issued under section
fifteen of this article, or any order incorporated in a final
decision issued under this article, except an order incorporated
in a decision under subsection (a) of this section or subsection
(b), section twenty-two of this article, shall be assessed a civil
penalty by the director under subdivision (5), subsection (a) of
this section of not more than $5,000 and for a second or
subsequent violation assessed a civil penalty of not more than
$10,000, unless the director determines that it is appropriate to
impose a special assessment for the violation, pursuant to the
provisions of subdivision (2) of this subsection.
(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;

(B) Failure or refusal to comply with any order issued under section fifteen of this article;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under section twenty-two of this article.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least $5,000 and not more than $10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any
director, officer or agent of the corporation who knowingly
authorized, ordered or carried out the violation, failure or
refusal is subject to the same civil penalties that may be
imposed upon a person under subsections (a) and (b) of this
section.

(d) Whoever knowingly makes any false statement,
representation or certification in any application, record,
report, plan or other document filed or required to be
maintained pursuant to this law or any order or decision
issued under this law is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not more than $10,000 or
confined in jail not more than one year, or both fined and
confined. The conviction of any person under this subsection
shall result in the revocation of any certifications held by the
person under this chapter which certified or authorized the
person to direct other persons in coal mining by operation of
law and bars that person from being issued any license under
this chapter, except a miner’s certification, for a period of not
less than one year or for a longer period as may be
determined by the director.

(e) Whoever willfully distributes, sells, offers for sale,
introduces or delivers in commerce any equipment for use in
a coal mine, including, but not limited to, components and
accessories of the equipment, who willfully misrepresents the
equipment as complying with the provisions of this law, or
with any specification or rule of the director applicable to the
equipment, and which does not comply with the law,
specification or rule, is guilty of a misdemeanor and, upon
conviction thereof, is subject to the same fine and
confinement that may be imposed upon a person under
subsection (d) of this section.

(f) Any person who willfully violates any safety standard
pursuant to this chapter or a rule promulgated thereunder that
causes a fatality or who willfully orders or carries out such
violation that causes a fatality is guilty of a felony and, upon
correction thereof, shall be fined not more than $10,000 or
confined in a state correctional facility not less than one year
and not more than five years, or both fined and imprisoned.

(g) There is continued in the Treasury of the State of
West Virginia a Special Health, Safety and Training Fund.
All civil penalty assessments collected under this section
shall be collected by the director and deposited with the
Treasurer of the State of West Virginia to the credit of the
Special Health, Safety and Training Fund. The fund shall be
used by the director who is authorized to expend the moneys
in the fund for the administration of this chapter.

§22A-1-40. Reporting violations, accident investigations;
  witness interviews.

(a) To the extent permitted by law, any person meeting
with, or providing a statement to, the director may request to
do so on a confidential basis without the consent, presence,
involvement or knowledge of any third party. Upon such a
request, the director shall keep the identity of any individual
providing such a statement and the statement itself
  confidential, to the extent permitted by law, and the statement
shall be exempt from disclosure under article one, chapter
twenty-nine-b of this code. Nothing in this section precludes
a person from being represented when speaking with the
director. Further, nothing in this section precludes a person
under subpoena or who is voluntarily speaking with the
director from authorizing any other person from participation
in such meeting or statement.

(b) If any miner is entrapped, fatally injured or otherwise
unable, as the result of an accident, to designate a
representative to observe witness interviews and
investigatory hearings conducted in an accident investigation,
the miner’s closest relative may designate one representative
who may, subject to subsection (a) of this section, attend
witness interviews and investigatory hearings regarding the
accident for the sole purpose of observing such interviews
and hearings and conveying information to the accident
victim’s family: Provided, That the right of a designated
representative to observe witness interviews and
investigatory hearings pursuant to this subsection shall be
subject to subsection (a) of this section and shall not extend
to interviews or investigatory hearings of a criminal nature
conducted by state or federal inspectors or other state or
federal law enforcement officers. No more than five
representatives designated pursuant to this section may attend
witness interviews and investigatory hearings for the purpose
of observing such interviews and hearings and conveying
information to accident victims’ families.

(c) The director shall, in consultation with the Board of
Coal Mine Health and Safety, develop a list of persons skilled
in the fields of grief and crisis management, communications
and family support. Following any mining accident
involving entrapped miners or fatal injuries, the director shall
promptly provide the list of such individuals to the families
of the accident victim or victims. The individuals contained
on the list developed by the director shall be available as a
resource to families of accident victims who seek their
assistance. The list shall also contain a reference to this code
section and a statement that the family has the right to
designate a representative of their choosing regardless of
whether that person is named on the list.

ARTICLE 1A. OFFICE OF MINERS’ HEALTH, SAFETY
AND TRAINING; ADMINISTRATION;
SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements;
standards and procedures for screening.

(a) Every employer of certified persons, as defined in
section two, article one of this chapter, shall implement a
substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, ten-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners’ Health, Safety and Training:

(A) Amphetamines,
(B) Cannabinoids/THC,
(C) Cocaine,
(D) Opiates,
(E) Phencyclidine (PCP),
(F) Benzodiazepines,
(G) Propoxyphene,
(H) Methadone,
(I) Barbiturates, and
(J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation’s rule, 49 CFR Part 40, which may be amended from time to time by legislative rule of the Office of Miners’ Health, Safety and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;
(2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection. “Random testing” means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons’ social security numbers, payroll identification numbers, or other comparable identifying numbers; and

(3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

(b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a former employer following a termination of the employer/employee relationship, or transferring to a West Virginia mine from an employer’s out-of-state mine to the extent that any substance abuse test required by the employer in the other jurisdiction does not comply with the minimum standards for substance abuse testing required by this article. Furthermore, the provisions of this section apply to all employers that employ certified persons who work in mines, regardless of whether that employer is an operator, contractor, subcontractor or otherwise.

(c) The employer or his or her agent shall notify the director at least quarterly, on a form prescribed by the director, of the number of pre-employment substance abuse screening tests administered during the prior calendar quarter and the number of positive test results associated with the substance abuse screening tests administered.
(d) The employer or his or her agent shall notify the director, on a form prescribed by the director, within seven days following completion of an arbitration conducted pursuant to a collective bargaining agreement applicable to the certified person, if any, of discharging a certified person for violation of the employer’s substance abuse screening policy and program. The notification shall be accompanied by a record of the test showing positive results or other violation. Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to section two of this article.

(e) Suspension or revocation of a certified person’s certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the director immediately and temporarily suspending the certified person’s West Virginia certificate until such time as the certified person’s certification is reinstated in the other jurisdiction.

(f) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require an employer to alter, amend, revise or otherwise change, in any respect, a previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: Provided, That each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the
minimum requirements of this article. For purposes of this section, a “safety-sensitive position” means an employment position where the employee’s job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

§22A-1A-2. Board of Appeals hearing procedures.

(a) Any hearing conducted after the temporary suspension of a certified person’s certificate pursuant to this article, shall be conducted within sixty days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within forty days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of subsection (c), section thirty-one, article one of this chapter. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to section fourteen, article six of this chapter. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any
other certification issued under this chapter, during the period of the suspension imposed by the Board of Appeals.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.


Records of substance abuse and alcohol screening tests, written or otherwise, received by the Office of Miners’ Health, Safety and Training, its employees, agents and representatives are confidential communications and are exempt from disclosure under article one, chapter twenty-nine-b of the code, except as follows:

(a) Where release of the information is authorized solely pursuant to a written consent form signed voluntarily by the person tested. The consent form shall contain the following:

1. The name of the person who is authorized to obtain the information;
2. The purpose of the disclosure;
3. The precise information to be disclosed;
4. The duration of the consent; and
5. The signature of the person authorizing the release of the information;

(b) Where the release of the information is compelled by the Board of Appeals or a court of competent jurisdiction;

(c) Where the release of the information is relevant to a legal claim asserted by the person tested;
(d) Where the information is used by the entity conducting the substance abuse or alcohol screening test in defense of a civil or administrative action related to the testing or results, or to consult with its legal counsel; or

(e) Where release of the information is deemed appropriate by the Board of Appeals or a court of competent jurisdiction in a disciplinary proceeding.

§22A-1A-4. Effective date.

The provisions of this article are effective beginning January 1, 2013.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-2. Submittal of detailed ventilation plan to director.

(a) A mine operator shall submit a detailed ventilation plan and any addendums to the director for review and comment. The mine operator shall review the plan with the director and address concerns to the extent practicable. The operator shall deliver to the miners’ representative employed by the operator at the mine, if any, a copy of the operator’s proposed annual ventilation plan at least ten days prior to the date of submission. The miners’ representative, if any, shall be afforded the opportunity to submit written comments to the operator prior to such submission; in addition the miners’ representative, if any, may submit written comments to the director. The director shall submit any concern that is not addressed to the United States Department of Labor - Mine Safety and Health Administration [MSHA] through comments to the plan. The mine operator shall provide a copy of the plan to the director ten days prior to the submittal of the plan to MSHA.

(b) The operator shall give the director a copy of the MSHA-approved plan and any addendums as soon as the operator receives the approval.
(c) In the event of an unforeseen situation requiring immediate action on a plan revision, the operator shall submit the proposed revision to the director and the miners’ representative, if any, employed by the operator at the mine when the proposed revision is submitted to MSHA. The director shall work with the operator to review and comment on the proposed plan revision to MSHA as quickly as possible.

(d) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addendums thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine for the period of time that they are in effect.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane detecting devices; records of examination; maintenance of methane detectors, etc.

(a) The Office of Miners’ Health, Safety and Training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within twelve weeks after any person is first employed as a miner. It is further the duty and responsibility of the Office of Miners’ Health, Safety and Training to see that the course is given to all persons as above provided after their first being employed in any mine in this state. In addition to other enforcement actions available to the director, upon a finding by the director of the existence of a pattern of conduct creating a hazardous condition at a mine, the director shall notify the Board of Miners’ Training, Education and Certification, which shall cause additional training to occur at the mine addressing such safety issue or issues identified by the director, pursuant to article seven of this chapter.
(b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in the mine is, before beginning work therein, instructed in the particular danger incident to his or her work in the mine, and furnished a copy of the mining laws and rules of the mine. It is the duty of every mine operator who employs apprentices, as that term is used in sections three and four, article eight of this chapter to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first one hundred twenty days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a location that the mine foreman, assistant mine foreman or experienced miner can effectively respond to cries for help of the apprentice. The location shall be on the same side of any belt, conveyor or mining equipment.

(c) Persons whose duties require them to use an approved methane detecting device or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the Office of Miners’ Health, Safety and Training and a record of the examination shall be kept by the operator and the office. Approved methane detecting devices and other approved methane detectors shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance and care of the permissible approved methane detecting device or any other approved device for detecting methane and oxygen deficiency by a person trained in the maintenance, and, before each shift, care shall be taken to ensure that the approved methane detecting
device or other device is in a permissible condition and maintained according to manufacturer’s specifications.


The mine foreman shall, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book of the fire bosses. The mine foreman shall supervise the fire boss or fire bosses, except as provided in section twenty-one of this article. No less frequently than bi-weekly, the superintendent or, if there is no superintendent, the senior person at the mine shall obtain complete copies of the books of the fire bosses, and acknowledge that he or she has reviewed such copies and acted accordingly. This acknowledgment shall be made by signing a book prescribed by the director for that purpose.

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

(a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or her shift or prior to his or her entering the mine to make his or her examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him or her to be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make the fire boss examinations shall be assigned a definite underground area of the mine, and, in making his or her examination shall examine all active working places in the assigned area and make tests with an approved device for accumulations of
methane and oxygen deficiency; examine seals and doors;
examine and test the roof, face and ribs in the working places
and on active roadways and travelways, approaches to
abandoned workings, accessible falls in active sections and
areas where any person is scheduled to work or travel
underground. He or she shall place his or her initials and the
date at or near the face of each place he or she examines.
Should he or she find a condition which he or she considers
dangerous to persons entering the areas, he or she shall place
a conspicuous danger sign at all entrances to the place or
places. Only persons authorized by the mine management
may enter the places while the sign is posted and only for the
purpose of eliminating the dangerous condition. Upon
completing his or her examination he or she shall report by
suitable communication system or in person the results of this
examination to a certified person designated by mine
management to receive and record the report, at a designated
station on the surface of the premises of the mine or
underground, before other persons enter the mine to work in
coal-producing shifts. He or she shall also record the results
of his or her examination with ink or indelible pencil in a
book prescribed by the director, kept for the purpose at a
place on the surface of the mine designated by mine
management. All records of daily and weekly reports, as
prescribed herein, shall be open for inspection by interested
persons.

(b) Supplemental examination. -- When it becomes
necessary to have workers enter areas of the mine not
covered during the preshift examination, a supplemental
examination shall be performed by a fire boss or certified
person acting as such within three hours before any person
enters the area. The fire boss or certified person acting as
such shall examine the area for hazardous conditions,
determine if air is traveling in its proper direction and test for
oxygen deficiency and methane.
(c) Each examined area shall be certified by date, time and the initials of the examiner.

(d) The results of the examination shall be recorded with ink or indelible pencil by the examiner in the book referenced in subsection (a) of this section before he or she leaves the mine on that shift.

§22A-2-24. Control of coal dust; rock dusting.

(a) In all mines, dangerous accumulations of fine, dry coal and coal dust shall be removed from the mine, and all dry and dusty operating sections and haulageways and conveyors and back entries shall be rock dusted or dust allayed by other methods as may be approved by the director.

(b) All mines or locations in mines that are too wet or too high in incombustible content for a coal dust explosion to initiate or propagate are not required to be rock dusted during the time any of these conditions prevail. Coal dust and other dust in suspension in unusual quantities shall be allayed by sprinkling or other dust allaying devices.

(c) In all dry and dusty mines or sections thereof, rock dust shall be applied and maintained upon the roof, floor and sides of all operating sections, haulageways and parallel entries connected thereto by open crosscuts. Back entries shall be rock dusted. Rock dust shall be so applied to include the last open crosscut of rooms and entries, and to within forty feet of faces. Rock dust shall be maintained in a quantity that the incombustible content of the mine dust that could initiate or propagate an explosion shall not be less than eighty percent. The incombustible content of mine dust in return entries shall also be equal to or greater than eighty percent.

(d) Rock dust shall not contain more than five percent by volume of quartz or free silica particles and shall be pulverized so that one hundred percent will pass through a
twenty mesh screen and seventy percent or more will pass through a two hundred mesh screen.

(e) If requested by the director, an operator shall provide records establishing the quantity of bulk and bag rock dust purchased for a period not to exceed the immediately preceding six months.

§22A-2-43. Actions to detect and respond to excess methane.

The following actions are required to detect and respond to excess methane:

(a) Hand-held testing required. -- In any mine, no electrical equipment or permissible diesel powered equipment may be brought in by the last open crosscut until a qualified person tests for methane. If one percent or more methane is present, the equipment may not be taken into the area until the methane concentration is reduced to less than one percent. Thereafter, subsequent methane examinations shall be made at least every twenty minutes while any electrical or diesel powered equipment is present and energized.

(b) Location of tests. -- Tests for methane concentrations under this section shall be made at least twelve inches from the roof, face, ribs and floor.

(c) Working places and intake air courses. --

(1) When one percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located or in an area where mechanized mining equipment is being installed or removed:

(A) Except intrinsically safe atmospheric monitoring systems (AMS), electrically powered equipment in the affected area shall be de-energized and other mechanized equipment shall be shut off.
(B) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane to less than one percent.

(C) No other work shall be permitted in the affected area until the methane concentration is less than one percent.

(2) When one and five-tenths percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located or in an area where mechanized mining equipment is being installed or removed:

(A) Except for the mine foreman, assistant mine foreman, or individuals authorized by the mine foreman or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners’ representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(B) Except for intrinsically safe AMS, electrically powered equipment in the affected area shall be disconnected at the power source.

(d) Return air split.--

(1) When one percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location at which the split is used to ventilate seals or worked-out areas, changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air to less than one percent.
(2) When one and five-tenths percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location where the split is used to ventilate seals or worked-out areas, except for the mine foreman, assistant mine foreman or individuals authorized by the mine or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners’ representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(3) Other than intrinsically safe AMS, equipment in the affected area shall be de-energized, electric power shall be disconnected at the power source and other mechanized equipment shall be shut off.

(4) No other work shall be permitted in the affected area until the methane concentration in the return air is less than one percent.

(e) Return air split alternative. --

(1) The provisions of this paragraph may apply if:

(A) The quantity of air in the split ventilating the active workings is at least twenty seven thousand cubic feet per minute in the last open crosscut or the quantity specified in the approved ventilation plan, whichever is greater.

(B) The methane content of the air in the split is continuously monitored during mining operations by an AMS that gives a visual and audible signal on the working section when the methane in the return air reaches one and five-tenths percent and the methane content is monitored as specified in the approved ventilation plan.
(C) Rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point.

(2) When one and five-tenths percent or more methane is present in a return air split between a point in the return opposite the section loading point and where that split of air meets another split of air or where the split of air is used to ventilate seals or worked-out areas:

(A) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air below one and five-tenths percent.

(B) Except for the mine foreman, assistant mine foreman or individuals authorized by the mine foreman or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners’ representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(C) Except for intrinsically safe AMS, equipment in the affected area shall be de-energized, electric power shall be disconnected at the power source and other mechanized equipment shall be shut off.

(D) No other work shall be permitted in the affected area until the methane concentration in the return air is less than one and five-tenths percent.

(f) **Bleeders and other return air courses.**

The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of
(g) Machine mounted methane monitors. --

(1) Approved methane monitors shall be installed and maintained on all face cutting machines, continuous miners, longwall face equipment and other mechanized equipment used to extract coal or load coal within the working place.

(2) The sensing device for methane monitors on longwall shearing machines shall be installed at the return air end of the longwall face. An additional sensing device also shall be installed on the longwall shearing machine, downwind and as close to the cutting head as practicable. An alternative location or locations for the sensing device required on the longwall shearing machine may be approved in the ventilation plan.

(3) The sensing devices of methane monitors shall be installed as close to the working face as practicable.

(4) Methane monitors shall be maintained in permissible and proper operating condition and shall be calibrated with a known air-methane mixture at least once every fifteen days and a record of the calibration shall be recorded with ink or indelible pencil by the person performing the calibration in a book prescribed by the director and maintained on the surface. Calibration records shall be retained for inspection for at least one year from the date of the test. To assure that methane monitors are properly maintained and calibrated, the operator shall use persons properly trained in the maintenance, calibration, and permissibility of methane monitors to calibrate and maintain the devices.

(h) Automatic de-energization of extraction apparatus. --
When the methane concentration at any machine-mounted methane monitor reaches one percent, the monitor shall give a warning signal. The warning signal device of the methane monitor shall be visible to a person operating the equipment on which the monitor is mounted. The methane monitor shall automatically de-energize the extraction apparatus on the machine on which it is mounted, but not the machine as a whole to facilitate proper mining procedures, when:

(1) The methane concentration at any machine-mounted methane monitor reaches one and twenty-five one hundredths percent for a sustained period; or

(2) The monitor is not operating properly.

The machine’s extraction apparatus may not again be started in that place until the methane concentration measured by the methane monitor is less than one percent.

(i) Compliance schedule for machine refit.--

Within one hundred twenty days of the effective date of the amendments to this section, the Board of Coal Mine Health and Safety shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code establishing calibration procedures, defining the term “sustained period” for purposes of implementing this section, and establishing a compliance schedule setting forth the time frame in which all new and existing face cutting machines, continuous miners, longwall face equipment and other mechanized equipment used to extract coal or load coal within the working place shall be refitted with methane monitors. Enforcement of subsections (g) and (h) of this section shall not commence until after the time frame is established by rule.
§22A-2-43a. Operation of cutting and mining machines; repair and maintenance of same.

(a) Qualified person to operate cutting machine. -- No person shall be placed in charge of a coal-cutting machine in any mine who is not a qualified person, capable of determining the safety of the roof and sides of the working places and of detecting the presence of explosive gas, unless they are accompanied by a certified or qualified person who has passed such an examination.

(b) Operation of mining machines. -- Machine operators and helpers shall use care while operating mining machines. They shall examine the roof of the working place to see that it is safe before starting to operate the machine. They shall not move the machine while the cutter chain is in motion. Additionally, no person shall operate the cutterhead on any continuous miner while the machine is moving from place to place underground: Provided, That a cutterhead may be operated during clean up or when the machine is extracting coal.

(c) Repair and maintenance of mining machines. -- (1) Repairs or maintenance shall not be performed on mining machines until the power is off and locked and tagged, if required by law, and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. For purposes of this subsection, the following terms shall have the following meanings:

(A) “Maintenance” means the labor of keeping machinery in good working order and includes cleaning, clearing jammed material or conducting examinations on or in close proximity to machinery; and

(B) “Repair” means to fix, mend, or restore to good working order.

(d) Methods to comply with the standard to prevent inadvertent or unexpected motion include:
(A) Opening the circuit breaker for the affected machinery, provided no energized parts or conductors are exposed, and placing the run selector switch for startup of the machinery in the “off” position. On longwall machinery, this would include placing the lockout switch in the lockout position in the area were the repair or maintenance is being performed. A qualified electrician is required to de-energize a circuit breaker if there are exposed energized parts or conductors; or

(B) Opening the circuit breaker at the power center that supplies power for the affected machinery and disengaging the power cable coupler that supplies power to the machinery; or

(C) Opening a manual visible disconnect switch, either within the circuit or onboard the machinery, and securing the switch against reenergization, as required by law. A control circuit start-stop switch does not constitute a manual disconnect; or

(D) In cases such as steeply inclined belt conveyors and suspended loads, when removing the power alone will not ensure against unintentional or inadvertent movement, the machinery shall be physically blocked, in addition to removing the power by one of the three methods described above. Physical blocking may be achieved by the use of such devices as bars, chocks or clamps.

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.
(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: Provided, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f)(1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.

(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. A luminescent sign with the words “SELF-CONTAINED SELF-RESCUER” or “SELF-CONTAINED SELF-RESCUERS” shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at twenty-five
foot intervals, shall be attached to each cache from the last
open crosscut to the surface. The operator shall conduct
weekly inspections of each cache and each lifeline cord or
other similar device to ensure operability.

(3) Any person that, without the authorization of the
operator or the director, knowingly removes or attempts to
remove any self-contained self-rescue device or lifeline cord
from the mine or mine site with the intent to permanently
deprive the operator of the device or lifeline cord or
knowingly tampers with or attempts to tamper with the
device or lifeline cord shall be guilty of a felony and, upon
conviction thereof, shall be imprisoned in a state correctional
facility for not less than one year nor more than ten years or
fined not less than $10,000 nor more than $100,000, or both.

(g) (1) A wireless emergency communication device
approved by the director and provided by the operator shall
be worn by each person underground. The wireless
emergency communication device shall, at a minimum, be
capable of receiving emergency communications from the
surface at any location throughout the mine. Each operator
shall train each miner in the use of the device and provide
refresher training courses for all underground employees
during each calendar year. The operator shall install in or
around the mine any and all equipment necessary to transmit
emergency communications from the surface to each wireless
emergency communication device at any location throughout
the mine.

(2) Any person that, without the authorization of the
operator or the director, knowingly removes or attempts to
remove any wireless emergency communication device or
related equipment, from the mine or mine site with the intent
to permanently deprive the operator of the device or
equipment or knowingly tampers with or attempts to tamper
with the device or equipment shall be guilty of a felony and,
upon conviction thereof, shall be imprisoned in a state
correctional facility for not less than one year nor more than
(h) (1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: Provided, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than $10,000 nor more than $100,000, or both.

(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.

§22A-2-66. Accident; notice; investigation by Office of Miners’ Health, Safety and Training.

(a) For the purposes of this section, the term "accident" means:
(1) The death of an individual at a mine;

(2) An injury to an individual at a mine which has a reasonable potential to cause death;

(3) The entrapment of an individual;

(4) The unplanned inundation of a mine by a liquid or gas;

(5) The unplanned ignition or explosion of gas or dust;

(6) The unplanned ignition or explosion of a blasting agent or an explosive;

(7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;

(8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;

(9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;

(10) An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank;

(11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and

(12) An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.
(b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice, within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: Provided, That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section eight, article five of said chapter, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: Provided, however, That if, immediately upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of the mine provides notice to the local organization for emergency services as defined in section eight, article five, chapter fifteen of this code, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code, then, in order to comply with this subsection, the operator or mine foreman in charge of the mine shall also give notice to the Mine and Industrial Accident Emergency Operations Center at the statewide number identified in this subsection within fifteen minutes of completing the telephone call to the local organization for emergency services or the appropriate local emergency telephone system operator, as applicable: Provided, further, That nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners’ Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of $100,000 on the operator if it is determined that the operator or the mine foremen in charge of the mine failed to give immediate notice as required
in this section: *Provided*, That the director may waive imposition
of the civil administrative penalty at any time if he or she finds
that the failure to give immediate notice was caused by
circumstances wholly outside the control of the operator:
*Provided, however*, That the assessment of the civil
administrative penalty set forth in this subsection may be
appealed to the Board of Appeals, and the Board of Appeals
may, by unanimous vote, reduce the amount of the civil
administrative penalty upon a finding of mitigating
circumstances warranting the imposition of a lesser amount.

(d) If anyone is fatally injured, the inspector shall
immediately go to the scene of the accident and make
recommendations and render assistance as he or she may
deem necessary for the future safety of the men and
investigate the cause of the explosion or accident and make
a record. He or she shall preserve the record with the other
records in his or her office. The cost of the investigation
records shall be paid by the Office of Miners’ Health, Safety
and Training. A copy shall be furnished to the operator and
other interested parties. To enable him or her to make an
investigation, he or she has the power to compel the
attendance of witnesses and to administer oaths or
affirmations. The director has the right to appear and testify
and to offer any testimony that may be relevant to the
questions and to cross-examine witnesses.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND
SAFETY.

§22A-6-4. Board powers and duties.

(a) The board shall adopt as standard rules the “coal mine
health and safety provisions of this chapter”. Such standard
rules and any other rules shall be adopted by the board
without regard to the provisions of chapter twenty-nine-a of
this code. The Board of Coal Mine Health and Safety shall
devote its time toward promulgating rules in those areas
specifically directed by this chapter and those necessary to prevent fatal accidents and injuries.

(b) The board shall review such standard rules and, when deemed appropriate to improve or enhance coal mine health and safety, revise the same or develop and promulgate new rules dealing with coal mine health and safety.

(c) The board shall develop, promulgate and revise, as may be appropriate, rules as are necessary and proper to effectuate the purposes of article two of this chapter and to prevent the circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a of this code:

(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules may expand protections afforded by this chapter notwithstanding specific language therein, and such rules may deal with subject areas not covered by this chapter to the end of affording the maximum possible protection to the health and safety of miners.

(2) No rules promulgated by the board shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any coal operator has the power to petition the circuit court of Kanawha County for a determination as to whether any rule promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law: Provided, That any rule properly promulgated by the board pursuant to the terms and conditions of this chapter creates a rebuttable presumption that said rule does not reduce the protection afforded miners below that provided by this chapter.
(4) The director shall cause proposed rules and a notice
thereof to be posted as provided in section eighteen, article
one of this chapter. The director shall deliver a copy of such
proposed rules and accompanying notice to each operator
affected. A copy of such proposed rules shall be provided to
any individual by the director’s request. The notice of
proposed rules shall contain a summary in plain language
explaining the effect of the proposed rules.

(5) The board shall afford interested persons a period of
not less than thirty days after releasing proposed rules to
submit written data or comments. The board may, upon the
expiration of such period and after consideration of all
relevant matters presented, promulgate such rules with such
modifications as it may deem appropriate.

(6) On or before the last day of any period fixed for the
submission of written data or comments under subdivision (5)
of this section, any interested person may file with the board
written objections to a proposed rule, stating the grounds
therefor and requesting a public hearing on such objections.
As soon as practicable after the period for filing such
objections has expired, the board shall release a notice
specifying the proposed rules to which objections have been
filed and a hearing requested.

(7) Promptly after any such notice is released by the
board under subdivision (6) of this section, the board shall
issue notice of, and hold a public hearing for the purpose of
receiving relevant evidence. Within sixty days after
completion of the hearings, the board shall make findings of
fact which shall be public, and may promulgate such rules
with such modifications as it deems appropriate. In the event
the board determines that a proposed rule should not be
promulgated or should be modified, it shall within a
reasonable time publish the reasons for its determination.
(8) All rules promulgated by the board shall be published in the State Register and continue in effect until modified or superseded in accordance with the provisions of this chapter.

(d) To carry out its duties and responsibilities, the board is authorized to employ such personnel, including legal counsel, experts and consultants, as it deems necessary. In addition, the board, within the appropriations provided for by the Legislature, may conduct or contract for research and studies and is entitled to the use of the services, facilities and personnel of any agency, institution, school, college or university of this state.

(e) The director shall within sixty days of a coal mining fatality or fatalities provide the board with all available reports regarding such fatality or fatalities.

The board shall review all reports and any recommended rules submitted by the director, receive any additional information it requests, and may, on its own initiative, investigate the circumstances surrounding a coal mining fatality or fatalities and ascertain the cause or causes of such coal mining fatality or fatalities. In order to investigate a coal mining fatality or fatalities, a majority of the board must vote in favor of commencing an investigation. Within ninety days of the receipt of the Federal Mine Safety and Health Administration’s fatal accident report and the director’s report and recommended rules, the board shall review and consider the presentation of said report and rules and the results of its own investigation, if any, and, if a majority of all voting board members determines that additional rules can assist in the prevention of the specific type of fatality, the board shall either accept and promulgate the director’s recommended rules, amend the director’s recommended rules or draft new rules, as are necessary to prevent the recurrence of such fatality. If the board chooses to amend the director’s recommended rules or draft its own rules, a vote is required within one hundred twenty days as to whether to promulgate
the amended rule or the rule drafted by the board: *Provided,*

That the board may, by majority vote, find that exceptional
circumstances exist and the deadline cannot be met:

*Provided, however,* That under no circumstances shall such
deadline be extended by more than a total of ninety days. A
majority vote of the board is required to promulgate any such
rule.

The board shall annually, not later than July 1, review the
major causes of coal mining injuries during the previous
calendar year, reviewing the causes in detail, and shall
promulgate such rules as may be necessary to prevent the
recurrence of such injuries.

Further, the board shall, on or before January 10, of each
year, submit a report to the Governor, President of the Senate
and Speaker of the House, which report shall include, but is
not limited to:

(1) The number of fatalities during the previous calendar
year, the apparent reason for each fatality as determined by
the office of miners’ health, safety and training and the
action, if any, taken by the board to prevent such fatality;

(2) Any rules promulgated by the board during the last
year;

(3) What rules the board intends to promulgate during the
current calendar year;

(4) Any problem the board is having in its effort to
promulgate rules to enhance health and safety in the mining
industry;

(5) Recommendations, if any, for the enactment, repeal or
amendment of any statute which would cause the
enhancement of health and safety in the mining industry;
(6) Any other information the board deems appropriate;

(7) In addition to the report by the board, as herein contained, each individual member of said board has right to submit a separate report, setting forth any views contrary to the report of the board, and the separate report, if any, shall be appended to the report of the board and be considered a part thereof.

§22A-6-13. Study of ingress and egress to bleeder and gob areas of longwall panels and pillar sections.

The Board of Coal Mine Health and Safety is directed to study the safety of working or traveling in bleeder or gob areas of a longwall panel or pillar section of a mine where only one travelable entry in and out of the area exists. The study shall consider what additional roof control or other measures, if any, should be implemented to ensure that underground miners who work or travel in bleeder or gob areas of a longwall panel or pillar section having only one travelable entry in and out of the areas are at least as safe as miners working in comparable areas with multiple travelable entries in and out of the areas. By December 31, 2012, the board shall report to the Legislature’s Joint Committee on Government and Finance with recommendations regarding implementation of the findings of this study.

§22A-6-14. Study of mandatory substance abuse program.

The Board of Coal Mine Health and Safety is directed to study the mandatory substance abuse screening policy and program requirements of article one-a of this chapter and make recommendations to the director regarding: (a) Establishment of guidelines to be employed by the Board of Appeals when administering disciplinary actions to certified persons pursuant to article one-a of this chapter; (b) requiring certification by the Office of Miners’ Health, Safety and Training of persons who regularly work at mines who are not presently required to obtain certification; and (c)
establishment of additional minimum requirements, parameters, methodologies and protocols to be integrated into the substance abuse screening policy and program requirements of article one-a of this chapter. By August 31, 2012, the board shall submit its report to the director. The director is authorized to propose for legislative promulgation, legislative rules pursuant to article three, chapter twenty-nine-a of this code regarding the implementation of the findings of this study. These rules shall be initially promulgated as emergency rules by the director pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of the code by December 31, 2012, and shall include the establishment of certification requirements recommended by the board for persons who regularly work at mines that are not presently required to obtain certification and establishment of guidelines to be employed by the Board of Appeals when administering disciplinary actions to certified persons pursuant to article one-a of this chapter.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22A-7-5. Board powers and duties.

(a) The board shall establish criteria and standards for a program of education, training and examination to be required of all prospective miners and miners prior to their certification in any of the various miner specialties requiring certification under this article or any other provision of this code. The specialties include, but are not limited to, underground miner, surface miner, apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss, shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section, the director may by rule further subdivide the classifications for certification.

(b) The board may require certification in other miner occupational specialties: Provided, That no new specialty
may be created by the board unless certification in a new
specialty is made desirable by action of the federal
government requiring certification in a specialty not
enumerated in this code.

(c) The board may establish criteria and standards for a
program of preemployment education and training to be
required of miners working on the surface at underground
mines who are not certified under the provisions of this
article or any other provision of this code.

(d) The board shall set minimum standards for a program
of continuing education and training of certified persons and
other miners on an annual basis: Provided, That the
standards shall be consistent with the provisions of section
seven of this article. Prior to issuing the standards, the board
shall conduct public hearings at which the parties who may
be affected by its actions may be heard. The education and
training shall be provided in a manner determined by the
director to be sufficient to meet the standards established by
the board.

(e) The board may, in conjunction with any state, local or
federal agency or any other person or institution, provide for
the payment of a stipend to prospective miners enrolled in
one or more of the programs of miner education, training and
certification provided in this article or any other provision of
this code.

(f) The board may also, from time to time, conduct any
hearings and other oversight activities required to ensure full
implementation of programs established by it.

(g) Nothing in this article empowers the board to revoke
or suspend any certificate issued by the Director of the Office
of Miners’ Health, Safety and Training.

(h) The board may, upon its own motion or whenever
requested to do so by the director, consider two certificates
issued by this state to be of equal value or consider training provided or required by federal agencies to be sufficient to meet training and education requirements set by it, the director, or by the provisions of this code.

(i) As part of the annual training required by this section, the board shall include training of certified persons and other miners, instruction on miners’ rights as they relate to the operation of unsafe equipment as provided in section seventy-one of article two of this chapter, his or her right to withdrawal from unsafe conditions as provided in section seventy-one-a of article two of this chapter and his or her rights under section twenty-two, article one of this chapter.

§22A-7-5a. Study of miner training and education.

The board is directed to conduct a study of the overall program of education, training and examination associated with the various miner specialties requiring certification under this article or any other provision of this code. The study shall identify ways to enhance miner education and training to adequately reflect technological advances in coal mining techniques and best practices used in modern coal mines, and improve supervision of apprentice miners. Furthermore, the board shall place particular emphasis in its study on ways to improve education and training in the areas of proper mine ventilation, methane monitoring and equipment de-energization, fire-boss procedures and overall core mining competencies. By December 31, 2012, the board shall report to the Legislature’s Joint Committee on Government and Finance with recommendations regarding the implementation of the findings of this study.

ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS.

§22A-12-1. Report on enforcement procedures.

The director shall, by December 31, 2013, report to the Legislature and Governor on the need for revisions in the
state’s underground mine safety enforcement procedures.

The director shall initiate the study using appropriate academic resources and mining safety organizations to conduct a program review of state enforcement procedures to evaluate what reforms will assure that mining operations follow state mandated safety protocols. The report shall include recommended legislation, rules and policies, consider various options for improving inspections, accountability and equitable and timely administrative procedures that cause remediation of hazardous working conditions.

CHAPTER 32

(S. B. 575 - By Senator Foster)

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to repeal §16-5V-22 of the Code of West Virginia, 1931, as amended, relating to the Emergency Medical Services Retirement System, prior disability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§1. Repeal of section relating to prior disability.

Section twenty-two, article five-v, chapter sixteen of the Code of West Virginia, 1931, as amended, is hereby repealed.
AN ACT to amend and reenact §61-3C-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8A-1 of said code, all relating to updating the definition of “computer” in the commission of certain crimes.

Be it enacted by the Legislature of West Virginia:

That §61-3C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8A-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-3. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(a) “Access” means to instruct, communicate with, store data in, retrieve data from, intercept data from or otherwise make use of any computer, computer network, computer program, computer software, computer data or other computer resources.
(b) “Authorization” means the express or implied consent given by a person to another to access or use said person's computer, computer network, computer program, computer software, computer system, password, identifying code or personal identification number.

(c) “Computer” means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. The term “computer” includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any other electronic data storage device or equipment, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

(d) “Computer contaminant” means any set of computer instructions that are designed to damage or destroy information within a computer, computer system or computer network without the consent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources or damage or destroy the normal operation of the computer.

(e) “Computer data” means any representation of knowledge, facts, concepts, instruction or other information computed, classified, processed, transmitted, received,
retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer network, computer program or computer software and may be in any medium, including, but not limited to, computer printouts, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.

(f) “Computer network” means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.

(g) “Computer operations” means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses. A “computer operation” for a particular computer shall also mean any function for which that computer was designed.

(h) “Computer program” means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs or otherwise influences the functioning of a computer or computer network.

(i) “Computer software” means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

(j) “Computer services” means computer access time, computer data processing or computer data storage and the computer data processed or stored in connection therewith.
(k) “Computer supplies” means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible input, output or storage medium used in connection with a computer, computer network, computer data, computer software or computer program.

(l) “Computer resources” includes, but is not limited to, information retrieval; computer data processing, transmission and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software or computer program.

(m) “Owner” means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources or computer supplies.

(n) “Person” means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture or any state, county or municipal government and any subdivision, branch, department or agency thereof.

(o) “Property” includes:

(1) Real property;

(2) Computers and computer networks;

(3) Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

(i) Tangible or intangible;

(ii) In a format readable by humans or by a computer;
(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(iv) Located on any paper or in any device on which it is stored by a computer or by a human; and

(4) Computer services.

(p) “Value” means having any potential to provide any direct or indirect gain or advantage to any person.

(q) “Financial instrument” includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.

(r) “Value of property or computer services” shall be: (1) The market value of the property or computer services at the time of a violation of this article; or (2) if the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of section six or seven of this article, the cost of reproducing or replacing the property or computer services at the time of the violation.

ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.


When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:
(a) “Adult” means a person eighteen years of age or older.

(b) “Computer” means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. As used in this article, computer includes file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any electronic data storage device or equipment. The term “computer” includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

(c) “Computer network” means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

(d) “Display” means to show, exhibit or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.

(e) “Distribute” means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.

(f) “Employee” means any individual who renders personal services in the course of a business, who receives
compensation and who has no financial interest in the
ownership or operation of the business other than his or her
salary or wages.

(g) “Internet” means the international computer network
of both federal and nonfederal interoperable packet switched
data networks.

(h) “Knowledge of the character of the matter” means
having awareness of or notice of the overall sexual content
and character of matter as depicting, representing or
describing obscene matter.

(i) “Matter” means any visual, audio, or physical item,
article, production transmission, publication, exhibition, or
live performance, or reproduction thereof, including any two-
or three-dimensional visual or written material, film, picture,
drawing, video, graphic, or computer generated or
reproduced image; or any book, magazine, newspaper or
other visual or written material; or any motion picture or
other pictorial representation; or any statue or other figure; or
any recording, transcription, or mechanical, chemical, or
electrical reproduction; or any other articles, video laser disc,
computer hardware and software, or computer generated
images or message recording, transcription, or object, or any
public or commercial live exhibition performed for
consideration or before an audience of one or more.

(j) “Minor” means an unemancipated person under
eighteen years of age.

(k) “Obscene matter” means matter that:

(1) An average person, applying contemporary adult
community standards, would find, taken as a whole, appeals
to the prurient interest, is intended to appeal to the prurient
interest, or is pandered to a prurient interest;
(2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

(3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.

(l) “Parent” includes a biological or adoptive parent, legal guardian or legal custodian.

(m) “Person” means any adult, partnership, firm, association, corporation or other legal entity.

(n) “Sexually explicit conduct” means an ultimate sexual act, normal or perverted, actual or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

CHAPTER 34
(Com. Sub. for S. B. 566 - By Senators Wills and Foster)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §25-1-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of Corrections to contract with nonprofit or charitable entities, including, but not limited to, nonprofit community mental health clinics, operating half-way houses or transitional housing facilities for the placement of persons in the commissioner’s custody, whether confined or under parole
supervision; requiring persons with the ability to pay to reimburse the state for the costs of the placement; and requiring the Division of Corrections to provide certain information about the placements to the Governor.

Be it enacted by the Legislature of West Virginia:

That §25-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units; contracting with certain entities for reentry and direct placement services; reports to Governor.

(a) The Commissioner of Corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his or her jurisdiction or control:

1. Mount Olive Correctional Complex;
2. Huttonsville Correctional Center;
3. Anthony Correctional Center;
4. Denmar Correctional Center;
5. Pruntytown Correctional Center;
6. Northern West Virginia Correctional Center;
7. St. Marys Correctional Center;
(b) The Commissioner of Corrections may contract with the county commission of McDowell County to house and incarcerate inmates at the Stevens Correctional Center consistent with all requirements and standards governing the Division of Corrections.

(c) Jurisdiction of and title to the West Virginia Children’s Home at Elkins are hereby transferred to the Department of Health and Human Resources, which is the custodian of all deeds and other muniments of title to the property and shall record those that are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, the West Virginia Children’s Home shall be managed and controlled by a superintendent appointed by the Commissioner of the Division of Human Services.

(d) The Commissioner of Corrections may establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. The work and study release units may be coeducational and shall be managed, directed and controlled as provided in this article.

(e)(1) The commissioner may contract with nonprofit or charitable entities, including but not limited to nonprofit community mental health clinics, operating half-way houses or transitional housing facilities for the placement of persons in the commissioner’s custody, whether confined or under parole supervision, as long as such facilities meet standards and criteria established by the commissioner.
(A) The Commissioner of Corrections may direct that a person who is placed in a half-way house or transitional housing facility under this section make reimbursement to the state in the amount of a reasonable sum calculated to offset all or part of the costs of the placement.

(B) Prior to ordering the person to make the reimbursement, the commissioner, or his or her designee, shall consider the following:

(i) The person’s ability to pay;

(ii) The nature and extent of the person’s responsibilities to his or her dependents, if any;

(iii) The length of probable incarceration under the court’s sentence; and

(iv) The effect, if any, that reimbursement might have on the person’s rehabilitation.

(f) The Division of Corrections shall provide the number of persons placed in a half-way house or a transitional housing facility pursuant to subsection (e) of this section in its report made pursuant to section twenty, article one, chapter five of this code, and shall describe its plans to use the authority provided under the provisions of subsection (e) of this section in furtherance of the duties and responsibilities imposed by this article.

(g) Any person employed by the Office of Public Institutions who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six, chapter twenty-nine of this code, remain in the civil service system as a covered employee.
AN ACT to amend and reenact §25-7-11 of the Code of West Virginia, 1931, as amended, relating to continuing the Correctional Industries Account; increasing the maximum amount that may be maintained in the Correctional Industries Account; directing that excess funds in the Correctional Industries Account at the end of any fiscal year be deposited into a new special revenue fund to be known as the Division of Corrections Additional Operations Account; and specifying the purposes for expenditures from the Division of Corrections Additional Operations Account.

Be it enacted by the Legislature of West Virginia:

That §25-7-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. CORRECTIONAL INDUSTRIES ACT OF 2009.

§25-7-11. Correctional industries account.

1. (a) The Correctional Industries Account is continued in the State Treasury. 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.

(b) Except as provided in subsection (c) of this section, funds collected and deposited may be used only to purchase manufacturing supplies, equipment, machinery and materials used to carry out the purposes of this article; to pay necessary personnel; and to defray necessary expenses, including inmate earnings, all of which are under the direction of the commissioner and subject to the commissioner’s approval.

(c) The Correctional Industries Account may not be maintained in excess of the amount necessary to efficiently and properly carry out the purposes of this article. In no event may the Correctional Industries Account be maintained in excess of $2 million. Any moneys in the account exceeding $2 million shall be transferred at the end of each fiscal year into the Division of Corrections Additional Operations Account established pursuant to subsection (d) of this section.

(d) There is hereby created in the State Treasury a special revenue account known as the Additional Operations Account. The commissioner is authorized to use funds from the account to offset operational costs, for building and maintenance, purchases, equipment repair or replacement for the Division of Corrections and to defray necessary expenses incident to those activities.
CHAPTER 36

(H. B. 4522 - By Delegates Poore, Hunt, Sobonya, Guthrie, Ireland, Lawrence, Michael, Miley, White, Frazier and Skaff)

[Passed March 10, 2012; in effect July 1, 2012.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §51-2A-9 of the Code of West Virginia, 1931, as amended, relating to providing additional contempt powers for family court judges in civil contempt cases; and providing for alternatives to incarceration until the person has purged himself or herself of the contempt.

Be it enacted by the Legislature of West Virginia:

That §51-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. FAMILY COURTS.


1 (a) In addition to the powers of contempt established in chapter forty-eight of this code, a family court judge may:

3 (1) Sanction persons through civil contempt proceedings when necessary to preserve and enforce the rights of private parties or to administer remedies granted by the court;
(2) Regulate all proceedings in a hearing before the family court judge; and

(3) Punish direct contempts that are committed in the presence of the court or that obstruct, disrupt or corrupt the proceedings of the court.

(b) A family court judge may enforce compliance with his or her lawful orders with remedial or coercive sanctions designed to compensate a complainant for losses sustained and to coerce obedience for the benefit of the complainant. Sanctions must give the contemnor an opportunity to purge himself or herself. In selecting sanctions, the court must use the least possible power adequate to the end proposed. A person who lacks the present ability to comply with the order of the court may not be confined for a civil contempt. Sanctions may include, but are not limited to, seizure or impoundment of property to secure compliance with a prior order. Ancillary relief may provide for an award of attorney’s fees.

(c) Upon a finding that a person is in civil contempt, the court, when otherwise appropriate and in its discretion, and as an alternative to incarceration, may place the person on work release, in a weekend jail program, in an existing community service program, in an existing day-reporting center program, in any other existing community corrections program or on home confinement until the person has purged himself or herself of the contempt.
CHAPTER 37

(H. B. 4291 - By Delegates Miley, Frazier, Longstreth, Barill and Manchin)

[Passed February 15, 2012; in effect from passage.]
[Approved by the Governor on February 22, 2012.]

AN ACT to amend and reenact §51-8-8 of the Code of West Virginia, 1931, as amended, relating to county law libraries operated by the Supreme Court of Appeals and circuit courts; providing that circuit courts may no longer establish county law libraries; and providing that the Supreme Court of Appeals alone shall determine the appropriate number thereof.

Be it enacted by the Legislature of West Virginia:

That §51-8-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. STATE AND COUNTY LAW LIBRARIES; LAW CLERKS.

§51-8-8. Authority to establish county law libraries; under control of circuit judge; rules.

1 The Supreme Court of Appeals may establish county law libraries which once established, are wholly under the management of the circuit judge, with the assistance of the circuit clerk. The Supreme Court of Appeals may determine the appropriate number of law libraries that will be in operation as well as the location of the libraries and may
COURTS AND THEIR OFFICERS

§59-1-11 of the Code of West Virginia, 1931, as amended, relating to collecting fees by circuit clerks; removing the requirement that the circuit clerk charge three times the amount of actual postage when sending certain documents by mail or express; and allowing for the collection of a fee equal to the actual amount of the postage and express costs for sending decrees, orders or records that have not been ordered to be sent by mail or express.

Be it enacted by the Legislature of West Virginia:

That §59-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

AN ACT to amend and reenact §59-1-11 of the Code of West Virginia, 1931, as amended, relating to collecting fees by circuit clerks; removing the requirement that the circuit clerk charge three times the amount of actual postage when sending certain documents by mail or express; and allowing for the collection of a fee equal to the actual amount of the postage and express costs for sending decrees, orders or records that have not been ordered to be sent by mail or express.

Be it enacted by the Legislature of West Virginia:

That §59-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

CHAPTER 38

(Com. Sub. for S. B. 100 - By Senator Palumbo)

[Passed March 5, 2012; in effect ninety days from passage.]  
[Approved by the Governor on March 14, 2012.]
§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:

1. For instituting any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding, $155, of which $30 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code and $20 deposited in the special revenue account created in section six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for domestic violence victims;

2. For instituting an action for medical professional liability, $280, of which $10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

3. Beginning on and after July 1, 1999, for instituting an action for divorce, separate maintenance or annulment, $135;

4. For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, $85; and

5. For petitioning for an expedited modification of a child support order, $35.

(b) In addition to the foregoing fees, the following fees shall be charged and collected:
(1) For preparing an abstract of judgment, $5;

(2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, $1;

(3) For issuing a suggestion and serving notice to the debtor by certified mail, $25;

(4) For issuing an execution, $25;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, $25;

(6) For vacation or modification of a suggestee execution, $1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, $3;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, $10, of which $5 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50¢;

(10) For additional service, plaintiff or appellant, where any case remains on the docket longer than three years, for each additional year or part year, $20; and

(11) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, $50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.
(c) In addition to the foregoing fees, a fee for the actual amount of the postage and express may be charged and collected for sending decrees, orders or records that have not been ordered by the court to be sent by mail or express.

(d) The clerk shall tax the following fees for services in a criminal case against a defendant convicted in such court:

(1) In the case of a misdemeanor, $85; and

(2) In the case of a felony, $105, of which $10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(e) The clerk of a circuit court shall charge and collect a fee of $25 per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten-percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten-percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument.
processed by the clerk and all fees collected 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. Nothing in this subsection authorizes the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(f) The clerk of a circuit court shall charge and collect a fee of $10 for services rendered by the clerk for processing of bailpiece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

CHAPTER 39


[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-9 of the Code of West Virginia, 1931, as amended, all relating to crane operator certification; redefining
a crane for the purposes of the act; clarifying those persons who are exempted from certification; expanding the type of equipment for which certification is required to operate; requiring adherence to standards established by the Occupational Safety and Health Administration of the United States Department of Labor; clarifying the minimum requirements for certification; authorizing the Commissioner of Labor to issue notices to cease and desist unlawful practices; authorizing the Commissioner of Labor to apply to the circuit court for injunctive relief; limiting reciprocity provisions; deleting obsolete provisions; and requiring certain crane operators to hold certain classes of certification as of November 10, 2014.

Be it enacted by the Legislature of West Virginia:

That §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-1. Definitions.

For purposes of this article:

(a) “Commissioner” means the Commissioner of the Division of Labor, or his or her authorized representative.

(b) “Crane” means a power-operated hoisting machine used in construction, demolition or excavation work, which has a power-operated winch and load line and a power-operated boom that moves laterally by the rotation of the machine on a carrier, and which has a manufacturer’s rated lifting capacity of more than two thousand pounds. “Crane” does not mean a forklift, digger derrick truck, bucket truck or
any vehicle, aircraft or helicopter, or equipment which does not have a power-operated winch and load line.

(c) “Emergency basis” means an occurrence of an event, circumstance or situation that presents an imminent threat to persons or property and constitutes a serious health or safety hazard.

(d) “Employer” means any person, firm, corporation or other entity who hires or permits any individual to work.

(e) “Employee” means any individual employed by an employer and also as defined by the commissioner.

(f) “Tower crane” means a crane in which a boom, swinging jib, or other structural member is mounted on a vertical mast or tower.

(g) “Training or training course” means a course approved by the commissioner which includes some form of testing throughout, or a final written examination or practical test, or both, which ensures, or tends to ensure that learning has occurred and that the objectives of the training have been realized. The commissioner will evaluate whether the approved training adequately demonstrates competency to safely operate cranes.

§21-3D-2. Certification required; exemptions.

(a) A person may not operate a crane or tower crane without certification issued under this article except for those persons exempted under subsection (b) of this section.

(b) A person is not required to obtain certification under this article if the person:

(1) Is a member of the Department of Defense or Armed Forces of the United States or an employee of the United
States, when such member or employee is engaged in the work of a crane operator exclusively for such governmental unit; or

(2) Is primarily an operator of farm machinery who is performing the work of a crane operator as part of an agricultural operation; or

(3) Is operating a crane on an emergency basis; or

(4) Is operating a crane for personal use and not for profit on the site of real property which the person owns or leases; or

(5) Is an Operator-in-Training under the direct supervision of a certified crane operator and:

(A) Who is enrolled in an industry recognized in-house training course based on the American National Standards Institute Standards for Crane Operators and who is employed by the entity that either taught the training course or contracted to have the training course taught, all of which is approved by the commissioner; or

(B) Who is enrolled in an apprenticeship program or training program for crane operators approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

(6) Is an employee of and operating a crane at the direction of any manufacturing plant or other industrial establishment, including any mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery or well or is an employee of and operating a crane at the direction of the person, firm or corporation who owns or is operating such plant or establishment;
(7) Is an employee of a public utility operating a crane to perform work in connection with facilities used to provide a public service under the jurisdiction of the Public Service Commission, Federal Energy Regulatory Commission or Federal Communications Commission; or

(8) Is operating timbering harvesting machinery associated with the production of timber and the manufacturing of wood products.


(a) The commissioner shall:

(1) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which rules at the minimum must include provisions for:

(A) A Class A certification program for individuals who operate cranes or tower cranes in the State of West Virginia, which must require both a written examination and a practical demonstration, and which must be accredited by the American National Standards Institute’s Personnel Certification Accreditation Program;

(B) A Class B certification program for individuals who operate cranes or tower cranes in the State of West Virginia, which must require the successful completion of a training course;

(C) Certification categories including lattice boom truck cranes; lattice boom crawler cranes; fixed cab-telescoping boom cranes; swing cab-telescoping boom cranes; and tower cranes: Provided, That the holders of a certification for the large telescoping boom crane, upon application for recertification, will be provided with a one time election to

[Ch. 39]
either be certified as an operator of a fixed-cab or swing-cab telescoping boom crane, and that holders of a certification for the small telescoping boom crane, upon application for recertification, will be automatically certified as a fixed cab operator;

(D) Class A certification renewal requirements of individuals who operate cranes in the State of West Virginia, that must include a written examination and a current physician’s certificate at least every five years; and

(E) Class B certification renewal requirements of individuals who operate cranes in the State of West Virginia, that must include the successful completion of a training course approved by the commissioner;

(2) Prescribe application forms for original and renewal certification;

(3) Set application fees in amounts that are reasonable and necessary to defray the costs of the administration of this article in an amount not to exceed $75 per year;

(4) Set examination and training course fees in an amount not to exceed the actual cost of the examination and the training course;

(5) Administer or cause to be administered the written examination, practical demonstrations and the training course as required for certification;

(6) Determine the standards for acceptable performance on the written examination, practical demonstration and the required training course: Provided, That the minimum standards must be consistent with national standards, current operating procedures and technology and be transferable to other states where possible;
(7) Provide the option for applicants and crane operators to take examinations that meet or exceed requirements for national crane operator certification; and

(8) Take other action as necessary to enforce this article.

(b) The commissioner, or his or her designee, upon receipt of information that a person has engaged in or is engaging in an act that constitutes a violation of this article, may issue a notice to the person to cease and desist and may apply to the circuit court for an order enjoining the act. Upon a showing that the person has engaged in or is engaging in an act that constitutes a violation of this article, the court may order an injunction, restraining order or other order as the court considers appropriate.

§21-3D-4. Minimum certification requirements.

(a) The commissioner shall certify an applicant who:

(1) Is at least eighteen years of age;

(2) Meets the application requirements as prescribed by rule;

(3) Passes the written examination;

(4) Passes the practical demonstration: Provided, That the practical demonstration approved by the commissioner may be administered on-site by a qualified company representative;

(5) Presents the original, or a photographic copy, of a physician’s certificate that he or she is physically qualified to drive a commercial motor vehicle as required by 49 C.F.R. §391.41, as of the effective date of this article or an
equivalent physician’s certificate as approved by the commissioner; and

(6) Pays the appropriate fees.

(b) Certification issued under this article is valid throughout the state and is not assignable or transferable, and is valid for one year from the date on which it was issued.

(c) Notwithstanding any other provision of this article to the contrary, the commissioner shall establish a dual classification system of certification as follows:

(1) Class A certification, which will provide eligibility for national certification, and for which the applicant must achieve a passing score of seventy on the national commission for the certification of crane operators written examination;

(2) Class B certification, for which the commissioner may accept a lesser score on the national commission for the certification of crane operators written examination: Provided, That this score may not be less than sixty for Class B certification.

(d) On and after November 10, 2014:

(1) All individuals who operate cranes in the State of West Virginia which are governed by the provisions of the Occupational Safety and Health Administration of the United States Department of Labor, 29 C.F.R §1926.1400, Subpart CC, are required to hold a Class A certification; and

(2) All individuals who operate cranes in the State of West Virginia which are not governed by any provision of the Occupational Safety and Health Administration of the
§21-3D-9. Reciprocity.

The commissioner, in his or her discretion, may grant certification to persons certified by other states, without examination or without the required training upon satisfactory proof that the qualifications for the applicants are equal to the qualifications of this state: Provided, That the other states extend similar reciprocity privileges to persons certified by this state.

CHAPTER 40

(S. B. 606 - By Senators Palumbo, Unger, Jenkins, Klempa and Foster)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §60A-7-706 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto six new sections, designated §61-8C-6, §61-8C-7, §61-8C-8, §61-8C-9, §61-8C-10 and §61-8C-11, all relating to forfeiture of certain property; correcting a technical error; stating legislative findings; providing for the forfeiture of certain materials related to recording sexually explicit conduct of minors or soliciting minors; establishing a procedure for seizure of forfeitable property; creating procedures for forfeiture; setting process for disposition and distribution of forfeited moneys, securities and negotiable instruments; and creating process for disposition and distribution of other forfeited properties.
Be it enacted by the Legislature of West Virginia:

That §60A-7-706 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto six new sections, designated §61-8C-6, §61-8C-7, §61-8C-8, §61-8C-9, §61-8C-10 and §61-8C-11, all to read as follows:

CHAPTER 60A.  UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 7.  WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.

(a) Whenever moneys, securities or other negotiable instruments are forfeited under the provisions of this article, such proceeds shall be distributed as follows:

(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney which initiated the forfeiture proceeding;

(2) The balance shall be deposited in a special law-enforcement investigation fund. The fund may be placed in any interest-bearing depository insured by an agency of the federal government. The fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property.

(b) No funds shall be expended from the special law-enforcement investigation fund except as follows:
(1) In the case of the funds belonging to the State Police, the funds shall only be expended at the direction of the Superintendent of the State Police and in accordance with the provisions of article two, chapter eleven-b of this code and the provisions of subdivision (10), subsection (b), section two, article two, chapter twelve of this code;

(2) In the case of funds belonging to the office of either the sheriff or prosecuting attorney of any county in which the special fund has been created, the funds therein may only be expended in the manner provided in sections four and five, article five, chapter seven of this code; and

(3) In the case of funds belonging to the police department of any municipality in which the special fund has been created, the funds therein may only be expended in the manner provided in section twenty-two, article thirteen, chapter eight of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-6. Legislative findings.

The Legislature hereby finds and declares that the seizure and sale of items under the provisions of this article is not contemplated to be a forfeiture as the same is used in article twelve, section five of the West Virginia Constitution and to the extent that such seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article is not part of net proceeds as the same is contemplated by such article twelve, section five of the West Virginia Constitution.
§61-8C-7. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.

(a) The following are subject to forfeiture:

(1) All visual depictions which have been manufactured, distributed, dispensed or possessed in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, processing, delivering, importing or exporting any visual depictions or any crimes against children in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(3) All books, records, research products and materials, including hard drives, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(4) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of articles eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter by any person in exchange for a visual depiction, all proceeds traceable to the exchange and all moneys, negotiable instruments and securities used, or which are intended to be used, to facilitate any violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter: Provided, That no property may be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent; and
(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection, except that:

(A) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter;

(B) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter; and

(C) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of article eight-a or eight-c of this chapter or section fourteen-b, article three-c of this chapter.

(b) Property subject to forfeiture under this article may be seized by the State Police (hereinafter referred to as the “appropriate person” in this article).

(c) Visual depictions which are manufactured, possessed, transferred, sold or offered for sale in violation of this article
are contraband and shall be seized and summarily forfeited to
the state. Visual depictions which are seized or come into the
possession of the state, the owners of which are unknown, are
contraband and shall be summarily forfeited to the state upon
the seizure of the visual depictions.

(d) Notwithstanding any other provisions of this article to
the contrary, any items of tangible personal property sold to
a bona fide purchaser are not subject to forfeiture unless the
state establishes by clear and convincing proof that the bona
fide purchaser knew or should have known that the property
had in the previous three years next preceding the sale been
used in violation of this chapter.

(e) Notwithstanding any other provisions of this code to
the contrary, any person who has an ownership interest in
items of tangible personal property subject to forfeiture by
this article shall be presumed to be an innocent owner.
Unless the state establishes by clear and convincing proof
that the innocent owner knew or should have known that the
property subject to forfeiture had been used in violation of
article eight-a or eight-c of this chapter or section fourteen-b,
article three-c of this chapter and, if applicable, that the
innocent owner did not do all that reasonably could be
expected under the circumstances to terminate the illegal use
of the property once he or she had knowledge of it, the court
shall enter an order either: (1) Severing the property
appropriately; (2) transferring the property to the state with
a provision that the state shall compensate the innocent owner
to the extent of his or her ownership interest once a final
order of forfeiture has been entered and the property has been
reduced to liquid assets; or (3) permitting the innocent owner
to retain the property subject to a lien in favor of the state to
the extent of the forfeitable interest in the property. If the
state meets the burden set forth in this section, then the court
shall enter an order declaring the person with an ownership
interest is not an innocent owner and allowing forfeiture
proceedings to continue, pursuant to the requirements set forth in this article.


(a) Seizure of property made subject to forfeiture by the provisions of this article may be made upon process issued by any court of record having jurisdiction over the property.

(b) Notwithstanding the provisions of subsection (a) of this section, seizure of property subject to forfeiture by the provisions of this article may be made without process if:

(1) The seizure is incident to a lawful arrest or pursuant to a search under a search warrant or an inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this article;

(3) The appropriate person has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The appropriate person has probable cause to believe that the property was used or intended for use in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, forfeiture proceedings shall be instituted within ninety days of the seizure thereof.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate person, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the appropriate person may:
(1) Place the property under seal;
(2) Remove the property to a place designated by him or her;
(3) Require the appropriate law-enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or
(4) In the case of seized moneys, securities or other negotiable instruments, place the assets in any interest-bearing depository insured by an agency of the federal government.


(a)(1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this article shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law-enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor.

(2) A petition for forfeiture may be filed and proceedings held thereon in the circuit court of the county wherein the seizure was made, the real property subject to forfeiture is situate or the circuit court of the county wherein any owner of the property subject to forfeiture may reside.

(3) Any civil trial stemming from a petition for forfeiture brought under this article at the demand of either party shall be by jury.

(4) A petition for forfeiture of the seized property shall be filed within ninety days after the seizure of the property in question. The petition shall be verified by oath or affirmation of a law-enforcement officer representing the law-
enforcement agency responsible for the seizure or the
prosecuting attorney and shall contain the following:

(A) A description of the property seized;

(B) A statement as to who is responsible for the seizure;

(C) A statement of the time and place of seizure;

(D) The identity of the owner or owners of the property, if known;

(E) The identity of the person or persons in possession of
the property at the time seized, if known;

(F) A statement of facts upon which probable cause for
belief that the seized property is subject to forfeiture pursuant
to the provisions of this article is based;

(G) The identity of all persons or corporations having a
perfected security interest or lien in the subject property, as
well as the identity of all persons or corporations known to
the affiant who may be holding a possessory or statutory lien
against such property; and

(H) A prayer for an order directing forfeiture of the
seized property to the state, and vesting ownership of such
property in the state.

(b) At the time of filing or as soon as practicable
thereafter, a copy of the petition for forfeiture shall be served
upon the owner or owners of the seized property, as well as
all holders of a perfected security interest or lien or of a
possessory or statutory lien in the same class, if known.
Should diligent efforts fail to disclose the lawful owner or
owners of the seized property, a copy of the petition for
forfeiture shall be served upon any person who was in
possession or alleged to be in possession of the property at
the time of seizure, where such person’s identity is known.
The above service shall be made pursuant to the provisions of
the West Virginia Rules of Civil Procedure. Any copy of the
petition for forfeiture so served shall include a notice
substantially as follows: “To any claimant to the within
described property: You have the right to file an answer to
this petition setting forth your title in, and right to possession
of, the property within thirty days from the service hereof. If
you fail to file an answer, a final order forfeiting the property
to the state will be entered, and such order is not subject to
appeal.”

If no owner or possessors, lien holders or holders of a
security interest be found, then such service may be by Class
II legal publication in accordance with the provisions of
article three, chapter fifty-nine of this code, and the
publication area shall be the county wherein such property
was located at the time of seizure and the county wherein the
petition for forfeiture is filed.

(c) In addition to the requirements of subsection (b)
above, the prosecuting attorney or law-enforcement officer
upon whose oath or affirmation the petition for forfeiture is
based, shall be responsible for the publication of a further
notice. Such further notice that a petition for forfeiture has
been filed shall be published by Class II legal advertisement
in accordance with article three, chapter fifty-nine of this
code. The publication area shall be the county wherein the
property was seized and the county wherein the petition for
forfeiture is filed. The notice shall advise any claimant to the
property of their right to file a claim on or before the date set
forth in the notice, which date shall not be less than thirty
days from the date of the first publication. The notice shall
specify that any claim must clearly state the identity of the
claimant and an address where legal process can be served
upon that person. In addition such notice shall contain the
following information:
(1) A description of the property seized;

(2) A statement as to who is responsible for the seizure;

(3) A statement of the time and place of seizure;

(4) The identity of the owner or owners of the property, if known;

(5) The identity of the person or persons in possession of the property at the time of seizure, if known; and

(6) A statement that prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state shall be requested of the court.

(d) If no answer or claim is filed within thirty days of the date of service of the petition pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to subsection (b) of this section, the court shall enter an order forfeiting the seized property to the state. If any claim to the seized property is timely filed, a time and place shall be set for a hearing upon such claim. The claimant or claimants shall be given notice of such hearing not less than ten days prior to the date set for the hearing.

(e) At the hearing upon the claim or claims, the state shall have the burden of proving by a preponderance of the evidence that the seized property is subject to forfeiture pursuant to the provisions of this chapter.

(f) Any order forfeiting property to the state and entered pursuant to this section perfects the state’s right, title and interest in the forfeited property and relates back to the date of seizure: Provided, That in any proceeding under this article the circuit court shall in its final order make specific
findings with respect to whether or not probable cause to seize such property existed at the time of such seizure.

(g) During the pendency of a forfeiture proceeding, it is unlawful for any property owner or holder of a bona fide security interest or other valid lien holder to transfer or attempt to transfer any ownership interest or security interest in seized property with the intent to defeat the purpose of this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner or holder of a security interest or other lien holder from making such a transfer should one come to its attention. Any such transfer which is made in violation of the provisions of this subsection shall have no effect upon an order of the court forfeiting seized property to the state if a notice of lis pendens is filed prior to the recording of the instrument of transfer.

(h) The court may void any transfer of property made before or after a forfeiture proceeding has been commenced, which is subject to forfeiture, if the transfer was not to a bona fide purchaser without notice for value.

(i) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought pursuant to this chapter must be filed within one hundred twenty days of the date of entry of the final appealable order. The appellant shall be required to give notice of intent to appeal within thirty days of the entry of such appealable order.

§61-8C-10. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.

(a) Whenever moneys, securities or other negotiable instruments are forfeited under the provisions of this article, such proceeds shall be distributed as follows:
(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney which initiated the forfeiture proceeding;

(2) The balance shall be deposited in a special law-enforcement investigation fund. The fund may be placed in any interest-bearing depository insured by an agency of the federal government. The fund shall be administered by the Superintendent of the State Police or his or her designee.

(b) No funds shall be expended from the special law-enforcement investigation fund except as follows:

(1) In the case of funds belonging to the State Police, the funds shall only be expended at the direction of the Superintendent of the State Police and in accordance with the provisions of article two, chapter eleven-b of this code and the provisions of subdivision (10), subsection (b), section two, article two, chapter twelve of this code;

(2) In the case of funds belonging to the office of the prosecuting attorney of any county in which the special fund has been created, the funds therein may only be expended in the manner provided in sections four and five, article five, chapter seven of this code; and

(3) In the case of funds belonging to the police department of any municipality in which the special fund has been created, the funds therein may only be expended in the manner provided in section twenty-two, article thirteen, chapter eight of this code.

§61-8C-11. Disposition of other forfeited property; distribution of proceeds.

(a) When property other than that referred to in section ten of this article is forfeited under this article, the circuit
court ordering the forfeiture, upon application by the
prosecuting attorney or the Superintendent of the State Police
or his or her designee, may direct that:

(1) Title to the forfeited property be vested in the law-
enforcement agency so petitioning;

(2) The law-enforcement agency responsible for the
seizure retain the property for official use; or

(3) The forfeited property shall be offered at public
auction to the highest bidder for cash. Notice of such public
auction shall be published as a Class III legal advertisement
in accordance with article three, chapter fifty-nine of this
code. The publication area shall be the county where the
public auction will be held.

(b) When a law-enforcement agency receives property
pursuant to this section, the court may, upon request of the
prosecuting attorney initiating the forfeiture proceeding,
require the law-enforcement agency to pay unto the office of
said prosecuting attorney a sum not to exceed ten percent of
the value of the property received to compensate said office
for actual costs and expenses incurred.

(c) The proceeds of every public sale conducted pursuant
to this section shall be paid and applied as follows: First, to
the balance due on any security interest preserved by the
court; second, to the costs incurred in the storage,
maintenance and security of the property; and third, to the
costs incurred in selling the property.

(d) Any proceeds of a public sale remaining after
distribution pursuant to subsection (c) of this section shall be
distributed as follows:
(1) Ten percent of such proceeds shall be tendered to the office of the prosecuting attorney who initiated the forfeiture proceeding.

(2) The balance shall be deposited in a special law-enforcement investigation fund. Such fund shall be administered by the Superintendent of the State Police or his or her designee and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in the special law-enforcement investigative fund pursuant to this article shall be expended only to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law-enforcement purposes as the Superintendent of the State Police or his or her designee may deem appropriate; however, these funds may not be utilized for regular operating needs.

(e) If more than one law-enforcement agency was substantially involved in effecting the seizure and forfeiture of property, the court wherein the petition for forfeiture was filed shall equitably distribute the forfeited property among the law-enforcement agencies. In the event of a public sale of such property pursuant to subsection (a) of this section, the court shall equitably distribute any proceeds remaining after distribution pursuant to subsection (c) and subdivision (1), subsection (d) of this section among such law-enforcement agencies for deposit into their individual special law-enforcement investigative fund. Equitable distribution shall be based upon the overall contribution of the individual law-enforcement agency to the investigation which led to the seizure.

(f) Upon the sale of any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to any bona fide purchaser at a
(g) Any funds expended pursuant to the provisions of this section shall only be expended in the manner provided in subsection (b), section ten of this article.

(h) Every prosecuting attorney or law-enforcement agency receiving forfeited property or proceeds from the sale of forfeited property pursuant to this article shall submit an annual report to the body which has budgetary authority over such agency. Such report shall specify the type and approximate value of all forfeited property and the amount of proceeds from the sale of forfeited property received in the preceding year. No county or municipality may use anticipated receipts of forfeited property in their budgetary process.

(i) In lieu of the sale of any forfeited property subject to a bona fide security interest preserved by an order of the court, the law-enforcement agency receiving the forfeited property may pay the balance due on any security interest preserved by the court from funds budgeted to the office or department or from the special fund and retain possession of the forfeited property for official use pursuant to subsection (a) of this section.

(j) In every case where property is forfeited, disposition of the forfeited property, in accordance with this article, shall be made within six months of the date upon which the court of jurisdiction orders forfeiture. Should the office or agency receiving the property fail either to place the property in
official use or dispose of the property in accordance with law, the court of jurisdiction shall cause disposition of the property to be made with any proceeds therefrom to be awarded to the state.

(k) No disposition shall occur until all applicable periods for filing a notice of intent to appeal has expired and no party in interest shall have filed such notice. The filing of the notice of intent to appeal shall stay any such disposition until the appeal has been finally adjudicated or until the appeal period of one hundred eighty days has expired without an appeal having actually been taken or filed, unless a valid extension of the appeal has been granted by the circuit court under the provisions of section seven, article four, chapter fifty-eight of this code.

(l) The special law-enforcement investigative funds of each law-enforcement agency may be placed in an interest-bearing depository insured by the federal government.

CHAPTER 41

(Com. Sub. for S. B. 411 - By Senators Prezioso and Laird)

[Passed March 10, 2012; in effect ninety days from passage.] [Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-3-22a, relating to electronic cash register automated sales suppression devices and phantom-ware; providing definitions; making it unlawful to willfully and knowingly sell, purchase, install, transfer or possess in this state any automated sales suppression device or
phantom-ware; providing criminal penalties and civil liability and civil remedies; establishing that such devices and software are contraband; and providing for the seizure and destruction of such devices.

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 §61-3-22a, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-22a. Possession or use of automated sales suppression devices; penalty.

(a) General. -- When used in this article, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. --

(1) “Automated sales suppression device” or “zapper” means a software program, carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record
transaction data for the purpose of computing, compiling or processing retail sales transaction data in whatever manner.

(3) “Phantom-ware” means a hidden, preinstalled or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

(4) “Transaction data” includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address and identification number of the vendor and the receipt or invoice number of the transaction.

(5) “Transaction report” means a report documenting, but not limited to, the sales taxes collected, media totals and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(c) It is unlawful to willfully and knowingly sell, purchase, install, transfer or possess in this state any automated sales suppression device or zapper or phantom-ware.

(d) Any person convicted of a violation of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be confined in a correctional institution for not less than one nor more than five years, or fined not less than $10,000 nor more than $100,000, or both confined and fined.
(e) Any person violating subsection (c) of this section is liable for all taxes and penalties due the state as the result of the fraudulent use of an automated sales suppression device, zapper or phantom-ware and shall forfeit all profits associated with the sale or use of an automated sales suppression device or phantom-ware.

(f) An automated sales suppression device or phantom-ware and any cash register or device containing such device or software is contraband and, as such, subject to seizure and destruction by any duly authorized law-enforcement agency in the state, including the Criminal Investigation Division of the State Tax Department.

CHAPTER 42

(Com Sub. for S. B. 212 - By Senators Snyder, Green, Klempa, McCabe, Williams, Sypolt, Palumbo, Foster, Beach and Wells)

[Amended and again passed March 16, 2012, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-49b, relating to the disruption of communications and public utility services; defining terms; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3-49b, to read as follows:
ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49b. Disruption of communications and utilities services.

(a) Any person who causes a disruption of communications services or public utility services by the theft or by intentionally damaging communications or public utility equipment and by such conduct causes:

(1) A disruption of communication services or public utility services to ten or more households or subscribers; or

(2) A loss in the value of the property in an amount of one thousand dollars or more, shall be guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be sentenced to not more than two thousand hours of court-approved community service or fined not more than $10,000, or both. For a second offense, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years or fined not more than $10,000, or both. For third and subsequent offenses, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than ten years, or fined not more than $10,000, or both.

(b) As used in this section, communications and public utility equipment includes but is not limited to public safety communications towers and equipment, telephone lines, communications towers and tower equipment, radio towers and tower equipment, railroad and other industrial safety communication devices or systems, electric towers and equipment and electric transmission and distribution lines.
AN ACT to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to making it a felony to disarm or attempt to disarm correctional officers.

Be it enacted by the Legislature of West Virginia:

That §61-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; penalties; definitions.

1 (a) Any person who by threats, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct, any law-enforcement officer, probation officer or parole officer acting in his or her official capacity 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.
(b) Any person who intentionally disarms or attempts to disarm any law-enforcement officer, correctional officer, probation officer or parole officer, acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) Any person who, with intent to impede or obstruct a law-enforcement officer in the conduct of an investigation of a felony offense, knowingly and willfully makes a materially false statement, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 and not more than $200, or confined in jail for five days, or both fined and confined. However, the provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For the purposes of this subsection, “law-enforcement officer” does not include a watchman, a member of the West Virginia State Police or college security personnel who is not a certified law-enforcement officer.

(d) Any person who intentionally flees or attempts to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her, 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.

(e) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation...
officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 and shall be confined in a regional jail not more than one year.

(f) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $2,000, and shall be imprisoned in a state correctional facility not less than one nor more than five years.

(g) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of any person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $3,000 and shall be confined in the county or regional jail for not less than six months nor more than one year.

(h) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to any person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned
in a state correctional facility not less than three nor more than ten years.

(i) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to any person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be punished by a definite term of imprisonment in a state correctional facility which is not less than five nor more than fifteen years. A person imprisoned pursuant to the provisions of this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(j) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs at the time, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than ten years.

(k) For purposes of this section, the term “vehicle” includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in section one, article one, chapter seventeen-a of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.
Ch. 44] CRIMES AND THEIR PUNISHMENT 549

109 (l) For purposes of this section, the terms “flee”, “fleeing” and “flight” do not include any person’s reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer’s direction to stop.

114 (m) The revisions to subsections (e), (f), (g) and (h) of this section enacted during the regular session of the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

CHAPTER 44

(Com Sub. for S. B. 165 - By Senators Laird, Tucker, Yost, Barnes, Plymale, Unger and Wills)

[Passed February 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on February 15, 2012.]

AN ACT to amend and reenact §61-8B-2 and §61-8B-10 of the Code of West Virginia, 1931, as amended, all relating to prohibiting sexual acts between persons who are incarcerated, on probation or parole with state and local jail, correctional, probation and parole employees or contractors; prohibiting sexual contact; removing consent of victim as a defense for criminal acts; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-8B-2 and §61-8B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-2. Lack of consent.

(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion;

(2) Incapacity to consent; or

(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct.

(c) A person is deemed incapable of consent when such person is:

(1) Less than sixteen years old;

(2) Mentally defective;

(3) Mentally incapacitated;

(4) Physically helpless; or

(5) Subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to subsections (a) and (b) of section ten of this article.
§61-8B-10. Imposition of sexual acts on persons incarcerated or under supervision; penalties.

(a) Any person employed by the Division of Corrections, any person working at a correctional facility managed by the Commissioner of Corrections pursuant to contract or as an employee of a state agency, any person working at a correctional facility managed by the Division of Juvenile Services pursuant to contract or as an employee of a state agency, any person employed by a jail or by the Regional Jail and Correctional Facility Authority, any person working at a facility managed by the Regional Jail and Correctional Facility Authority or a jail or any person employed by, or acting pursuant to, the authority of any sheriff, county commission or court to ensure compliance with the provisions of article eleven-b, chapter sixty-two of this code who engages in sexual intercourse, sexual intrusion or sexual contact with a person who is incarcerated in this state is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than one nor more than five years or fined not more than $5,000.

(b) Any person employed by the Division of Corrections as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer who engages in sexual intercourse, sexual intrusion or sexual contact with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than one nor more than five years or fined not more than $5,000, or both.

(c) The term “incarcerated in this state” for purposes of this section includes in addition to its usual meaning,
offenders serving a sentence under the provisions of article eleven-b, chapter sixty-two of this code.

(d) Authorized pat-down, strip search or other security related tasks does not constitute sexual contact pursuant to this section.

CHAPTER 45

(S. B. 596 - By Senators Palumbo, Jenkins, Beach and Klempa)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8C-3a, relating to prohibiting child erotica; creating a misdemeanor offense for producing, possessing, displaying or distributing child erotica; providing criminal penalty; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8C-3a, to read as follows:

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-3a. Prohibiting child erotica; penalties.

(a) Any person age eighteen or over who knowingly and intentionally produces, possesses, displays or distributes, in
any form, any visual portrayals of minors who are partially clothed, where the visual portrayals are: (1) Unrelated to the sale of a commercially available legal product; and (2) used for purely prurient purposes, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year or fined not more than $1,000, or both confined and fined.

(b) As used in this section only:

(1) “Purely prurient purposes” means for the specific purpose of sexual gratification or sexual arousal from viewing the visual portrayals prohibited by this section; and

(2) “Commercially available” means for sale to the general public.

(3) A “minor” is a child under the age of sixteen years, or a person who is sixteen years of age or older but less than eighteen years old and who is mentally defective or mentally incapacitated.

CHAPTER 46

(S. B. 331 - By Senators Wills and Miller)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §61-11A-2 and §61-11A-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §62-12-23 of said code, all relating to adding persons who reside with crime victims to those who are provided notice
of matters in the prosecutorial process; and the right to be heard at sentencing and parole proceedings.

Be it enacted by the Legislature of West Virginia:

That §61-11A-2 and §61-11A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §62-12-23 of said code be amended and reenacted, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.


(a) For the purposes of this section, “victim” means a person who is a victim of a felony, or, where a death occurs during the commission of a felony or a misdemeanor, the following persons shall be notified if known by the prosecutor: A member of the deceased victim’s immediate family, the fiduciary of the deceased victim’s estate or an adult household member residing with the victim.

(b) Prior to the imposition of sentence upon a defendant who has been found guilty of a felony, or of a misdemeanor if death occurs during the commission of a crime, or has pleaded guilty or nolo contendere to a felony, or to a misdemeanor if death occurs during the commission of a crime, the court shall permit the victim of the crime to appear before the court to make an oral statement for the record if the victim notifies the court of his or her desire to make such a statement after receiving notification provided in subsection (c) of this section. If the victim fails to notify the court, the failure is a waiver of the right to make an oral statement. In lieu of the appearance and oral statement, the victim may submit a written statement to the court or to the probation officer in charge of the case. The probation officer shall
forthwith file the statement delivered to his or her office with
the sentencing court and the statement must be made a part of
the record at the sentencing hearing. The statement, whether
oral or written, must relate solely to the facts of the case and
the extent of injuries, financial losses and loss of earnings
directly resulting from the crime for which the defendant is
being sentenced.

(c) Within a reasonable time prior to the imposition of
sentence upon the defendant, the prosecuting attorney or
assistant prosecuting attorney in charge of the case shall
make reasonable efforts, in writing, to advise the person who
was the victim of the crime, the parent or guardian of a minor
who was the victim of a crime, the fiduciary of the victim’s
estate if the victim is deceased and the immediate family
members of the victim if the victim is deceased and if their
whereabouts are known to the prosecutor or assistant
prosecutor. The writing will provide the date, time and place
of the original sentencing hearing and of the victim’s right to
submit a written or oral statement to the sentencing court.

(d) The oral or written statement given or submitted by a
victim in accordance with the provisions of this section is in
addition to and not in lieu of the victim impact statement
required by the provisions of section three of this article.

and witnesses in the criminal justice system.

(a) No later than July 1, 1984, the Attorney General shall
promulgate rules and regulations in accordance with the
provisions of chapter twenty-nine-a of this code, establishing
guidelines for law-enforcement agencies and prosecuting
attorneys’ offices consistent with the purposes of this article.
The Attorney General shall seek the advice of the West
Virginia State Police and Department of Health and Human
Resources in preparing such rules and regulations. In
preparing such rules and regulations, the following objectives shall be considered:

(1) The arresting law-enforcement agency should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following:

(A) Availability of crime victim compensation (where applicable);

(B) Community-based victim treatment programs;

(C) The role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

(D) Stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

(2) The prosecuting attorney or his or her assistant should ensure that victims and witnesses receive information on steps that law-enforcement officers and prosecuting attorneys can take to protect victims and witnesses from intimidation.

(3) All victims and witnesses who have been scheduled to attend criminal justice proceedings should be notified by the prosecuting attorneys’ offices as soon as possible of any scheduling changes which will affect their appearances.

(4) Victims, witnesses, one member of the immediate family and any adult household member residing with the victim should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of judicial proceedings relating to their case, from the prosecuting attorney’s office, including:
(A) The arrest of an accused;

(B) The initial appearance of an accused before a judicial officer;

(C) The release of the accused pending judicial proceedings; and

(D) Proceedings in the prosecution of the accused including, but not limited to, the entry of a plea of guilty, trial, sentencing and, where a term of imprisonment is imposed, the release of the accused from such imprisonment.

(5) The victim of a serious crime, or in the case of a minor child or a homicide the family of the victim, shall be consulted by the prosecuting attorney in order to obtain the views of the victim or family about the disposition of any criminal case brought as a result of such crime, including the views of the victim or family about:

(A) Dismissal;

(B) Release of the accused pending judicial proceedings;

(C) Plea negotiations; and

(D) Pretrial diversion program.

(6) Victims and other prosecution witnesses should be provided a waiting area that is separate from all other witnesses prior to court appearances, if feasible.

(7) Law-enforcement agencies should promptly return victims’ property held for evidentiary purposes unless there is a compelling law-enforcement reason for retaining it.
(8) A victim or witness who so requests should be assisted by law-enforcement agencies and prosecuting attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law-enforcement agencies or attorneys for the government, is subjected to serious financial strain should be assisted by the appropriate state agencies in dealing with creditors.

(b) Nothing in this section shall be construed as creating a cause of action against the State of West Virginia or any of its political subdivisions.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-23. Notification of parole hearing; victim’s right to be heard; notification of release on parole.

(a) Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury, child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney who prosecuted the offender shall prepare a Parole Hearing Notification Form. This form shall contain the following information:

(1) The name of the county in which the offender was prosecuted and sentenced;

(2) The name of the court in which the offender was prosecuted and sentenced;
(3) The name of the prosecuting attorney or assistant prosecuting attorney who prosecuted the offender;

(4) The name of the judge who presided over the criminal case and who sentenced the offender;

(5) The names of the law-enforcement agencies and officers who were primarily involved with the investigation of the crime for which the offender was sentenced; and

(6) The names, addresses and telephone numbers of the victims of the crime for which the offender was sentenced or the names, addresses and telephone numbers of the immediate family members of each victim of the crime, including, but not limited to, each victim’s spouse, father, mother, brothers, sisters and any adult household member residing with the victim.

(b) The prosecuting attorney shall retain the original of the Parole Hearing Notification Form and shall provide copies of it to the circuit court which sentenced the offender, the parole board, the Commissioner of Corrections and to all persons whose names and addresses are listed on the form.

(c) At least forty-five days prior to the date of a parole hearing, the parole board shall notify all persons who are listed on the Parole Hearing Notification Form of the date, time and place of the hearing. Such notice shall be sent by certified mail, return receipt requested. The notice shall state that the victims of the crime have the right to submit a written statement to the parole board and to attend the parole hearing to be heard regarding the propriety of granting parole to the prisoner. The notice shall also state that only the victims may submit written statements and speak at the parole hearing unless a victim is deceased, is a minor or is otherwise incapacitated.
(d) The panel considering the parole shall inquire during the parole hearing as to whether the victims of the crime or their representatives, as provided in this section, are present. If so, the panel shall permit those persons to speak at the hearing regarding the propriety of granting parole for the prisoner.

(e) If the panel grants parole, it shall immediately set a date on which the prisoner will be released. Such date shall be no earlier than thirty days after the date on which parole is granted. On the date on which parole is granted, the parole board shall notify all persons listed on the Parole Hearing Notification Form that parole has been granted and the date of release. A written statement of reasons for releasing the prisoner, prepared pursuant to subdivision (4), subsection (b), section thirteen of this article, shall be provided upon request to all persons listed on the Parole Hearing Notification Form.

CHAPTER 47

(Com. Sub. for S. B. 517 - By Senators K. Facemyer and Unger)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §62-11C-5 of the Code of West Virginia, 1931, as amended, relating to creating community beautification and reclamation programs for state highways, municipal, county and state parks and recreation areas and community gardens through the West Virginia Community Corrections Act.
Be it enacted by the Legislature of West Virginia:

That §62-11C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-5. Establishment of programs.

(a) Any county or combination of counties or a county or counties and a Class I or II municipality may establish and operate community corrections programs, as provided for in this section, to be used both prior to trial as a condition of bond in circuit and magistrate court, as well as an alternative sentencing option for those offenders sentenced within the jurisdiction of the county or counties which establish and operate the program: Provided, That the chief judge must certify that the community corrections facility is available for use in connection with the imposition of pretrial bond conditions.

(b) Any county or combination of counties or a county or counties and a Class I or II municipality that seek to establish programs as authorized in this section shall submit plans and specifications for the programs to be established, including proposed budgets, for review and approval by the community corrections subcommittee established in section three of this article.

(c) Any county or combination of counties or a county or counties and a Class I or II municipality may establish and operate an approved community corrections program to provide alternative sanctioning options for an offender who is convicted of an offense for which he or she may be sentenced to a period of incarceration in a county or regional jail or a state correctional facility and for which probation or
home incarceration may be imposed as an alternative to incarceration.

(d) Community corrections programs authorized by subsection (a) of this section may provide, but are not limited to providing, any of the following services:

(1) Probation supervision programs;

(2) Day fine programs;

(3) Community service restitution programs;

(4) Home incarceration programs;

(5) Substance abuse treatment programs;

(6) Sex offender containment programs;

(7) Licensed domestic violence offender treatment programs;

(8) Day reporting centers;

(9) Educational or counseling programs;

(10) Drug courts; or

(11) Community beautification and reclamation programs for state highways, municipal, county and state parks and recreation areas, and community gardens.

(e) A county or combination of counties or a county or counties and a Class I or II municipality which establish and operate community corrections programs as provided for in
this section may contract with other counties to provide
community corrections services.

(f) For purposes of this section, the phrase “may be
sentenced to a period of incarceration” means that the statute
defining the offense provides for a period of incarceration as
a possible penalty.

(g) No provision of this article may be construed to allow
a person participating in or under the supervision of a
community corrections program to earn “good time” or any
other reduction in sentence.

CHAPTER 48

(Com. Sub. for S. B. 369 -
By Senators Unger and Snyder)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §7-14D-12 of the Code of West
Virginia, 1931, as amended, relating to modifying the Deputy
Sheriff Retirement System to allow a retirant upon divorce,
annulment or remarriage to change the retirement benefit
options under certain circumstances; and prohibiting causes of
action against the board based upon such changes.

Be it enacted by the Legislature of West Virginia:

That §7-14D-12 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:
§7-14D-12. Annuity options.

(a) Prior to the effective date of retirement, but not thereafter, except as provided in subsection (c) of this section, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(1) Option A -- Joint and Survivor Annuity. -- A life annuity payable during the joint lifetime of the member and his or her beneficiary who is a natural person with an insurable interest in the member’s life. Upon the death of either the member or his or her beneficiary, the benefit shall continue as a life annuity to the survivor in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(2) Option B -- Contingent Joint and Survivor Annuity. -- A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member’s life. Upon the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.
(3) **Option C -- Ten Years Certain and Life Annuity.** -- A life annuity payable during the member’s lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member’s estate.

(4) **Option D -- Level Income Annuity.** -- A life annuity payable monthly in an increased amount “A” from the time of retirement until the member is Social Security retirement age, and then a lesser amount “B” payable for the member’s lifetime thereafter, with these amounts computed actuarially to satisfy the following two conditions:

(A) **Actuarial equivalence.** -- The actuarial present value at the date of retirement of the member’s annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount “A” plus the actual present value of the deferred life annuity in amount “B”; and

(B) **Level income.** -- The amount “A” equals the amount “B” plus the amount of the member’s estimated monthly Social Security primary insurance amount that would commence at the date amount “B” becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using Social Security law then in effect, using assumptions established by the board.

(b) In the case of a member who has elected the options set forth in subdivisions (a)(1) or (2) of this section, and whose beneficiary dies prior to the member’s death, the member may name an alternative beneficiary. If an alternative beneficiary is named within eighteen months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary. If the election is not made until eighteen
months after the death of the prior beneficiary, the amount shall be reduced so that it is only ninety percent of the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary.

(c)(1) In the case of a retired member who has elected an option set forth in subdivision (a)(1) or (2) of this section, and designated his or her spouse as beneficiary, upon divorce or annulment, the retiree may elect to change the retirement benefit options offered by those subdivisions to a life annuity in an amount adjusted on a fair basis to be of equal actuarial value of the annuity prospectively in effect relative to the retiree at the time the option is elected: Provided, That the retiree furnishes to the board satisfactory proof of entry of a final decree of divorce or annulment: Provided, however, That the retiree certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce or other court order that would restrict the election is in effect: Provided further, That no cause of action against the board arises or may be maintained on the basis of having permitted the retiree to change the retirement benefit option pursuant to the provisions of this subdivision.

(2) Upon remarriage, a retiree may name the new spouse as an annuitant for any of the retirement benefit options offered by subdivision (a)(1) or (2) of this section: Provided, That the retiree shall furnish to the board proof of marriage: Provided, however, That the retiree certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce or other court order that would restrict the designation is in effect: Provided further, That no cause of action against the board arises or may be maintained on the basis of having permitted the retiree to name a new spouse as annuitant for any of the survivorship retirement benefit options. The value of the new survivorship annuity shall be the actuarial equivalent of the retiree’s benefit prospectively in effect at the time the new annuity is elected.
AN ACT to amend and reenact §48-2-104 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §48-2-701 and §48-2-702; and to amend and reenact §59-1-10 of said code, all relating generally to premarital education; providing a premarital education incentive to applicants for marriage licenses; providing for curriculum requirements for premarital education; identifying instructors for premarital education; increasing the fee for marriage license without completion of a premarital education course; creating a fund for purposes of administering the premarital education; and creating a fund for purposes of administering civil legal services for low income persons.

Be it enacted by the Legislature of West Virginia:

That §48-2-104 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §48-2-701 and §48-2-702; and that §59-1-10 of said code be amended and reenacted, all to read as follows:
ARTICLE 2. MARRIAGE.

PART I. APPLICATION FOR MARRIAGE LICENSE.

§48-2-104. Contents of the application for a marriage license.

(a) The application for a marriage license must contain a statement of the full names of both the female and the male parties, their social security account numbers, dates of birth, places of birth and residence addresses. The application must state whether or not the persons seeking the license have completed premarital education pursuant to section seven hundred one, article two, chapter forty-eight of this code. If the application states that the applicants seeking issuance of the license have completed premarital education, then the applicants must submit a signed and dated certificate of completion issued by the premarital education provider.

(b) If either of the parties is a legal alien in the United States of America and has no social security account number, a tourist or visitor visa number or number equivalent to a United States social security account number must be provided.

(c) Every application for a marriage license must contain the following statement: “Marriage is designed to be a loving and lifelong union between a woman and a man.

The laws of this state affirm your right to enter into this marriage and to live within the marriage free from violence and abuse. Neither of you is the property of the other. Physical abuse, sexual abuse, battery and assault of a spouse or other family member, and other provisions of the criminal laws of this state are applicable to spouses and other family members, and these violations are punishable by law.”
§48-2-701. Premarital education encouraged; requirements.

(a) Persons applying for a marriage license may attend a premarital education course of at least four hours during the twelve months immediately preceding the date of the application for the license.

(b) A premarital education course offers instruction involving marital issues which may include, but not be limited to, the following:

1. Conflict management;
2. Communication skills;
3. Managing finances;
4. Child and parenting responsibilities;
5. Extended family roles; and
6. Key components of a successful marriage.

(c) Premarital education course instructors must have training in skills-based and research-based marriage preparation curricula.

(d) Premarital education courses may be performed by the following:

1. A professional counselor or marriage and family therapist licensed pursuant to article thirty-one, chapter thirty of this code;
2. A social worker licensed pursuant to article thirty, chapter thirty of this code;
(3) A psychiatrist who is licensed as a physician pursuant to article three, chapter thirty of this code;

(4) A psychologist who is licensed pursuant to article twenty-one, chapter thirty of this code; or

(5) An active member of the clergy or his or her designee, including retired clergy, provided that a designee is trained in skills-based and research-based marriage preparation curricula premarital education.

(e) The premarital education course curricula must meet the requirements of this section and provide a skills-based and research-based curricula of the following:

(1) The National Healthy Marriage Resource Center;

(2) A church, spiritual assembly, or religious organization; or

(3) Other substantially similar resource.

(f) The Department of Health and Human Resources shall maintain an Internet website on which individuals and organizations described in subsection (c) may electronically register with the department to indicate the skills-based and research-based curriculum in which the registrant is trained.

(g) The premarital education provider shall furnish each participant, who completes the premarital education required by this section, a certificate of completion.


(a) There is hereby created a special revenue account within the State Treasury known as the Marriage Education Fund. The account shall be administered by the Secretary of the Department of Health and Human Resources.
(b) Any balance in the account at the end of each fiscal year shall not revert to the general revenue fund but shall remain in the account and be expended as provided by in this section.

(c) The account shall consist of all fees collected under the provisions of paragraph (C), subdivision (4), subsection (c), of section ten, article one, chapter fifty-nine of this code, legislative appropriations, and all interest or other returned earned from investment of the fund.

(d) Expenditures from the account shall be made by the secretary for the purposes set forth in section seven-hundred-one of this article, and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article 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 fiscal year ending June 30, 2013, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

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 1/2" x 14".

(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, the clerk
of the county commission shall charge and collect the following fees:

(1) Fifteen dollars for a deed of conveyance (with or without a plat), trust deed, fixture filing or security agreement concerning real estate lease.

(2) Forty dollars for a 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. Twenty dollars of each recording fee received pursuant to this subdivision shall be deposited into the county’s General Revenue Fund and $20 paid quarterly by the clerk of the county commission to the West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code.

(3) Ten dollars for a financing, continuation, termination or other statement or writing permitted to be filed under chapter forty-six of this code.

(4) Ten dollars for a plat or map (with no deed of conveyance).

(5) No charge for a service discharge record.

(6) Ten dollars for any document or writing other than those referenced in subdivisions (1), (2), (3), (4) and (5) of this subsection.

(7) One dollar for each additional page for documents or writings containing more than five pages.

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. 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) Five dollars 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.

(c) Fifty-five dollars 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). This fee is reduced to
$35 if the applicants present a premarital education course
completion certificate issued pursuant to section seven hundred one, article two, chapter forty-eight of this code, and dated within one year of the application for a marriage license.

(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; and

(4) If a premarital education course completion certificate is not presented, the county clerk shall, on or before the tenth day of each month, transmit $20 of the marriage license fee received pursuant to this subsection to the state treasurer for deposit in the state treasury as follows:

(A) Five dollars to the credit of 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;

(B) Five dollars to the credit of the special revenue account, hereby created, designated the “Fund for Civil Legal Services for Low Income Persons,” which shall consist of all
gifts, grants, bequests, transfers, appropriations or other donations or payments which may be received and administered by the Division of Justice and Community Services from any governmental entity or unit or any person, firm, foundation, or corporation for the purposes of this section, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be made by the Director of the Division of Justice and Community Services and shall be limited to grants to nonprofit agencies which provide civil legal services to low income persons made at his or her discretion. Any balance in the fund at the end of each fiscal year shall not revert to the general revenue fund but shall remain in the fund and be expended as provided by this section.

(C) Ten dollars to the credit of the Marriage Education Fund created pursuant to section seven hundred two, article two, chapter forty-eight of this code.

(d) (1) One dollar and fifty cents for a copy of any writing or document, if it is not otherwise provided for.

(2) One dollar for each additional page if the writing or documents contains more than two pages.

(3) One dollar for annexing the seal of the commission or clerk to any paper.

(4) Five dollars for a certified copy of a birth certificate, death certificate or marriage license.

(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 §48-8-103 of the Code of West Virginia, 1931, as amended, relating to modifying or terminating spousal support based upon the results of genetic testing; defining “altered circumstances”; requiring a preliminary determination by the court as to whether genetic testing evidence should be admitted; providing facts which may be considered by the court in making the preliminary determination; and providing guidelines for genetic testing.

Be it enacted by the Legislature of West Virginia:

That §48-8-103 the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-103. Payment of spousal support.

(a) Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay spousal support in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party. Payments of spousal support are to be ordinarily made from a party’s income, but when the income is not sufficient to adequately provide for those payments, the court may, upon
specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate. An award of spousal support shall not be disproportionate to a party’s ability to pay as disclosed by the evidence before the court.

(b) At any time after the entry of an order pursuant to the provisions of this article, the court may, upon motion of either party, revise or alter the order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, issuing it forthwith, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice.

(c)(1) For the purposes of subsection (b) of this section, “altered circumstances” includes evidence in the form of genetic testing that establishes that a child conceived during the marriage of the parties is not the child of the former husband, or that a child was born to a woman other than the former wife because of the adultery of the former husband.

(2) Prior to admitting evidence of genetic testing, the court shall preliminarily determine whether genetic testing evidence should be admitted for the purpose of disproving or establishing paternity. The facts that may be considered by the court at this hearing include the following:

(A) The length of time that has elapsed since the party was first placed on notice that a child conceived during the marriage of the parties is not the child of the former husband, or that a child was born to a woman other than the former wife because of the adultery of the former husband;

(B) The length of time during which the individual desiring to challenge paternity assumed the role of parent to the child;
(C) The facts surrounding the party’s discovery of nonpaternity;

(D) The nature of the parent/child relationship;

(E) The age of the child;

(F) The harm which may result to the child if paternity were successfully disproved;

(G) The extent to which the passage of time reduced the chances of establishing paternity in favor of the child; and

(H) All other factors which may affect the equities involved in the potential disruption of the parent/child relationship or the chances of undeniable harm to the child.

(d) For the purposes of subsection (c), genetic testing must be performed pursuant to the following guidelines:

(1) The tests show that the inherited characteristics including, but not limited to, blood types, have been determined by appropriate testing procedures at a hospital, independent medical institution or independent medical laboratory duly licensed under the laws of this state, or any other state, and an expert qualified as an examiner of genetic markers has analyzed, interpreted and reported on the results; and

(2) The genetic test results exclude the former husband as the father of the child.
AN ACT to repeal §48-22-803 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-22-303 of said code; and to amend and reenact said code by adding thereto a new section, designated §61-2-14h, all relating to crimes against the person; increasing criminal penalties relating to the increase the penalty for the criminal offenses involving money in exchange for locating, providing or procuring a minor child in certain circumstances; providing circumstances deemed abuse and neglect; and providing exceptions from thereto for certain acts relating to lawful adoptions.

Be it enacted by the Legislature of West Virginia:

That §48-22-803 of the Code of West Virginia, 1931, as amended, be repealed; that §48-22-303 of the code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-2-14h, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 22. ADOPTION.

§48-22-303. Content of consent or relinquishment.

(a) A consent or relinquishment as required by the provisions of section 22-301 must be written in plain English
or, if the person executing the consent or relinquishment does not understand English, in the person’s primary language. The form of the consent or relinquishment shall include the following, as appropriate:

(1) The date, place and time of the execution of the consent or relinquishment;

(2) The name, date of birth and current mailing address of the person executing the consent or relinquishment;

(3) The date, place of birth and the name or pseudonym (“Baby Boy _____ or Baby Girl _____”) of the minor child;

(4) The fact that the document is being executed more than seventy-two hours after the birth of the child;

(5) If a consent, that the person executing the document is voluntarily and unequivocally consenting to the transfer of legal and physical custody to, and the adoption of the child by, an adoptive parent or parents whose name or names may, but need not be, specified;

(6) If a relinquishment, that the person executing the relinquishment voluntarily consents to the permanent transfer of legal and physical custody of the child to the agency for the purposes of adoption;

(7) If a consent, that it authorizes the prospective adoptive parents, or if a relinquishment, that it authorizes the agency, to consent to medical treatment of the child pending any adoption proceeding;

(8) That after the consent or relinquishment is signed and acknowledged, it is final and, unless revoked in accordance with the provisions of section 22-305, it may not be revoked or set aside for any other reason;
(9) That the adoption will forever terminate all parental rights, including any right to visit or communicate with the child and any right of inheritance;

(10) That the adoption will forever terminate all parental obligations of the person executing the consent or relinquishment;

(11) That the termination of parental rights and obligations is permanent whether or not any agreement for visitation or communication with the child is subsequently performed;

(12) That the person executing the consent or relinquishment does so of his or her own free will and the consent or relinquishment has not been obtained by fraud or duress;

(13) That the person executing the consent or relinquishment has:

(i) Received a copy of the consent or relinquishment;

(ii) Been provided the information and afforded the opportunity to participate in the voluntary adoption registry, pursuant to the provisions of article 23-101, et seq.;

(iii) Been advised of the availability of counseling;

(iv) Been advised of the consequences of misidentifying the other birth parent; and

(v) If a birth mother, been advised of the obligation to provide the information required by the provisions of section seven of this article in the case of an unknown father;
58 (14) That the person executing the consent or relinquishment has not received or been promised any money or anything of value for the consent or relinquishment, other than payments authorized by the provisions of section fourteen-h, article two, chapter sixty-one;

63 (15) Whether the child is an “Indian child” as defined in the Indian Child Welfare Act, 25 U.S.C. §1903;

65 (16) That the person believes the adoption of the child is in the child’s best interest; and

67 (17) That the person who is consenting or relinquishing expressly waives notice of any proceeding for adoption unless the adoption is contested, appealed or denied.

70 (b) A consent or relinquishment may provide explicitly for its conditional revocation if:

72 (1) Another person whose consent or relinquishment is required does not execute the same within a specified period;

74 (2) A court determines not to terminate another person’s parental relationship to the child; or

76 (3) In a direct placement for adoption, a petition for adoption by a prospective adoptive parent, named or described in the consent, is denied or withdrawn.

79 (c) A consent or relinquishment shall also include:

80 (1) If a consent, the name, address, telephone and facsimile numbers of the lawyer representing the prospective adoptive parents; or

83 (2) If a relinquishment, the name, address, telephone and facsimile numbers of the agency to which the child is being relinquished; and
(3) Specific instructions on how to revoke the consent or relinquishment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives or agrees to give to another person money, property, service or other thing of value in consideration for the recipient’s locating, providing or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

(b) Any person who knowingly receives, accepts or offers to accept money, property, service or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, may be confined in the state correctional facility for not less than one year nor more than ten years or, in the discretion of the court, be confined in jail not more than one year and fined not less than $2,000 nor more than $10,000.

(d) A child whose parent, guardian or custodian has sold or attempted to sell said child in violation of the provisions of
article twenty-two, chapter forty-eight may be deemed an abused child as defined by section three, article one, chapter forty-nine of this code. The court may place such a child in the custody of the department of health and human resources or with such other responsible person as the best interests of the child dictate.

(e) This section does not prohibit the payment or receipt of the following:

(1) Fees paid for reasonable and customary services provided by the department of health and human resources or any licensed or duly authorized adoption or child-placing agency.

(2) Reasonable and customary legal, medical, hospital or other expenses incurred in connection with the pregnancy, birth and adoption proceedings.

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother.

(4) Any fees or charges authorized by law or approved by a court in a proceeding relating to the placement plan, prospective placement or placement of a minor child for adoption.

(f) At the final hearing on the adoption as provided in article twenty-two, chapter forty-eight of this code, an affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted to the court.
AN ACT to amend and reenact §48-27-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-2A-2 of said code, all relating to authorizing the Supreme Court of Appeals to utilize existing judicial officers and resources to establish and implement one domestic violence court pilot project; establishing and clarifying the jurisdiction of the pilot project court; establishing an expiration date for the pilot project and requesting reports to the President of the Senate and Speaker of the House of Delegates prior to the convening of the regular sessions of the Legislature in the years 2015 and 2016.

Be it enacted by the Legislature of West Virginia:

That §48-27-301 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §51-2A-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 3. PROCEDURE.

§48-27-301. Jurisdiction.

(a) Circuit courts, family courts and magistrate courts, have concurrent jurisdiction over domestic violence proceedings as provided in this article.
(b) The Supreme Court of Appeals is authorized to assign an appropriate judicial officer for one pilot domestic violence court in any jurisdiction chosen by the Supreme Court of Appeals. The judicial officer assigned has the authority and jurisdiction to preside over criminal misdemeanor crimes of domestic violence involving family or household members as defined in subdivisions one through six and paragraphs (A), (B) and (H), subdivision seven, section two hundred four of this article, relating to offenses under subsections (b) and (c), section nine, article two, chapter sixty-one of this code, misdemeanor violations of section nine-a, article two, chapter sixty-one of this code, misdemeanor violations of section twenty-eight, article two, chapter sixty-one of this code, misdemeanor offenses under article three, chapter sixty-one of this code, where the alleged perpetrator and the victim are said family or household members, subdivisions seven and eight, section seven, article seven, chapter sixty-one of this code and civil and criminal domestic violence protective order proceedings as provided in this article. The judicial officer chosen for any pilot domestic violence court may be a current or senior status circuit judge, family court judge, temporary family court judge or magistrate. The Supreme Court of Appeals is requested to maintain statistical data to determine the feasibility and effectiveness of any pilot domestic violence court established by the provisions of this section. The program shall terminate December 31, 2016, and the Supreme Court is requested to provide a report to the President of the Senate and the Speaker of the House of Delegates regarding the program’s efficacy prior to the regular sessions of the Legislature in 2015 and 2016.

(c) The assigned judicial officer, in this pilot domestic violence court, does not have jurisdiction to preside over any felony crimes.
§51-2A-2. Family court jurisdiction; exceptions; limitations.

(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of article three, four or five, chapter forty-eight of this code except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of child support brought under the provisions of articles eleven, twelve and fourteen, chapter forty-eight of this code;

(3) All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of article ten, chapter forty-eight of this code;

(5) All actions for the interstate enforcement of family support brought under article sixteen, chapter forty-eight of this code and for the interstate enforcement of child custody brought under the provisions of article twenty of said chapter;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought
under the Uniform Child Custody Jurisdiction and Enforcement Act, as provided in article twenty, chapter forty-eight of this code;

(7) All petitions for writs of habeas corpus wherein the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;

(11) All actions brought by an obligor to contest the enforcement of an order of support through the withholding from income of amounts payable as support or to contest an affidavit of accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

(12) All final hearings in domestic violence proceedings;

(13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of the underlying action;
(15) All proceedings for property distribution brought under article seven, chapter forty-eight of this code;

(16) All proceedings to obtain spousal support brought under article eight, chapter forty-eight of this code;

(17) All proceedings relating to the appointment of guardians or curators of minor children brought pursuant to sections three, four and six, article ten, chapter forty-four of this code, exercising concurrent jurisdiction with the circuit court; and

(18) All proceedings relating to petitions for sibling visitation.

(b) If an action for divorce, annulment or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment or separate maintenance is pending and a petition is filed pursuant to the provisions of article six, chapter forty-nine of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the
parents has been entered by the family court in the pending
action for divorce, annulment or separate maintenance, the
family court shall stay any further proceedings concerning
the allocation of custodial and decision-making responsibility
for the child between the parents and defer to the orders of
the circuit court in the abuse or neglect proceedings.

(d) If a family court judge is assigned as a judicial officer
of a pilot domestic violence court then jurisdiction of all
proceedings relating to criminal misdemeanor crimes of
domestic violence as referenced in section three hundred one
of this article involving a family or household member as
referenced in subdivisions one through six and paragraphs
(A), (B), and (H), subdivision seven, section two hundred
four, article twenty-seven, chapter forty-eight of this code
shall be concurrent with the circuit and magistrate courts.

(e) A family court is a court of limited jurisdiction. A
family court is a court of record only for the purpose of
exercising jurisdiction in the matters for which the
jurisdiction of the family court is specifically authorized in
this section and in chapter forty-eight of this code. A family
court may not exercise the powers given courts of record in
section one, article five, chapter fifty-one of this code or
exercise any other powers provided for courts of record in
this code unless specifically authorized by the Legislature. A
family court judge is not a “judge of any court of record” or
a “judge of a court of record” as the terms are defined and
used in article nine of this chapter.
AN ACT to amend and reenact §48-27-311 and §48-27-701 of the Code of West Virginia, 1931, as amended, relating to prevention and treatment of domestic violence generally; eliminating the requirement of serving domestic violence orders by certified mail where personal service fails; authorizing fee to law enforcement for service of process; and clarifying that personal service must be attempted at every address for respondent provided by petitioner.

Be it enacted by the Legislature of West Virginia:

That §48-27-311 and §48-27-701 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.


1 A protective order may be served on the respondent by means of a Class I legal advertisement published notice, with the publication area being the most current known county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine
of this code if personal service by law enforcement has been unsuccessful. Simultaneously with the publication, the respondent shall be served with the protective order and the order of publication by first class mail to the respondent’s most current known residential address.

Any protective order issued by the court of this state which is served in compliance with the provisions of Rule 4(f) of the West Virginia Rules of Civil Procedure served outside the boundaries of this state shall carry the same force and effect as if it had been personally served within this state’s boundaries.


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 to every address provided by petitioner. Any law-enforcement agency that serves pleadings or orders pursuant to this section may receive the fee authorized therefor by Rule 4 of the Rules of Practice and Procedure for Domestic Violence Civil Proceedings. If service is not made, law enforcement shall continue to attempt service on the respondent until proper service is made.
AN ACT to amend and reenact §48-27-502 and §48-27-1101 of the Code of West Virginia, 1931, as amended, all relating to domestic violence generally; clarifying that the practice and procedure for domestic violence civil proceedings are governed by court rule; providing that a prohibition against possessing firearms and ammunition is a mandatory provision for domestic violence protective orders; and, providing that a domestic violence protective order state that possession of firearms and ammunition while subject to domestic violence protective order is a criminal violation of state and federal law.

Be it enacted by the Legislature of West Virginia:

That §48-27-502 and §48-27-1101 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.


(a) A protective order must order the respondent to refrain from abusing, harassing, stalking, threatening or
otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury.

(b) The protective order must prohibit the respondent from possessing any firearm or ammunition.

(c) The protective order must inform the respondent that he or she is prohibited from possessing any firearm or ammunition and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under state and federal law, notwithstanding the fact that the respondent might otherwise have a right to possess a firearm.

(d) The protective order must inform the respondent that the order is in full force in every county of this state.

(e) The protective order must contain on its face the following statement, printed in bold-faced type or in capital letters:

“VIOLATION OF THIS ORDER MAY BE PUNISHED BY CONFINEMENT IN A REGIONAL JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF AS MUCH AS $2,000”.

§48-27-1101. Rules of practice and procedure; forms to be provided; operative date.

(a) Pleadings, practice and procedure in domestic violence matters before the court are governed by the rules of practice and procedure for domestic violence civil proceedings promulgated by the West Virginia Supreme Court of Appeals.
(b) The West Virginia Supreme Court of Appeals shall prescribe forms which are necessary and convenient for proceedings pursuant to this article and the court shall distribute such forms to the clerk of the circuit court, the secretary-clerk of the family court and the clerk of magistrate court of each county within the state.

CHAPTER 55


[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2012.]

AN ACT to amend and reenact §17B-2-1 and §17B-2-6 of the Code of West Virginia, 1931, as amended, all relating to issuance of driver’s licenses; providing that licenses issued under this section may contain information designating the licensee as a person who is an honorably discharged veteran of any branch of the Armed Forces of the United States; providing that veterans may renew licenses without cost if not expired; and redefining “previously licensed” as an applicant who has held at least a level two or similar driver’s licensing level or class.

Be it enacted by the Legislature of West Virginia:

That §17B-2-1 and §17B-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

(a)(1) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street used by the public generally unless the person has a valid driver’s license issued pursuant to this code for the type or class of vehicle being driven.

(2) Any person licensed to operate a motor vehicle pursuant to this code may exercise the privilege thereby granted in the manner provided in this code and, except as otherwise provided by law, is not required to obtain any other license to exercise the privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver’s license, shall indicate on the license the type or general class or classes of vehicles the licensee may operate in accordance with this code, federal law or rule. Licenses shall be issued in different colors for those drivers under age eighteen, those drivers age eighteen to twenty-one and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups.

(c) The following drivers licenses classifications are hereby established:

(1) A Class A, B or C license shall be issued to those persons eighteen years of age or older with two years of driving experience who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Motor Carrier Safety and Improvement
(2) A Class D license shall be issued to those persons eighteen years and older with one year of driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purpose of regulating the operation of motor vehicles, wherever the term “chauffeur's license” is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered or required to be registered as a Class A motor vehicle, as that term is defined in section one, article ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) A Class E license shall be issued to those persons who have qualified for a driver’s license under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E or (G) license for any person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) A Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure
provided by this chapter and have paid the required fee, but who do not possess a Class A, B, C, D or E driver's license.

(5) A Class G driver’s license or instruction permit shall be issued to a person using bioptic telescopic lenses who has successfully completed an approved driver training program and complied with all other requirements of article two-b of this chapter.

(d) All licenses issued under this section may contain information designating the licensee as a diabetic, organ donor, as deaf or hard-of-hearing, or as having any other handicap or disability, or that the licensee is an honorably discharged veteran of any branch of the Armed Forces of the United States according to criteria established by the division, if the licensee requests this information on the license. An honorably discharged veteran may be issued a replacement license without charge if the request is made before the expiration date of the current license and the only purpose for receiving the replacement license is to get the veteran’s designation placed on the license.

(e) No person, except those hereinafter expressly exempted, may drive any motorcycle upon a street or highway in this state or upon any subdivision street used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under section seven-b of this article for motorcycle operation or a valid motorcycle instruction permit.

(f)(1) An identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;
(B) Has reached the age of two years. The division may also issue an identification card to a person under the age of two years for good cause shown;

(C) Has paid the required fee of two dollars and fifty cents per year: Provided, That the fee is not required if the applicant is sixty-five years or older or is legally blind; and

(D) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The identification card shall contain the same information as a driver’s license except that the identification card shall be clearly marked as an identification card. The division may issue an identification card with less information to persons under the age of sixteen. An identification card may be renewed annually on application and payment of the fee required by this section.

(A) Every identification card issued to a person who has attained his or her twenty-first birthday expires on the licensee’s birthday in those years in which the licensee’s age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years or for more than seven years and expires on the licensee’s birthday in those years in which the licensee’s age is evenly divisible by five.

(B) Every identification card issued to a person who has not attained his or her twenty-first birthday expires thirty days after the licensee’s twenty-first birthday.

(C) Every identification card issued to persons under the age of sixteen shall be issued for a period of two years and shall expire on the last day of the month in which the applicant’s birthday occurs.
(3) The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(g) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars or confined in jail not more than six months, or both fined and confined.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

(a) Every application for an instruction permit or for a driver’s license shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of the fee entitles an applicant under the age of eighteen to not more than two attempts at the written test or not more than three attempts to pass the road skills test. An applicant age eighteen years or older is entitled to not more than two attempts at the written test or not more than three attempts to pass the road skills test within a period of ninety days from the date of issuance of the instruction permit. An applicant who fails either the written test or the road skills test may not be tested twice within a period of one week.

(b) Any applicant who has not been previously licensed must hold an instruction permit for a minimum of thirty days. For the purposes of this section, the term “previously licensed” means an applicant who has obtained at least a level two graduated license or junior driver's license issued under the provisions of this article or has obtained an equal or greater level of licensure if previously licensed in another state.
(c) Every application for an instruction permit shall state the full legal name, date of birth, sex, and residence address of the applicant and briefly describe the applicant. The application shall state whether the applicant has theretofore been a licensed driver and, if so, when, and by what state or country and whether his or her license has ever been suspended or revoked within five years of the date of application, or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal. The application will indicate whether the applicant desires a notation on the driver’s license indicating that the applicant is an organ donor, in accordance with article one-b of this chapter, is diabetic, deaf, or hard of hearing, has any other handicap or disability, or is an honorably discharged veteran of any branch of the Armed Forces of the United States, and such other pertinent information as the commissioner may require.

CHAPTER 56

(Com. Sub. for S. B. 512 - By Senators Palumbo and Beach)

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §17C-5A-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §17C-5C-4a and §17C-5C-4b, all relating to updating statutory provisions relating to procedures of the Office of Administrative Hearings; providing written objections to revocation notices may be filed by facsimile or e-mail; providing notices of hearing are sent to the
ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-2. Hearing; revocation; review.

(a) Written objections to an order of revocation or suspension under the provisions of section one of this article or section seven, article five of this chapter shall be filed with the Office of Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of the period of revocation or
suspension and afford the person an opportunity to be heard by
the Office of Administrative Hearings. The written objection
must be filed with Office of Administrative Hearings in
person, by registered or certified mail, return receipt requested,
or by facsimile transmission or electronic mail within thirty
calendar days after receipt of a copy of the order of revocation
or suspension or no hearing will be granted: Provided, That
a successful transmittal sheet shall be necessary for proof of
written objection in the case of filing by fax. The hearing
shall be before a hearing examiner employed by the Office
of Administrative Hearings who shall rule on evidentiary
issues. Upon consideration of the designated record, the hearing
examiner shall, based on the determination of the facts of the
case and applicable law, render a decision affirming,
reversing or modifying the action protested. The decision
shall contain findings of fact and conclusions of law and shall
be provided to all parties by registered or certified mail, return
receipt requested.

(b) The hearing shall be held at an office of the Division of
Motor Vehicles located in or near the county in which the
arrest was made in this state or at some other suitable place in
the county in which the arrest was made if an office of the
division is not available. The Office of Administrative
Hearings shall send a notice of hearing to the person whose
driving privileges are at issue and the person’s legal counsel if
the person is represented by legal counsel, the investigating or
arresting law-enforcement officers, the Division of Motor
Vehicles, and the Attorney General’s Office, if the Attorney
General has filed a notice of appearance of counsel on behalf
of the Division of Motor Vehicles.

(c) (1) Any hearing shall be held within one hundred
eighty days after the date upon which the Office of
Administrative Hearings received the timely written objection
unless there is a postponement or continuance.
(2) The Office of Administrative Hearings may postpone or continue any hearing on its own motion or upon application by the party whose license is at issue in that hearing or by the commissioner for good cause shown.

(3) The Office of Administrative Hearings may issue subpoenas commanding the appearance of witnesses and subpoenas duces tecum commanding the submission of documents, items or other things. Subpoenas duces tecum shall be returnable on the date of the next scheduled hearing unless otherwise specified. The Office of Administrative hearings shall issue subpoenas and subpoenas duces tecum at the request of a party or the party’s legal representative. The party requesting the subpoena shall be responsible for service of the subpoena upon the appropriate individual. Every subpoena or subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by a person over eighteen years of age or by registered or certified mail, return receipt requested, and received by the party responsible for serving the subpoena or subpoena duces tecum: Provided, That the Division of Motor Vehicles may serve subpoenas to law-enforcement officers through electronic mail to the department of his or her employer. If a person does not obey the subpoena or fails to appear, the party who issued the subpoena to the person may petition the circuit court wherein the action lies for enforcement of the subpoena.

(d) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the Office of Administrative Hearings by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence
of alcohol, controlled substances or drugs, or did drive a motor
vehicle while having an alcohol concentration in the person’s
blood of eight hundredths of one percent or more, by weight,
or did refuse to submit to the designated secondary chemical
test, or did drive a motor vehicle while under the age of
twenty-one years with an alcohol concentration in his or her
blood of two hundredths of one percent or more, by weight,
but less than eight hundredths of one percent, by weight.

(f) In the case of a hearing in which a person is accused of
driving a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or accused of driving a motor
vehicle while having an alcohol concentration in the person’s
blood of eight hundredths of one percent or more, by weight,
or accused of driving a motor vehicle while under the age of
twenty-one years with an alcohol concentration in his or her
blood of two hundredths of one percent or more, by weight,
but less than eight hundredths of one percent, by weight, the
Office of Administrative Hearings shall make specific findings
as to: (1) Whether the investigating law-enforcement officer
had reasonable grounds to believe the person to have been
driving while under the influence of alcohol, controlled
substances or drugs, or while having an alcohol concentration
in the person’s blood of eight hundredths of one percent or
more, by weight, or to have been driving a motor vehicle while
under the age of twenty-one years with an alcohol
concentration in his or her blood of two hundredths of one
percent or more, by weight, but less than eight hundredths of
one percent, by weight; (2) whether the person was lawfully
placed under arrest for an offense involving driving under the
influence of alcohol, controlled substances or drugs, or was
lawfully taken into custody for the purpose of administering a
secondary test: Provided, That this element shall be waived in
cases where no arrest occurred due to driver incapacitation; (3)
whether the person committed an offense involving driving
under the influence of alcohol, controlled substances or drugs,
or was lawfully taken into custody for the purpose of
administering a secondary test; and (4) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others and if the Office of Administrative Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person’s license for a period of ten years: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the
commissioner shall revoke the person’s license for a period of five years: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(i) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person’s license for a period of two years: Provided, That if the license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or more, by weight, or finds that the person knowingly permitted the persons vehicle to be driven by another person who was under the influence of
alcohol, controlled substances or drugs, or knowingly permitted the person’s vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight the commissioner shall revoke the person’s license for a period of six months or a period of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a of this article: Provided, That any period of participation in the Motor Vehicle Alcohol Test and Lock Program that has been imposed by a court pursuant to section two-b, article five of this chapter shall be credited against any period of participation imposed by the commissioner: Provided, however, That a person whose license is revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program: Provided further, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: And provided further, That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k) (1) If in addition to finding by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person did drive a motor vehicle while having an alcohol concentration in the person’s blood of fifteen hundredths of one percent or more, by weight, the commissioner shall revoke the person’s license for a period of forty-five days with an additional two hundred and seventy days of participation in the Motor Vehicle Alcohol
Test and Lock Program in accordance with the provisions of section three-a, article five-a, chapter seventeen-c of this code:

*Provided,* That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however,* That if the person’s license has previously been suspended or revoked the person’s license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(2) If a person whose license is revoked pursuant to subdivision (1) of this subsection proves by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days: *Provided,* That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however,* That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(1) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to
perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person’s license for a period of five years: *Provided*, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(m) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person’s license for a period of two years: *Provided*, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(n) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an
alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall suspend the person’s license for a period of sixty days: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article, the period of revocation shall be for one year, or until the person’s twenty-first birthday, whichever period is longer.

(o) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did have on or within the Motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person’s license for a period of one year: Provided, That if the person’s license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the person’s license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(p) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:
(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest;

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest; or

(3) Any revocation under the provisions of section seven, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest.

(q) In the case of a hearing in which a person is accused of refusing to submit to a designated secondary test, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: Provided, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) whether the person had been given a written statement advising the person that the person’s license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated in the manner provided in said section.
(r) If the Office of Administrative Hearings finds by a preponderance of the evidence that: (1) The investigating officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: Provided, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) the person had been given a written statement advising the person that the person’s license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person’s license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

(s) If the Office of Administrative Hearings finds to the contrary with respect to the above issues the commissioner shall rescind his or her earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section or section seven, article five of this chapter. A copy of the Office of Administrative Hearings’ final order containing its findings of fact and conclusions of law made and entered following the hearing shall be served...
upon the person whose license is at issue or upon the person’s legal counsel if the person is represented by legal counsel by registered or certified mail, return receipt requested or by electronic mail if available. The final order shall be served upon the commissioner by electronic mail. During the pendency of any hearing, the revocation of the person’s license to operate a motor vehicle in this state shall be stayed.

A person whose license is at issue and the commissioner shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code. Neither the Commissioner nor the Office of Administrative Hearings may stay enforcement of the order. The court may grant a stay or supersede as of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits and the appellant will suffer irreparable harm if the order is not stayed: Provided, That in no event shall the stay or supersede as of the order exceed one hundred fifty days. Notwithstanding the provisions of section four, article five of said chapter, the Office of Administrative Hearings may not be compelled to transmit a certified copy of the file or the transcript of the hearing to the circuit court in less than sixty days.

(t) In any revocation or suspension pursuant to this section, if the driver whose license is revoked or suspended had not reached the driver’s eighteenth birthday at the time of the conduct for which the license is revoked or suspended, the driver’s license shall be revoked or suspended until the driver’s eighteenth birthday or the applicable statutory period of revocation or suspension prescribed by this section, whichever is longer.

(u) Funds for this section’s hearing and appeal process may be provided from the Drunk Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code, upon application for the funds to the Commission on Drunk Driving Prevention.
ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.

§17C-5C-4a. Rule-making authority.

1 The Office of Administrative Hearings may propose legislative and procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code in order to implement the provisions of this article and to carry out the duties prescribed therein.

§17C-5C-4b. Duty to provide notice of change of address.

1 Any person who has any pending contested matter before the Office of Administrative Hearings is required to provide written notice of a change in address by written notice at least ten days prior to any scheduled hearing in which they are a party. If the person’s final hearing is held prior to the person’s change in address, then the person is required to provide the written notice prior to the issuance of the final order in their case. Written notice must be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the Office of Administrative Hearings.

CHAPTER 57

(H. B. 4119 - By Delegates Perry and Lawrence)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2012.]

*Clerk’s Note: It has been determined that H. B. 4119, originally styled as Chapter 57 was enrolled and signed by the Governor in an incorrect form. Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, H. B. 4119 did not become law.*
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-6b, relating to the General Educational Development Diploma (GED); making legislative findings; setting forth legislative intent; and requiring the State Board of Education to study GED issues and make a report with recommendations by a certain date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-6b, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6b. General Educational Development (GED) diploma; legislative findings and intent; examination costs; testing materials and procedures; report required.

(a) The Legislature makes the following findings related to the General Educational Development (GED) examination:

(1) The GED examination is an instrument for success that can keep a student from dropping out of school and can transform the future for both school age and adult individuals.
who attain a GED diploma. One in every seven Americans with a high school credential has received the GED, as well as one in every twenty college students. For those who have not graduated from high school, attaining a GED diploma greatly increases their employment opportunities and earning potential.

(2) While West Virginia’s average per-capita income has increased over the past ten years as the state’s economy has held steady or grown slightly, most other states have shown declines. Despite these positive changes, West Virginia still ranks as one of the five poorest states in the nation. Additionally, many counties within the state fall far below the state average; therefore, the current cost of the GED examination is difficult for many citizens to afford without help, and significant cost increases will make the GED examination cost prohibitive.

(3) In addition to the cost factor, large areas of West Virginia are without broadband Internet access or without adequate broadband Internet access speeds, which results in diminished opportunities for rural residents to participate in the rapidly unfolding digital revolution compared to their nonrural neighbors. Citizens living in these areas have few opportunities to become adept in computer technology. Therefore, most such citizens, especially adults seeking to earn a GED years after leaving the public school system, are not proficient or even comfortable using the Internet.

(4) Individuals who may benefit most from earning a GED diploma are those who lack many of the skills needed to secure employment or to function successfully in an age dependent upon technology. Because such individuals also lack the financial resources to obtain those needed skills, if the GED is unattainable they are likely to remain in a state of poverty.
(b) It is the intent of the Legislature to make the GED diploma available to the widest possible range of state residents who have not achieved a high school diploma. To that end, an examination of the following issues is required:

(1) The impact on prospective GED test takers of the proposed changes in the design and delivery of the qualifying examination made by the American Council on Education (ACE) in 2011;

(2) The impact of the increase in costs per individual tested; and

(3) The alternatives available to reduce costs and to retain the option of pen and paper testing for those who desire it.

(c) The State Board shall perform an exhaustive study of the issues surrounding administration of the GED examination in the state including, but not limited to, the following:

(1) Analysis of research, pilot testing, or both, that was done in West Virginia by the American Council on Education prior to its decision to eliminate pen and paper examinations, along with the justifications offered for eliminating this type of examination as a possible option;

(2) Determination of the current and future costs to the state to provide GED examinations free of charge to eligible individuals; and

(3) Recommendations for statutory or rule changes to achieve the following goals:

(A) Reducing or controlling escalating costs of administering the GED examinations; and

(B) Retaining paper and pen testing for those individuals who request or require it; or
(C) Eliminating or reducing significantly the difficulty for individuals who are not comfortable or proficient in taking online examinations.

(d) The State Board shall complete its work and report its findings, conclusions and recommendations, together with drafts of any legislation or rule changes necessary to effectuate the recommendations, to the Legislative Oversight Commission on Education Accountability no later than July 1, 2012.

CHAPTER 59

(S. B. 436 - By Senators Plymale, Browning, Unger, Kessler (Mr. President), Prezioso, Klempa, Beach and Jenkins)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 2, 2012.]

section, designated §18B-14-1, all relating to public education generally; state institutions of higher education; career and technical education; seamless curricula; programs of study; requiring state board to provide adult basic education programs on certain college campuses; creating West Virginia EDGE initiative; establishing initiative goals; providing for administration and accountability; requiring certain joint rule; clarifying that no specific level of appropriation is required; creating collaborative degree completion program; setting forth legislative findings, intent and program objectives; specifying program applicability; setting forth powers and duties of participating agencies; requiring certain agreements and specifying approval procedures; clarifying legislative findings and intent regarding community and technical college system; renaming certain consortia planning districts and clarifying duties; specifying certain accountability procedures; providing for consortia cochairs; assigning responsibility for developing collaborative degree completion programming; defining programs of study and directing consortia to focus on identifying and providing student programs of study leading to placement in high-demand, high-wage occupations; requiring initial consortia compacts and annual updates by certain date and specifying approval process; specifying facilitating institutions for certain consortia; providing for select committee to examine higher education outcomes-based funding models; specifying membership; requiring report of findings with recommendations to Legislative Oversight Commission on Education Accountability and Joint Committee on Government and Finance by certain date; updating names of agencies and institutions; making technical corrections; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

§18-27-18, §18-27-19, §18-27-20, §18-27-21 and §18-27-22 of the Code of West Virginia, 1931, as amended, be repealed; that §18-2-10 of said code be amended and reenacted; that §18-2B-1, §18-2B-2, §18-2B-3, §18-2B-4 and §18-2B-7 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18-13-1, §18-13-2, §18-13-3, §18-13-4 and §18-13-5; that said code be amended by adding thereto a new article, designated §18B-3B-1, §18B-3B-2 and §18B-3B-3; that §18B-3C-1, §18B-3C-2 and §18B-3C-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-14-1, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-10. Certificates and awards.

The State Board shall promulgate rules and shall determine the minimum standards for the granting of certificates and awards for secondary vocational education, adult basic education, adult occupational education and adult technical preparatory education, subject to the provisions of section two, article two-b of this chapter and article three-a of chapter eighteen-b of this code.

The State Board shall provide a program of adult basic education at each state community and technical college campus where developmental education services are provided in cooperation with the West Virginia Council for Community and Technical College Education and the institutional board of governors of each college. This approach to providing adult basic education links these programs with developmental education and creates a simpler, clearer pathway for adults to enter college.
ARTICLE 2B. AREA VOCATIONAL PROGRAM.

§18-2B-1. Aims and purposes of program; areas where available.

The aims and purposes of the area vocational educational program are to provide vocational training or retraining on an organized basis designed to prepare individuals for useful employment in recognized occupations. The program shall be made available to residents of West Virginia in an area or areas designated and approved by the State Board.

§18-2B-2. Authority to establish programs, etc.; Division of Vocational Education established; rules; director.

(a) The State Board may establish, operate and maintain area vocational educational programs including the acquisition by purchase, lease, gift or otherwise of necessary lands and the construction, expansion, remodeling, alteration and equipping of necessary buildings for the purpose of operating and conducting educational training centers.

(b) The State Board may delegate its operational authority for multicounty vocational centers to an administrative council composed of equal representation from each of the participating county boards of education, the superintendent of schools from each participating county, and the state director of vocational education or his or her representative. To this end, there is hereby expressly established in the State Board a division of vocational education which shall determine the area or areas in which the programs are to be conducted and is authorized to promulgate rules necessary to carry out the provisions of this article, pursuant to article three-b, chapter twenty-nine-a of this code. The director of the division of vocational education administers and supervises the area vocational educational programs.
§18-2B-3. Area vocational education program funds.

There is hereby established a fund to be known as the Area Vocational Education Program Fund for Secondary Education. There is hereby established a separate fund to be known as the Area Vocational Education Program Fund for Post-Secondary Vocational Education. All moneys appropriated for such purpose by the Legislature as well as any gifts or grants made to the appropriate fund by any governmental subdivision of the state or by the United States government or by any individual, firm or corporation, to carry out the provisions of this article shall be expended by the State Board.

§18-2B-4. Expenditure of funds; title to property.

The State Board may expend the area vocational education program funds for salaries; teachers' retirement contributions and necessary traveling expenses of teachers and other necessary employees, including, but not limited to, vocational guidance counselors; for purchase, rental, maintenance and repair of instructional equipment, buildings and supplies; and for the necessary costs of transportation of certified students.


The State Board may pay for the transportation of any certified unemployed person participating in any area vocational educational program during the period of time that he or she is engaged in the training program at any of the instructional centers.

ARTICLE 13. WEST VIRGINIA EDGE.

§18-13-1. Earn a Degree - Graduate Early (EDGE) initiative established; purposes.

The Earn a Degree - Graduate Early initiative herein established is known and may be cited as “West Virginia
EDGE”. This program is part of the programs of study and seamless curriculum initiative that focuses on aligning curriculum between education levels. Specifically, West Virginia EDGE is established to connect public schools with higher education for the following purposes:

(a) To prepare public high school students for success in the workplace or postsecondary education; and

(b) To provide the opportunity for these students to earn community and technical college credit free-of-charge for the duplicated secondary and postsecondary courses identified during the curriculum alignment process.

§18-13-2. Goals for West Virginia EDGE.

In order to serve the citizens of the state by promoting a higher college-going rate, reducing the time and cost for students to obtain college credentials and expanding opportunities for economic development, the West Virginia EDGE initiative shall meet the following goals:

(1) Create incentives for more students to continue their education beyond high school by providing all students with information about and access to courses that will prepare them to meet college-level standards;

(2) Expand successful concurrent enrollment programs that include all students, not just those who are designated as college bound. The goal here is to prepare all students for both work and postsecondary education with the same rigorous curriculum;

(3) Align junior and senior year secondary courses with community and technical college certificate and associate degree programs. This alignment provides access to early entrance college courses which offer all students the
opportunity to establish a college transcript while still in high school;

(4) Increase the number of students attending public community and technical colleges by participating in a collaborative partnership between the public schools and the state community and technical colleges; and

(5) Establish programs of study pathways in combination with early entrance college courses which together allow a student to obtain an associate degree one year after high school graduation or to receive an associate degree along with the high school diploma.

§18-13-3. Program administration and accountability.

(a) West Virginia EDGE is administered by the Assistant State Superintendent of the Division of Technical, Adult and Institutional Education who serves as State Tech-Prep Coordinator. The community and technical college/career and technical education consortia planning districts created by section four, article three-c, chapter eighteen-b of this code serve as regional consortia to implement the program.

(b) The duties of State Tech-Prep Coordinator include, but are not limited to, the following:

(1) Developing a collaborative agreement with the facilitating state community and technical college or colleges in each consortium district and with the Council for Community and Technical College Education to meet the goals and objectives of this article.

(2) Meeting the record-keeping requirements of section nine, article eight, chapter five of this code:

(A) By developing or adapting an existing comprehensive relational data base and data analysis system for student
tracking to assure that consistent, reliable data relevant to the 
goals of the program are available; and

(B) By tracking and evaluating EDGE outcomes across all 
eight consortia districts and by creating a standardized 
reporting procedure for collecting consistent EDGE data at the 
state level;

(3) Assuring that coordinators in the district consortia 
preserve and retain reliable supporting source documents 
necessary to validate the data included with the state electronic 
database;

(4) Providing documentation to substantiate program 
outcomes, including, but not limited to, the number of students 
who enroll in the program, specific courses taken, student 
course and final exam grades, the number who earn EDGE 
credits and, of these, the number who apply the credits in 
pursuit of degrees or certifications at state community and 
technical colleges; and

(5) Collecting data relevant to the goals and objectives 
established for this initiative, analyzing the data, and preparing 
a report for the Legislative Oversight Commission on 
Education Accountability by December 1, 2012, and annually 
thereafter. The specific focus of the report is the analysis of 
data on program outcomes to demonstrate to what degree the 
initiative has met the goals and objectives of this article.

§18-13-4. Joint rule required.

The State Board and the West Virginia Council for 
Community and Technical College Education, created in 
section three, article two-b, chapter eighteen-b of this code, 
shall promulgate a joint legislative rule in accordance with 
article three-b, chapter twenty-nine-a of this code, for the 
administration of West Virginia EDGE. This rule shall 
incorporate strategies designed to achieve the overall goals of
the program, methods of operation, and step-by-step procedures for achieving the objectives outlined in section two and for implementing the reporting and accountability measures set forth in section three of this article.

§18-13-5. No specific level of appropriation required.

The Legislature recognizes the importance of the West Virginia Edge Program and will endeavor to provide sufficient funds to meet program goals and objectives. However, funding is subject to appropriation by the Legislature and nothing in this article requires any specific level of appropriation.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3B. COLLABORATIVE DEGREE COMPLETION PROGRAM.

§18B-3B-1. Legislative findings and intent.

(a) The Legislature makes the following findings:

(1) Evidence from national studies shows clearly that the need to increase the number of Americans who hold post-secondary credentials has reached a critical point. According to Complete College America, the United States has fallen from its long-held position as first among the nations and now ranks tenth in the percentage of young adults with a college degree. Even more discouraging is the statistic which shows that, for the first time in national history, the current generation of college-age Americans will be less educated than their parents’ generation.

(2) In West Virginia, the large numbers of high school students who are uninterested and/or unprepared for college can be attributed to three primary factors:
(A) Lack of alignment in courses between public education and public colleges and universities;

(B) Lack of clear career pathways presented to students early enough to help them choose and follow an articulated path from high school through postsecondary education; and

(C) Lack of knowledge among students and parents about financial aid opportunities that can help them and their families defray the cost of attending college.

(3) Sixty-three percent of jobs now available or to become available in the near future require postsecondary education. This statistic is particularly relevant for community and technical college students, but even for students who choose to pursue a four-year degree, it is critical that they be clearly focused on career goals in order to succeed.

(4) Currently, a severe gap exists between the demands for technically skilled workers in West Virginia and the aspirations and programmatic focus of many of our students. Nearly thirty percent of the state’s high school students have failed to enroll in either the pre-baccalaureate professional pathway or the career and technical education skilled pathway. Most of these individuals could be better served in a focused program of study that begins in the public schools and makes a seamless transition to the postsecondary level in the state community and technical colleges.

(5) The best way to promote this focus on career goals among our students is through implementation of career pathways. This is an integrated collection of programs and services intended to develop students’ core academic, technical and employability skills; provide them with continuous education and training; and place them in high-demand, high-opportunity jobs.
(6) In West Virginia, preparing students to achieve higher levels of education is a responsibility shared among the state agencies responsible for providing education and workforce development training. Since increasing the education level of state citizens enhances West Virginia’s economic future and the general well-being of its citizens, providing additional opportunities to earn a college credential is the responsibility of all public secondary education and state institutions of higher education.

(b) It is the intent of the Legislature to encompass the entire public higher education system to remove those obstacles that block these pathways to college completion and to direct agencies and institutions to collaborate and cooperate to deliver needed services. Therefore, the object of this article is two-fold:

(1) To set forth a viable collaborative model that public community and technical colleges and public school career centers shall adopt to increase the number of West Virginians with a college credential; and

(2) To maximize existing resources and capacity to train the workforce in West Virginia by encouraging the most efficient expenditure of available dollars.

§18B-3B-2. Collaborative degree completion program established; program applicability and objectives.

(a) The Collaborative Degree Completion Program is hereby established as a collaborative partnership which includes the following:

(1) The public school career and technical centers which includes state technology centers, technical centers, career centers and career/technical centers; and
(2) The state community and technical colleges.

(b) The program shall meet the following objectives:

(1) Increasing the number of West Virginians who hold a college credential and providing opportunities for a larger number of adults to earn that credential;

(2) Increasing the education and technical skill levels of the state’s work force; and

(3) Delivering post-secondary technical education in the most effective and cost efficient manner by maximizing the available resources of career centers and community and technical colleges.

(c) The program shall be adopted by each community and technical college/career and technical education consortia planning district. Each district shall assess the needs of its employers, institutions and centers and may adapt the basic model to fit the needs of the area to be served; however, each model shall include the following basic strategies to meet the objectives established in this article:

(1) Identify postsecondary adult career-technical education programs offered by the public school career centers that are to be evaluated for delivery as a Certificate of Applied Science or an Associate of Applied Science Degree;

(2) Ensure that all collaborative programs meet the conditions of the Higher Learning Commission of the North Central Association of Schools and Colleges which is the accrediting body for state community and technical colleges;

(3) Ensure that all collaborative programs meet the academic standards of the participating college; and
(4) Provide for the collaborative program to remain onsite at the career and technical center if participating agencies determine that site to be the best location for achieving program objectives.

§18B-3B-3. Powers and duties of agencies participating in collaborative degree completion program.

Members of each community and technical college/career and technical education consortia planning district shall enter into an agreement that delineates the division of responsibilities among the facilitating community and technical college pursuant to section four, article three-c of this chapter and the career and technical centers, including activities for which these entities are jointly responsible.

(a) The following activities are the responsibility of the facilitating community and technical college in each consortia planning district:

(1) Approve all curricula course and/or programs through the college’s approval process;

(2) Maintain authority over the curriculum as required by the college’s accrediting agency;

(3) Deliver all program general education courses;

(4) Award the appropriate degree;

(5) Employ all general education faculty and approve the employment of all technical program faculty;

(6) Enroll students through the college’s admission and registration process and administer student financial aid, including coordinating and administering veterans’ education benefits;
(7) Charge and collect the college’s tuition and fees; and

(8) Pay the career and technical center for technical faculty time.

(b) The following activities are the responsibility of each career and technical center within the consortium planning district:

(1) Deliver the majority of the technical content courses;

(2) Maintain equipment and laboratories and provide adequate instructional space if the program is delivered onsite at the career and technical center; and

(3) Employ technical content faculty, if needed. If participants choose, these faculty members may be provided by the facilitating community and technical college.

(c) The following activities are the joint responsibility of the facilitating community and technical college and each career and technical center in the consortium planning district:

(1) Maintain programmatic accreditation, if required;

(2) Maintain student transcripts at both the community and technical college and the career and technical center. The college transcript is the official transcript of record;

(3) Determine admission standards and student acceptance into the programs;

(4) Market the program and share the cost of marketing as determined in the consortia agreement;

(5) Develop and implement a program of cross counseling in which counselors from secondary and postsecondary career
and technical centers and state community and technical colleges meet with students and their parents, beginning in the eighth grade to answer their education and career-related questions, to serve as a source of support through high school graduation and to provide specific, targeted information on career pathways and financial aid opportunities; and

(6) Determine the feasibility of collaboratively developing and implementing postsecondary-level programs to extend high school programs that currently are terminal.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-1. Legislative findings.

(a) The Legislature makes the following findings related to state community and technical colleges:

(1) Community and technical colleges are a distinctively American invention. They fill a critical gap between public secondary education and the baccalaureate institutions and universities and they provide a connection between adult basic education and higher education. Their overriding mission is to provide affordable access to postsecondary education and to provide this education and related services to people who otherwise might not have enrolled in a college or university. They provide access to students who live in geographic proximity and who seek low-cost postsecondary education.

(2) As the state’s primary provider of workforce education and training, community and technical colleges located in every region of West Virginia are essential to a statewide strategy to prepare students for high-demand, high-wage jobs, workforce development necessary to diversify and grow the state’s economy, and further postsecondary education and life long learning.
(3) The mission of state community and technical colleges is to provide comprehensive education services that combine the critical functions of career-technical education and work force development, non-credit industry training, transfer education, developmental education and continuing education.

(4) While the student population of state community and technical colleges is now evenly divided between those who are under age twenty-five and adults who are twenty-five and older, the number in both categories who earn a degree or industry-recognized certificate within six years remains low. The declining numbers of high school graduates in the state makes it imperative for the community and technical college system to focus on increasing the numbers of adults who enroll and who complete programs to earn a degree or industry-recognized certificate within six years.

(b) In carrying out their mission, the governing boards of the community and technical colleges shall collaborate with public high schools and career and technical centers to deliver services effectively and efficiently in the locations where they are needed most.

§18B-3C-2. Legislative intent.

The following comprise the intent of the Legislature in enacting this article:

(a) To establish community and technical college education that is well articulated with the public schools, the career and technical education centers and other state institutions of higher education; that encourages traditional and nontraditional students and adult learners to pursue a lifetime of learning; that serves as an instrument of economic development; and that has the independence and flexibility to respond quickly to changing needs of citizens and employers in the state;
(b) To establish community and technical college/career and technical education consortia districts for each of the community and technical colleges in order to ensure that the full range of community and technical college education programs and services is provided in all areas of the state, including the implementation of seamless programs of study as exemplified by West Virginia EDGE, established in article thirteen, chapter eighteen of this code and the Collaborative Degree Completion Program, established in article three-b of this chapter;

(c) To define the full range of programs and services that each community and technical college has the responsibility to provide; and

(d) To establish other policies and procedures necessary to ensure that the needs of West Virginia, its people and its businesses are met for the programs and services that can be provided through a comprehensive system of community and technical colleges.

§18B-3C-4. Community and technical college/career and technical education consortia planning districts.

(a) Unless otherwise designated, the presidents of the community and technical colleges facilitate the formation of community and technical college/career and technical education consortia in the state. Each consortium includes representatives of community and technical colleges, public career and technical education centers and state baccalaureate institutions offering associate degrees. The consortium is responsible for carrying out the following actions:

(1) Completing a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short- and long-term workforce development needs of the district;
(2) Coordinating efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information to assist in an informed program of planning and decision-making;

(3) Planning and developing a unified effort between the community and technical colleges and public career and technical education to meet the documented workforce development needs of the district through individual and cooperative programs; shared facilities, faculty, staff, equipment and other resources; and the development and use of distance learning and other education technologies;

(4) Collaborating and developing jointly the collaborative programming for adults between the community and technical colleges and the public career and technical centers. The focus of these collaborative efforts is the development of advanced skill programming that builds on the secondary curriculum and allows career and technical education graduates to acquire more in-depth preparation in their occupational area of interest;

(5) As a consortium, regularly reviewing and revising curricula to ensure that the workforce needs are met; developing new programs and phasing out or modifying existing programs, as appropriate, to meet such needs; and streamlining procedures for designing and implementing customized training programs;

(6) Increasing the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including implementing seamless programs of study, including West Virginia EDGE, and the Collaborative Degree Completion Program:

(A) Research shows that well-planned, well-coordinated programs of study have a positive impact on school attendance,
student grades, achievement scores, retention rates and career planning. To be successful, programs of study must include coherent and rigorous content aligned with challenging academic standards and relevant career and technical education content. They must provide for student movement through a coordinated, nonduplicative progression of courses that align secondary education with community and technical college education to prepare students to succeed at the community and technical college level and in high-wage, high-demand occupations;

(B) Therefore, the focus of each consortium is to identify the high-demand, high-wage occupations within the service district and develop programs of study, based on the findings, that lead to an industry-recognized credential, a certificate of applied science degree or an associate degree;

(C) The initial consortium compact and each annual update required in subsection (d) of this section shall identify the programs of study that are to be implemented in the district service area;

(7) Planning and implementing integrated professional development activities for secondary and post-secondary faculty, staff and administrators;

(8) Ensuring that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialing;

(9) Assessing student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and advance more rapidly without repeating course work in which they already possess competency;
(10) Cooperating with workforce investment boards to establish one-stop-shop career centers with integrated employment and training and labor market information systems that enable job seekers to assess their skills, identify and secure needed education training, and secure employment, and that allow employers to locate available workers;

(11) Increasing the integration of adult literacy, adult basic education, federal Work Force Investment Act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment, including cooperating with the State Department of Education to provide adult basic education programs on each community and technical college campus in the state where developmental education services are provided; and

(12) Establishing a single point of contact for employers and potential employers to access education and training programs throughout the district.

(b) The community and technical college education consortium shall cooperate with the regional workforce investment board in the district and shall participate in any development or amendment to the regional workforce investment plan.

(c) To carry out the provisions of this section, community and technical college/career and technical education consortia planning districts are established and defined as follows:

(1) Northern Panhandle District includes Hancock, Brooke, Ohio, Marshall and Wetzel counties.

(A) The facilitating institution is West Virginia Northern Community and Technical College.

(B) Participating institutions include West Virginia Northern Community and Technical College; John Marshall
High School; Cameron High School; John D. Rockefeller IV Career Center; and other public career and technical centers offering post-secondary programs.

(2) North Central West Virginia District includes Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and Upshur counties.

(A) The facilitating institution is Pierpont Community and Technical College.

(B) Participating institutions include Pierpont Community and Technical College; Glenville State College; Randolph County Technical Center; Monongalia County Technical Education Center; United Technical Center; Marion County Technical Center; Fred W. Eberle Technical Center; Calhoun Gilmer Career Center; Taylor County Technical Center; and other public career and technical centers offering post-secondary programs.

(3) Mid-Ohio Valley District includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson and Roane counties.

(A) The facilitating institution is West Virginia University at Parkersburg.

(B) Participating institutions include West Virginia University at Parkersburg; Roane-Jackson Technical Center; Wood County Technical Center; Mid Ohio Valley Technical Institute and other public career and technical centers offering post-secondary programs.

(4) Potomac Highlands District includes Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire counties.

(A) The facilitating institution is Eastern West Virginia Community and Technical College.
(B) Participating institutions include Eastern West Virginia Community and Technical College; South Branch Career and Technical Center; Mineral County Technical Center; and other public career and technical centers offering post-secondary programs.

(5) Shenandoah Valley District includes Berkeley, Jefferson and Morgan counties.

(A) The facilitating institution is Blue Ridge Community and Technical College.

(B) Participating institutions include Blue Ridge Community and Technical College; James Rumsey Technical Institute; and other public career and technical centers offering post-secondary programs.

(6) Advantage Valley District includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne counties.

(A) The facilitating institution for Cabell, Mason and Wayne counties is Mountwest Community and Technical College. The facilitating institutions for Clay, Fayette, Kanawha and Putnam counties are Bridgemont Community and Technical College and Kanawha Valley Community and Technical College.

(B) Participating institutions include Mountwest Community and Technical College; Bridgemont Community and Technical College; Kanawha Valley Community and Technical College; Carver Career and Technical Education Center; Garnet Career Center; Ben Franklin Career and Technical Center; Putnam Career and Technical Center; Cabell County Career-Technology Center; Mason County Career Center; and other public career and technical centers offering post-secondary programs.
Ch. 59] EDUCATION 641

(7) Southern Mountains District includes Lincoln, Boone, Logan, Mingo, Wyoming and McDowell counties.

(A) The facilitating institution is Southern West Virginia Community and Technical College.

(B) Participating institutions include Southern West Virginia Community and Technical College; Boone County Career and Technical Center; Wyoming County Career and Technical Center; Ralph R. Willis Career and Technical Center; McDowell County Career and Technology Center; Mingo Extended Learning Center; and other public career and technical centers offering post-secondary programs.

(8) Southeastern District includes Raleigh, Summers, Fayette, Nicholas, Webster, Pocahontas, Greenbrier, Monroe and Mercer counties.

(A) The facilitating institution is New River Community and Technical College.

(B) Participating institutions include New River Community and Technical College; Bridgemont Community and Technical College; Bluefield State College; Academy of Careers and Technology; Fayette Institute of Technology; Summers County High School; Monroe County Technical Center; Mercer County Technical Education Center; Nicholas County Career and Technical Center; and other public career and technical centers offering post-secondary programs.

(9) Cochairs preside over each consortium as follows:

(A) The president of the facilitating community and technical college, or his or her designee; and

(B) A career and technical education center administrator, or his or her designee, representing one of the participating institutions and selected by the consortium administrative leaders.
(d) In the role of the facilitating institution of the consortium, the college:

(1) Communicates to the Council and State Board;

(2) Facilitates the delivery of comprehensive community and technical college education in the region, which includes the seven areas of comprehensive community and technical college education delivery as required by section six of this article;

(3) Facilitates development of a statement of commitment signed by all participating institutions in the region setting forth how community and technical college education will be delivered; and

(4) Facilitates the development of a consortium compact to be submitted to the Council and State Board before July 1, 2012, and annually thereafter.

(e) Participating institutions are not subordinate to the facilitating institution but shall sign the statement of commitment to participate.

(f) The Council is responsible for carrying out the following activities:

(1) Annually evaluating the progress made in meeting the compact goals for each consortium through the development and collection of performance indicator data; and

(2) Providing each consortium with a model format for developing and revising a consortium compact outlining strategies and procedures for achieving stated goals. The compact shall be submitted to the Council and State Board for their respective approvals before July 1, 2012, and annually thereafter. The Council is responsible for approving the compact components related to community and technical college education. The State Board is responsible for
approving the compact components related to career and technical education. Each compact shall include implementation of seamless programs of study, the Collaborative Degree Completion Program and the West Virginia EDGE Program.

ARTICLE 14. MISCELLANEOUS.

§18B-14-1. Select committee on outcomes-based funding models in higher education.

(a) The Legislature makes the following findings regarding public higher education:

(1) It is in the best interest of the citizens to have an effective and comprehensive system for the delivery of public higher education services. In order to achieve desired goals of economic growth and societal well being, it is critical that more citizens have some level of education beyond high school.

(2) In Senate Bill 595 (Vision 2020), enacted in 2008 regular session, state policymakers established detailed goals and objectives that state institutions are expected to work toward achieving by the year 2020. Vision 2020 also provides mechanisms for measuring success and for holding the state systems of higher education accountable. It establishes clear-cut connections between the budget cycle, the goals and objectives and both positive and negative consequences.

(3) A variety of policy tools are available to influence and direct public higher education behavior, including organizing institutions into functional systems, creating governance structures and mechanisms designed to ensure that these systems and individual institutions focus on the public policy agenda and establishing outcomes-based goals, accountability measures and regulatory devices.

(4) While these policy tools are useful, they are not sufficient to influence institutions, students and employers to
behave in ways consistent with achieving the goals and objectives of *Vision 2020* the public policy agenda. Resources appropriated to public higher education are used most effectively and efficiently when the attention of state colleges and universities is focused on meeting established priorities. This focus is developed and sustained only when the state financing policy contains a direct connection between the Legislature’s power to appropriate money and desired institutional outcomes. Unlike rules which can be bent; law can be creatively interpreted; accountability requirements which can lose their effectiveness as they are filtered through layers of bureaucracy; and responsibility for implementation which is divided among agencies and, ultimately, is totally dependent upon institutional discretion, a financing policy that ties the flow of funds directly to progress on achieving established state goals and objectives commands immediate attention.

(b) It is the constitutional responsibility of the Legislature to determine how to make the best use of available resources to meet state needs and established goals; therefore, the Joint Committee on Government and Finance shall create a select committee for the two-fold purpose of making a specific and detailed analysis of outcomes-based funding models used in higher education and providing recommendations to the Legislature on incorporating one or more of these models as an effective piece of the state’s financing policy.

(c) The select committee consists of the following members:

(1) The President of the Senate or designee;

(2) The Speaker of the House of Delegates or designee;

(3) The chairs of the Senate and House of Delegates Committees on Education, who shall cochair the committee;
(4) The vice chairs of the Senate and House of Delegates Committees on Education;

(5) The chairs of the Senate and House of Delegates Committees on Finance or their designees;

(6) The cochairs of the Joint Commission on Economic Development or their designees;

(7) Two members each from the Senate Committees on Finance and Education appointed by the President of the Senate; and

(8) Two members each from the House Committees on Finance and Education appointed by the Speaker of the House.

(d) The select committee shall develop a report with recommendations on implementing a state-level financing plan which includes, but is not limited to, the following items:

(1) A review of existing outcomes-based funding models for institutions and systems of higher education;

(2) Identification of the top three to five public policy objectives that are to be the focus of the financing policy;

(3) A review of outcomes-based funding models implemented in other states, including an evaluation of the degree to which these policies have succeeded in influencing institutional and system behavior;

(4) Recommendations on methods to balance the inherent need of institutions for stability with the demands of the state for services as identified in Vision 2020 and the public policy agenda;

(5) Recommendations on methods to develop a workable balance between addressing the well-being of institutions and the success of students; and
(6) An analysis of the impact of different models on institutions with widely differing missions, including recommendations on selecting and implementing the appropriate model for each type of institution specifically noting the impact of selected models on community and technical colleges, baccalaureate colleges and regional universities, and research universities.

(e) The committee shall commence its work before May 15, 2012, and shall deliver its report and recommendations, together with draft legislation to implement the recommendations, to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance by December 1, 2012.

CHAPTER 60

(Com. Sub. for H. B. 4433 - By Delegates Williams, Ashley, Cann, Ferns, Iaquinta, Perry, R. Phillips, Pino, Shaver and Varner)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to and reenact §18-2-34 of the Code of West Virginia, 1931, as amended, relating to modifying the criteria for awarding high school diplomas to certain veterans.

Be it enacted by the Legislature of West Virginia:

That §18-2-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-34. High school diplomas for surviving veterans of World War II, the Korean War, and the Vietnam Conflict.

(a) Notwithstanding any provision of this code to the contrary, the state board shall provide for the awarding of a high school diploma to any surviving veteran of World War II, the Korean War, or the Vietnam Conflict, who:

1. Left school prior to graduation and served in the Armed Forces of the United States;
2. Did not receive a high school diploma;
3. Was discharged from the armed forces under honorable conditions; and
4. Completes the application process as provided by the joint rules of the state board and the veterans’ council.

(b) The state board and the veterans’ council, created in article one, chapter nine-a of this code, shall jointly propose rules for the identification of eligible veterans and for awarding high school diplomas. The rules shall provide for an application process and the credentials required to receive a high school diploma.

(c) A diploma shall be awarded by the county board in the county in which the veteran resides or in the county in which the veteran would have received his or her diploma, whichever location the veteran chooses.

(d) For purposes of this section:

1. “World War II veteran” means any veteran who performed wartime service between September 16, 1940, and December 31, 1946;
(2) “Korean War veteran” means any veteran who performed military service between June 27, 1950, and January 31, 1955;


CHAPTER 61

(H. B. 4072 - By Delegates
M. Poling and Paxton)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to and amend and reenact §18-5-4 of the Code of West Virginia, 1931, as amended, relating to eliminating requirement for county boards of education to meet on the first Monday of July in years in which there is not a biennial primary election.

Be it enacted by the Legislature of West Virginia:

That §18-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

(a) The county board shall meet upon the dates provided by law, and at any other times the county board fixes upon its
3 records. Subject to adequate public notice, nothing in this section prohibits the county board from conducting regular meetings in facilities within the county other than the county board office. At any meeting as authorized in this section and in compliance with the provisions of chapter eighteen-a of this code, the county board may employ qualified teachers, or those who will qualify by the time they enter upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. Meetings of the county board shall be held in compliance with the provisions of chapter eighteen-a of this code for purposes relating to the assignment, transfer, termination and dismissal of teachers and other school employees.

(b) Special meetings may be called by the president or any three members, but no business may be transacted other than that designated in the call.

(c) In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not fewer than ten days after the budget has been made available to the public for inspection and within a reasonable time prior to the submission of the budget to the state board for approval. Reasonable time shall be granted at the hearing to anyone who wishes to speak regarding any part of the budget. Notice of the hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(d) A majority of the members of the county board is the quorum necessary for the transaction of official business.

(e) Board members may receive compensation at a rate not to exceed $160 per meeting attended, but they may not receive pay for more than fifty meetings in any one fiscal year. Board members who serve on an administrative council of a multicounty vocational center also may receive compensation for attending up to twelve meetings of the council at the same
rate as for meetings of the county board. Meetings of the council
are not counted as board meetings for purposes of determining
the limit on compensable board meetings.

(f) Members also shall be paid, upon the presentation of an
itemized sworn statement, for all necessary traveling expenses,
including all authorized meetings, incurred on official business,
at the order of the county board.

(g) When, by a majority vote of its members, a county board
considers it a matter of public interest, the county board may join
the West Virginia School Board Association and the National
School Board Association and may pay the dues prescribed by
the associations and approved by action of the respective county
boards. Membership dues and actual traveling expenses
incurred by board members for attending meetings of the West
Virginia School Board Association may be paid by their
respective county boards out of funds available to meet actual
expenses of the members, but no allowance may be made except
upon sworn itemized statements.

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CHAPTER 62

(H. B. 4299 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]

[Passed March 6, 2012; in effect from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §18-5-13 of the Code of West
Virginia, 1931, as amended, relating to authorizing a county
board of education to use the services of a bus operator from
another county in certain circumstances.
Be it enacted by the Legislature of West Virginia:

That §18-5-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.


1 Subject to the provisions of this chapter and the rules of the state board, each county board may:

2 (a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:

3 (1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

4 (A) Any principal, teacher, student or other person in connection with the schools and school interests;

5 (B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

6 (C) Any organization or body directly connected with the school;

7 (2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:
(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to the provisions of subsection (e) of this section;

(d) Consolidate schools;
(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month’s salary;

(f) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to the provisions of subsection (h) of this section; and

(D) Within available revenues, for students within two miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the
county board, except as provided in subsection (g) of this section;

(4) Pursuant to rules established by the state board, the county board may provide for professional employees to be certified to drive county board-owned vehicles that have a seating capacity of fewer than ten passengers. These employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home. Not more than one of these vehicles may be used for any school-sponsored activity;

(5) Students may not be transported to a school-sponsored activity in any county-owned or leased vehicle that does not meet school bus or public transit ratings. This section does not prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of sixteen or more passengers which is not owned and operated by the county board only as follows:

(A) The state board shall promulgate a rule to establish requirements for:

(i) Automobile insurance coverage;

(ii) Vehicle safety specifications;

(iii) School bus or public transit ratings; and

(iv) Driver training, certification and criminal history record check; and
(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the state board rule; and

(7) Buses shall be used for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; and
(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program; and
(2) Persons employed to teach in the high school or post high school program;

(l) At the county board’s discretion, employ, contract with or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee’s duties and responsibilities;

(p) Provide at public expense adequate public liability insurance, including professional liability insurance, for county board employees;

(q) Enter into cooperative agreements with other county boards to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field. The agreements are subject to approval by the state board;
(r) Provide information about vocational and higher education opportunities to exceptional students. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the state board; and

(t) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided in article four, chapter eighteen-a of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically the provisions of article sixteen, chapter five of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any
(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of subdivision (3), section two, article sixteen, chapter five of this code; and

(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-12, relating to allowing flexibility within county school systems; authorizing the State Board of Education to select a county school system to serve as a school system collaborative innovation zone; giving McDowell County first opportunity to submit application; specifying effect of change in school system approval status; requiring the State Board of Education to promulgate rules and emergency rules; providing the procedure and criteria for application and selection as a school system collaborative innovation zone; requiring development of school system collaborative innovation zone plan; setting forth potential innovations; requiring public town hall meetings; requiring meeting to review input from town hall meetings and develop plan; requiring meeting to educate employees about the plan and to allow examination and discussion of plan; requiring vote to determine level of school employee support; authorizing a designated school system to submit requests for exceptions from county and state board rules, policies and interpretations; permitting exceptions from statutes subject to legislative approval; prohibiting certain exceptions; allowing revision and resubmission of approved plan; setting forth duration of designation; requiring annual performance reviews and reports; permitting the posting of certain teaching vacancies in
accordance with certain procedures and approval; and for a school system collaborative innovation zone and to the extent applicable, including any land and infrastructure needs in the land use master plan, authorizing an area health association to work with county board in addressing health, wellness and fitness needs and authorizing an area institution of higher education to work with the county board to address certain challenges.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-12, to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-12. School system collaborative innovation zone; requirements to qualify; application for designation; required plans for innovation zones; plan approval; waiver of statutes, policies, rules or interpretations; progress reviews and annual reports; teacher vacancies, job postings and approval.

(a) The Legislature makes the following findings and expressions of legislative intent:

(1) The Legislature created a performance-based accreditation system in 1988 and has amended these provisions several times, significantly in 1998 to set forth a process for improving education consisting of four elements: (i) High quality education standards; (ii) an assessment of the performance and progress of schools and school systems in achieving these standards with a primary focus on student learning; (iii) holding schools and school systems accountable for performance and progress to provide assurances that a
thorough and efficient education is being provided; and (iv) a process for targeting resources strategically to improve teaching and learning. These provisions include a process for the state board to declare a state of emergency and intervene in the operation of a school system when its educational program does not meet the standards and it fails to implement an improvement plan or meet the plan’s deadlines and improve within a reasonable time. Since the inception of these provisions, the state board has declared a state of emergency in nine county school systems and intervened, including delegating decision-making authority to the state superintendent or his or her designee for system operations. Of these nine school systems, three improved sufficiently over a period of time for the state of emergency to be rescinded, the longest of which took ten years and six months. Of the six systems remaining under state board intervention, although most are fairly recent, one school system has been under state intervention for more than ten years and its improvement is progressing slowly;

(2) School systems do not exist in a vacuum and external circumstances and events can have a significant impact on them and the students they serve, as well as on the system’s capacity to deliver the thorough and efficient education to which those students are entitled. For example, the McDowell County school system which in the 1950's at its height of employment in coal production had a total population of about 100,000 residents, faced much different challenges than it does today with that county’s total population now at 22,113 based on the 2010 census. This school system has lost nearly 70 percent of its enrollment in the past 30 years, declining from 11,715 students in 1981-82 to 3,535 in 2011-12. Along with the steep decline in the historical bedrock of employment in the county in the coal industry and the large number of middle class workers and services it supported, including housing, utilities and medical care, the county’s rugged mountainous topography contributes to its vulnerability to natural disasters
such as the devastating floods in 2001 and 2002 that swept away many homes and much of the infrastructure along the creek beds throughout the county. This topography also significantly limits the amount of land suitable for development and transportation networks, and makes planning for future economic development alternatives difficult. The social and economic byproducts of these external circumstances and events leave a school system with many atypical challenges for addressing the needs of its students and making the improvements in performance and progress needed to assure a thorough and efficient education;

(3) Among the findings, intent and purposes of this article are that: (i) Allowing exceptions from certain statutes, policies, rules and interpretations through the creation of innovation zones will enable greater local control over the important educational factors that impact student achievement and the delivery of educational services to improve student learning; and (ii) innovation zones will provide greater flexibility and local control to meet the needs of a diverse population of students. In addition, among the findings of the Local Solution Dropout Prevention and Recovery Innovation Zone Act as set forth in section eleven of this article are findings that when educators, parents, elected officials, business leaders, faith-based leaders, human service personnel, judicial personnel and civic leaders collectively work together they are often able to find innovative solutions to address school and community problems. Since the creation of this article, forty-five innovation zone projects have been approved by the state board, nine of which were Dropout Prevention and Recovery Innovation Zone projects. Twenty-seven policy waivers and five statutory waivers have been granted to enable implementation of these projects. In one county, an innovation zone project was expanded to all of the remaining schools in the county when the schools used the Local School Improvement Council waiver process to request and receive a statutory waiver to implement a comprehensive new teacher
induction process countywide. Collectively, these projects illustrate how local schools, and in some cases school systems, have increased their capacity by using the innovation zone process to collaboratively plan and implement a variety of changes to increase student engagement, develop more flexible schedules, enhance student and teacher ownership of the learning process and increase student achievement;

(4) Choosing one county school system under a declared state of emergency due to nonapproval status to designate as an innovation zone would allow the testing of innovations that could be replicated in other school systems facing similar circumstances across the state, nation and world;

(5) Numerous studies have shown an association between a young person’s health status and his or her ability to succeed in educational settings;

(6) McDowell County is unique and should be given the first opportunity to use innovative solutions to improve its education system when the totality of the circumstances set forth in this subsection are considered. Other facts specifically applicable to McDowell County include the following:

(A) The McDowell County school system has been under a continuous declared state of emergency by the state board due to nonapproval status longer than any other county that is currently under a declared state of emergency;

(B) The McDowell County school system is engaged in a public-private partnership to begin addressing challenges both within the school system and in the community at large; and

(C) McDowell County has a chronic shortage of good roads, public transportation, housing, Internet bandwidth, recreation centers and health clinics;
(7) This section is intended as an additional tool for an eligible school system in collaboration with community and business partners to plan and implement new approaches to improve the performance and progress of the students, schools and system to achieve full approval at the earliest possible date. It is further the intent of the Legislature that the process for an eligible school system to apply for exceptions under this section should allow multiple opportunities to apply for additional exceptions as the system moves forward with its partners toward fulfillment of its improvement goals; and

(8) In accordance with the intent of this section as an additional tool for planning and implementing new approaches to improve the performance and progress of the students, schools and school system to achieve full approval at the earliest possible date, the state board shall rescind the state of emergency and nonapproval status of a school system designated as a school system collaborative innovation zone as soon as the requisite conditions are met as provided in section five, article two-e of this chapter, notwithstanding the designation. If a school system that has been designated as a school system collaborative innovation zone is subsequently issued a school system approval status that would make it ineligible for the designation, the designation shall remain in effect as provided in this section.

(b) The state board is authorized to choose one county school system currently under a declared state of emergency by the state board due to nonapproval status to participate in a program to test the effectiveness of allowing such county school systems to be considered school system collaborative innovation zones. Due to the reasons set forth in subsection (a) of this section, the McDowell County Board of Education shall be provided the first opportunity to submit a school system collaborative innovation zone application under this article. If the McDowell County Board of Education has not submitted an application by April 1, 2013 or less than fifty percent cast
ballots in an election to approve a school system collaborative innovation zone plan, the state board may accept applications from other county boards under a declared state of emergency by the state board due to nonapproval status.

(c) The Legislature finds that an emergency exists and, therefore, no later than April 16, 2012, the state board shall promulgate an emergency rule in accordance with section ten, article three-b, chapter twenty-nine-a of this code, to implement the provisions of this section. The state board also shall promulgate a legislative rule, in accordance with article three-b, chapter twenty-nine-a of this code, to implement this section. Both rules shall include, but not be limited to, the following provisions:

(1) The manner, time and process for the submission of a school system collaborative innovation zone application;

(2) The contents of the application, which must include a general description of the innovations the county school district seeks to institute;

(3) Factors to be considered by the state board when evaluating an application, which shall include, but are not limited to, the following factors:

(A) Support from teachers, staff, parents, students, the county board of education, the local school improvement council and school business partners; and

(B) The potential for an applicant to be successful in raising student achievement as a school system collaborative innovation zone; and

(4) Standards for the state board to review applications for designation as a school system collaborative innovation zone and to make determinations on the designation of a school system collaborative innovation zone.
(d) The state board shall review school system collaborative innovation zone applications in accordance with the standards adopted by the board and shall determine whether to designate the applicant as a school system collaborative innovation zone. The state board shall notify an applicant of the board’s determination within thirty days of receipt of the application.

(e) Prior to designation by the state board as a school system collaborative innovation zone, county school systems submitting applications shall develop school system collaborative innovation zone plans. The school system collaborative innovation zone plan may include, but is not limited to, the following proposals:

(1) Allowing increased collaborative site-based decision-making powers over the budgeting for and spending on programs and services for students;

(2) Allowing increased collaborative site-based decision-making powers over teacher recruitment;

(3) Allowing a collaborative process which ensures accountability and transparency to all stakeholders;

(4) Allowing a collaborative process which provides input and demonstrative buy-in from education personnel regarding appropriate professional development, supports, resources and working conditions.

(5) Allowing a collaborative site-based process to reduce certain requirements to allow staff to meet the school’s mission;

(6) Allowing, through a collaborative site-based process, flexibility to the alternative teacher certification provided in section one-a, article three, chapter eighteen-a of this code;
(7) Utilizing virtual school courses aligned with the Southern Regional Education Board’s Standards for Quality Online Courses; and

(8) Other innovation zone plans approved under the provisions of this article and being implemented in other schools and school systems throughout the state.

(f) Prior to submitting a school system collaborative innovation zone plan to the state board:

(1) The school system in collaboration with its public-private partnership shall conduct public town hall meetings in at least two schools in the county for the purpose of soliciting input from those in attendance on the challenges affecting the quality of education in the county and the potential strategies and priorities for addressing them. The two meetings shall occur within ten days of each other;

(2) Within fifteen days after the last town hall meeting, the county superintendent shall hold a meeting for the purpose of reviewing the input gathered at the public town hall meetings and developing the school system collaborative innovation zone plan. The meeting shall include the principals employed within the county, the chairs of the faculty senates of each school in the county, employee organization representatives, a school service person from each work site, parents and other stakeholders;

(3) Within fifteen days after the meeting to develop the school system collaborative innovation zone plan, the county superintendent shall hold a meeting of all regularly employed school employees for the purpose of educating those employees about the plan and for the purpose of providing the employees an opportunity to examine and discuss the school system collaborative innovation zone plan; and
(4) At the meeting required by subdivision (3) of this subsection, the county superintendent shall direct that a vote of all regularly employed school employees in the county be conducted to determine the level of school employee support for the school system collaborative innovation zone plan. The vote shall be completed within fifteen days after the meeting required by subdivision (3) of this subsection. The vote shall be by secret ballot administered by the panels created in subsection (c), section six of this article for each school and shall be administered in accordance with that subsection. For the vote to be valid, ballots must be cast by at least fifty percent of all regularly employed school employees in the county. The plan may not be submitted to the state board and the state board may not designate the school system as a school system collaborative innovation zone unless at least two-thirds of the employees voting vote to submit the plan.

(g) Approval of a school system collaborative innovation zone plan pursuant to this section is at the sole discretion of the state board. Any approval requirement not contained within this section does not apply.

(h) The plan is intended to serve as the basis for the innovation zone activities of the school system and to provide a vision for the school improvement goals it will work to accomplish in collaboration with its school and community partners. The plan is not intended as a limit on the normal school improvement activities that all school systems are expected to pursue, nor is the plan intended as a restriction on the ability of the school system or its schools to pursue other innovative strategies in accordance with the other provisions of this article, specifically the designation as a Local Solution Dropout Prevention and Recovery Innovation Zone in accordance with section eleven of this article.

(i) The designation as a school system collaborative innovation zone authorizes the school system to submit
requests as provided in subsection (j) of this section to the state board for exceptions to statutes, policies, rules and interpretations that are required to permit implementation by the school system of the innovative strategies contemplated in its school system collaborative innovation zone plan. The designation shall be for a period of five years, during which the school system may submit multiple individual requests for exceptions to permit implementation of different strategies contemplated in the plan as the strategies are developed. Each request for an exception shall be submitted and may be approved by the state board in accordance with subsection (j) of this section.

(j) (1) A school system designated as a school system collaborative innovation zone may request an exception to a statute, policy, rule or interpretation by submitting an application to the state board that contains the following information:

(A) A description of the program or initiative the school system intends to implement as an innovative strategy to improve student achievement if the request is approved by the state board;

(B) An explanation of the specific exception to a statute, policy, rule or interpretation, in the singular or plural, that the school system has identified as prohibiting or constraining the implementation of the program or initiative and why the exception is necessary;

(C) An explanation of how the program or initiative furthers the activities contemplated in the school system collaborative innovation zone plan;

(D) A certification by the county superintendent that the request for an exception was approved by a vote of the eligible employees in accordance with the process for voting as set forth in section six of this article, except that notwithstanding
subsection (d) of said section six, at least two-thirds of the
eligible employees voting must vote to request the exception
for it to be approved for submission to the state board:
Provided, That for the vote to be valid, ballots must be cast by
at least fifty percent of the eligible employees; and

(E) Any other information the state board requires as set
forth in its rule pursuant to subsection (c) of this section.

(2) The state board shall review the request in accordance
with the standards adopted by the board in its rule and shall
determine whether to approve or disapprove the request. The
approval or disapproval of a request is at the sole discretion of
the state board. Any approval requirement not contained
within this section does not apply.

(3) Except as provided in subdivision (5) of this
subsection, the state board shall approve or disapprove the
request within thirty days of receipt, subject to the following:

(A) No exceptions to state board policies, rules or
interpretations are granted unless the state board approves the
request at least conditionally pursuant to subdivisions (2) and
(5) of this subsection; and

(B) If the request is disapproved, the state board shall
communicate its reasons for the disapproval to the school
system and shall make recommendations for improving the
request. The school system may amend and resubmit the
request.

(4) Upon approval of the request by the state board, all of
the exceptions to state board policies, rules and interpretations
that were requested are granted; and

(5) If a request, or a part thereof, may not be implemented
unless an exception to a statute is granted by an Act of the
Legislature, the state board may approve the request, or the
part thereof, only upon the condition that the Legislature acts
to grant the exception. If the state board approves a request on
that condition, the state board shall submit the request for an
exception to a statute, along with supporting reasons, to the
Legislative Oversight Commission of Education
Accountability. The commission shall review the request and
make a recommendation to the Legislature regarding the
exception requested.

(k) A school system collaborative innovation zone may not
request an exception nor may an exception be granted from
any of the following:

(A) A required statewide assessment program administered
by the West Virginia Department of Education;

(B) Any provision of law or policy required by the No
Child Left Behind Act of 2001, Public Law No. 107-110 or
other federal law; and

(C) Sections two and seven, article two, chapter eighteen-a
of this code and sections seven-a, seven-b, eight and eight-b,
article four, chapter eighteen-a of this code, except that a
school system collaborative innovation zone may make a job
posting for a teacher vacancy in accordance with the
procedures and the approval by a vote of the teachers as
provided in section eight of this article.

(l) A county board designated as a school system
collaborative innovation zone pursuant to this section that has
an approved innovation zone plan may revise its plan and
resubmit its plan to the state board for approval after
conducting the vote pursuant to subdivision (4), subsection (f)
of this section and complying with all other applicable plan
requirements set forth in this section except for holding the
public town hall meetings required by subdivision (1),
subsection (f) of this section.
(m) The designation of a county school system as a school system collaborative innovation zone shall be for a period of five years. The state board, upon request of the school system, may extend the designation for an additional two years if the school system has outstanding items in its school system collaborative innovation zone plan that it still wants to pursue and only for the purpose of pursuing those outstanding items. The expiration of the designation does not negate any exceptions to statutes, policies, rules or interpretations granted to the school system, unless and until specifically revoked, repealed or modified by the state board or by the Legislature, as applicable.

(n) The state board or its designated committee shall perform annual performance reviews and provide annual reports in accordance with section seven of this article.

(o) A county school system whose plan has been approved may make a job posting for a teacher vacancy in accordance with the procedures and approval provided by section eight of this article.

(p) For any county that is designated as a school system collaborative innovation zone under the provisions of this section and to the extent the following provisions are applicable:

1. The county commission of the designated county shall collaborate with the Office of Coalfield Community Development in including any land and infrastructure needs in the land use master plan provided for in section nine, article two-a, chapter five-b of this code. These needs may include, but are not limited to, advancement of public education, economic development, highway development, recreational amenities and housing development;

2. An area health organization, such as Tug River Health Association, Inc., is authorized to work with the county board
to address the health, wellness and fitness needs of students, parents, school personnel and all others in the county. Tug River Health Association may partner with the Robert C. Byrd Center for Rural Health and the Marshall University Medical School in addressing these needs. In addressing the health, wellness and fitness needs, the following should be considered:

(A) New evaluations of school-aged children are needed to reassess their health status and direct further interventions;

(B) Prior to developing new assessment tools and initiating programs, a comprehensive inventory of prior assessment tools and programs is needed to determine their strengths and weaknesses. This can direct further studies and interventions;

(C) New assessment tools should include objective markers of disease as well as subjective opinions of individual health status and barriers to health;

(D) Objective and subjective data should be linked at individual and disease-specific levels;

(E) Disease-specific data may be used to address common barriers to health as perceived by a specific population and tailor interventions to these specific populations;

(F) The effectiveness of interventions should be assessed using the same health status markers used to develop the intervention;

(G) Interventions should use available technology that allows individuals to track measures of health and provide assistance in making informed decisions about their health;

(H) Assessments and interventions should be developed and implemented using community-based participatory research models; and
(1) Assessments and interventions should be multidisciplinary, collaborative efforts with existing organizations and programs; and

(3) Area institutions of higher education, such as Concord University and the June Harless Center at Marshall University, are authorized to work with the county board on innovative strategies to address challenges facing the school system and community, including, but not limited to, the areas of critical need and shortage in the teaching force, educator professional development and improving the college going rate. In addressing the areas of critical need shortage in the teaching force, consideration should be given to the implementation of an intensively supervised and mentored teacher-in-residence program for prospective teachers during their senior year in lieu of student teaching.

CHAPTER 64

(Com. Sub. for H. B. 4125 - By Delegates M. Poling, Paxton, Perry, Moye and Fragale)

[Passed March 6, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §18-9F-9 of the Code of West Virginia, 1931, as amended, relating to modifying when the requirement for schools to annually send notices to parents and guardians about the school’s crisis response plan and their ability to review a redacted copy becomes effective.

Be it enacted by the Legislature of West Virginia:
That §18-9F-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.


(a) The state board in conjunction with the Division of Homeland Security and Emergency Management shall promulgate by December 31, 2011, a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, and if necessary may promulgate an emergency rule in accordance with said article, for the establishment of an up-to-date, school specific crisis response plan at every school in the state. In developing the rule, the state board shall consider plans currently being developed as part of the safe schools initiative currently underway by the School Building Authority and the Division of Homeland Security and Emergency Management. In addition, those portions of a school’s access safety plan created pursuant to section three of this article may be used as a portion of the school’s specific crisis response plan if there are any overlapping requirements. The rule shall provide for at least the following:

(1) A model school crisis response plan for use by each school in the state, including a uniform template which shall be used by each school to file the plan, including at least the following information, in a secure electronic system identified by the Division of Homeland Security and Emergency Management:

(A) The school employee in charge during a crisis and a designated substitute;

(B) A communication plan to be used during a crisis;

(C) Protocols for responding to immediate physical harm of students, faculty or staff and to traumatic events, including the period after the events have concluded;
(D) Disaster and emergency procedures to respond to earthquakes, fire, flood, other natural disasters, explosions or other events or conditions in which death or serious injury is likely;

(E) Crisis procedures for safe entrance to and exit from the school by students, parents, and employees, including an evacuation and lock down plan; and

(F) Policies and procedures for enforcing school discipline and maintaining a safe and orderly environment during the crisis.

(2) A requirement that each school’s school specific crisis response plan shall be in place and filed with that school’s county board, and included in a secure electronic system identified by the Division of Homeland Security and Emergency Management, no later than August 1, 2013, or soon after completion by the school, whichever occurs first;

(3) The necessary safeguards to protect information contained in each school specific crisis response plan that may be considered protected critical infrastructure information, law enforcement sensitive information or for official use only. These safeguards must have the approval the Division of Homeland Security and Emergency Management. County boards shall provide the same necessary safeguards for the information in the plan;

(4) The annual review and necessary update of the model plan and uniform template by state board in conjunction with the Division of Homeland Security and Emergency Management by December 31 of each year after 2011;

(5) The development by each school of a school specific crisis response plan by using the state board’s model plan as an example and with consultation from local social services
agencies, local first response agencies including police, fire, emergency medical services (EMS), emergency management and any other local entities that the school’s crisis response planning team determines should be consulted;

(6) Procedures for the annual review and update if necessary by each school of its school specific crisis response planning plan. Each school shall file either an updated crisis response plan or a memorandum stating that no update to the crisis response plan was necessary with its county board and the Division of Homeland Security and Emergency Management no later than August 1 of each year after 2013.

(7) Procedures for each school within the state to form a crisis response planning team, which team may consist of the school’s Local School Improvement Council or a separate team consisting of the principal, two teachers, one service person and two parents of children attending the school. In addition the school may include on the team one member of the county board, a school counselor, a member from local law-enforcement authorities, the local county emergency services director and one student in grade ten or higher if the school has those grades;

(8) Procedures for informing and training school personnel on any actions required of them to effectuate the school’s specific crisis response plan;

(9) A model template for redacted copies of the school crisis response plan for the public inspection and for the release and notice to parents of information related to the plan; and

(10) Procedures for non public schools to establish, file and update school crisis response plans consistent with subdivision (1) subsection (a) of this section.
(b) The county board shall keep the current crisis response plan of each school in the county on file and, unless otherwise provided for, provide a copy of each school’s crisis response plan to each local emergency response agency that has a role in the plan. Local emergency response agencies that maintain a copy of the plan shall provide the necessary safeguards for the information in the plan established pursuant to the state board rule promulgated pursuant to subsection (a) of this section. Upon request, a redacted copy of a school crisis response plan shall be made available for inspection by the public with any information removed that is necessary for compliance with the necessary safeguards. Following the filing of its school specific crisis response plan with the county board pursuant to subdivision (2), subsection (a) of this section, each school shall annually send notice home to all parents and guardians of students at the school alerting the parents and guardians to the existence of the plan and the ability to review a redacted copy at the offices of the county board.

CHAPTER 65

(Com. Sub. for H. B. 4070 - By Delegates M. Poling and Guthrie)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §18-10A-2a of the Code of West Virginia, 1931, as amended, relating to changing the basis for the county salary supplement equivalent pay rate for division of rehabilitation teachers from the amount paid to teachers by the board of education of the county in which facility in which the teacher works is located to the amount paid to teachers by the
board of education of the county in which the division of rehabilitation administrative headquarters are located.

Be it enacted by the Legislature of West Virginia:

That §18-10A-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10A. REHABILITATION SERVICES.


(a) Notwithstanding any other provision of this code to the contrary, beginning July 1, 2012, rehabilitation teachers shall be paid at the equivalent rate of pay of teachers, pursuant to section two, article four, chapter eighteen-a of this code. Rehabilitation teachers shall be paid outside the public school support plan, defined in section one, article nine-a of this chapter, and shall receive the equivalent of the salary supplement paid to teachers employed by the county board within the county where the administrative headquarters of the division are located, pursuant to section five-a, article four, chapter eighteen-a of this code.

(b) For purposes of this section, the following words shall be construed as follows:

(1) “Rehabilitation teacher” means any person employed by the division and who meets the certification requirements of section two-a, article three, chapter eighteen-a of this code, or who has been certified to teach by a state or nationally recognized organization, as approved by the office of the secretary of education and the arts. The teachers shall maintain current certification in their teaching areas in order to remain employed and may teach only in the areas in which they are certified: Provided, That teachers who were employed on or before April 1, 1995, are exempt from the following requirements:
(A) Certification pursuant to section two-a, article three, chapter eighteen-a of this code;

(B) Maintenance of current certification in their teaching areas in order to remain employed; and

(C) Teaching only in the areas in which they are certified.

(2) “Equivalent rate of pay” means an annualized rate based on a two hundred forty-day teaching schedule and includes pay for vacation and legal state holidays.

CHAPTER 66

(Com. Sub. for S. B. 611 - By Senators Kessler, Mr. President, Minard, Browning Stollings, Klempa, Foster and Unger)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-21-1, §18-21-2, §18-21-3 and §18-21-4, all relating to developing a special community-based pilot demonstration project to help at-risk youth in West Virginia; defining “at risk”; creating a Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth in West Virginia; permitting the Secretary of the West Virginia Department of Health and Human Resources to select a community-based organization to establish a Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth if funds are available; setting forth duties and goals of the community-based organization; requiring
the secretary and the director of the community-based organization to make status reports to the Legislature; and setting forth other duties of the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-21-1, §18-21-2, §18-21-3 and §18-21-4, all to read as follows:

ARTICLE 21. SPECIAL COMMUNITY-BASED PILOT DEMONSTRATION PROJECT TO IMPROVE OUTCOMES FOR AT-RISK YOUTH.

§18-21-1. Definition of “at-risk youth”.

As used in this article "at-risk youth" means all children between birth and seventeen and young adults between the ages of eighteen and twenty-one who are low income, receiving benefits from the West Virginia Department of Health and Human Resources, legally under the jurisdiction of the Department of Health and Human Resources or in custody of the West Virginia Division of Juvenile Services, the selected county’s juvenile court/probation department or the selected county’s alternative school system program.

§18-21-2. Creation of a Special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

Effective July 1, 2012, and if funds are available, the Secretary of the West Virginia Department of Health and Human Resources shall select a community-based organization to establish a special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth in a specified
community for a duration of four years. The project will identify, implement and document best practices that can be replicated in other communities. The designated community-based organization shall operate the special pilot project under the direction of the Secretary of the Department of Health and Human Resources and shall work in collaboration with the State School Superintendent, local county school superintendent, Executive Director of the President of the Community and Technical College System, the closest community and technical college and four-year college or university, State Workforce Investment Division, Executive Director of the West Virginia Vocational Rehabilitation Services, the local juvenile court system, the local workforce investment board, the Chancellor of the Higher Education Policy Commission, the Director of West Virginia Division of Juvenile Services, the local mental/behavior health organizations and other governmental and community-based organizations.

§18-21-3. Secretary of Department of Health and Human Resources responsibilities.

The Secretary of the West Virginia Department of Health and Human Resources shall:

(1) Identify a county with the most at-risk youth, that also has adequate facilities and community leadership, to run a community-based pilot program that brings together both state and local organizations, to work collaboratively to provide comprehensive, intense wrap-around services to at-risk youth and their families in a seamless coordinated system; and

(2) Identify the challenges confronting the most at-risk youth and their families and make specific recommendations to the pilot program administrators to improve the outcomes for these youths; specifically, to reduce the number of abuse and neglect cases to reduce the number of youth in out-of-
home and out-of-state placements; to reduce high school drop-out rates, to reduce substance abuse among youth including smoking, reduce teen pregnancies, to reduce juvenile delinquency and to reduce the number of juvenile delinquents and youth aging out of foster care that eventually enter into the adult criminal justice system.

(3) Document best practices which can be replicated in other counties.

(4) Establish baseline and goals for each performance measure in conjunction with the director of the community-based organization operating the pilot project.

(5) Beginning in January 2013, on or before the first day of the regular session of the Legislature, and each year thereafter, the Secretary of Department of Health and Human Resources along with the director of the community-based organization operating the pilot program shall make a status report to the Legislative Oversight Committee on Health and Human Resources Accountability.

§18-21-4. Organization and goals of the Community-Based Pilot Demonstration Program.

(a) The pilot program shall be operated by a local community-based organization under the direction the Secretary of the West Virginia Department of Health and Human Resources, and in collaboration with the State School Superintendent, county school superintendent, Executive Director of the State Workforce Investment Division, Executive Director of WV Vocational Rehabilitation Services, the local juvenile court system, the Chancellor of the Higher Education Policy Commission, President of the Community and Technical College System, president of the local community and technical college and four-year college or university, the Director of the West Virginia Division of
Juvenile Services, the local mental/behavior health organizations and other governmental and community-based organizations and partner agencies to serve as a clearinghouse to coordinate comprehensive youth and family services. The pilot project shall be housed within the community and will be directed by a local community-based nonprofit organization.

(b) The pilot project shall operate out of a centrally located building to coordinate services to youth and their families in the selected county from birth to seventeen years of age who are referred by the Department of Health and Human Resources.

(c) The goal of the pilot program is to improve outcomes for at-risk youth as measured by the following metrics:

(1) Early childhood development:

(A) Increase in the number of mothers receiving early prenatal care;

(B) Increase in number of mothers participating in the Right From the Start Program;

(C) Increase in the number of children screened by birth to three year-old program for early development delays;

(D) Increase in the number of three year-olds enrolled in Head Start;

(E) Increase in the number of four year-olds enrolled in:

(2) Preschool youth and teen measures:

(A) Decrease in school truancy;

(B) Decrease in truancy hearings;
(C) Decrease in school suspensions;

(D) Decrease in school expulsions;

(E) Decrease in high school dropouts at a select school;

(F) Increase in the number of youth participating in a mentoring program;

(G) Increase in academic performance for select students;

(H) Increase in number of youth participating in summer employment;

(I) Increase in number of youth entering postsecondary education or job.

(3) Parent Measures:

(A) Increase in the number of individuals registered at the WorkForce West Virginia Center;

(B) Increase in the number of individuals enrolled in job training;

(C) Increase in the number of individuals completing job training with a certification or credential;

(D) Increase in the number of individuals placed in employment; and

(E) Increase in number of children enrolled in the CHIP program.
AN ACT to amend and reenact §3-1-19 of the Code of West Virginia, 1931, as amended, relating to appointment of ballot commissioners; and authorizing county executive committees of the two largest political parties to make appointments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

1 (a) In each county in the state, the Board of Ballot Commissioners shall be comprised of:

3 (1) The clerk of the county commission while holding office; and

5 (2) Two other persons as follows:
(A) One person appointed by the county executive committee of the political party that cast the largest number of votes in the state at the last preceding general election; and

(B) One person appointed by the county executive committee of the political party that cast the second largest number of votes in the state at the last preceding general election.

(b) If the county executive committees do not make the appointments in a timely manner, then the county clerk shall make the appointments.

(c) The county clerk shall serve as chairman.

(d) It shall be the duty of the county clerk to notify the chairman of the respective county executive committees of the two parties, at least five days before the time of the making of the appointments.

(e) If at any time after notice is given, and before or on the day so fixed for making appointments, the chairman of each of the committees shall designate, in writing, a member of his or her party as ballot commissioner. Each designee shall be appointed if he or she meets the qualifications of a voter: Provided, That a ballot commissioner cannot be a candidate for any office in any election held during the time he or she is serving as ballot commissioner.

(f) Ballot commissioners shall be appointed between the 15th and 30th days of January, in each year in which a general election is to be held, for a term of two years beginning on February 1 next ensuing.

(g) The ballot commissioners shall perform their duties at all general, special and primary elections held in the county or any magisterial district thereof during their term of office.
(h) A vacancy shall be filled in the same manner as an original appointment, but immediate notice of a vacancy shall, where necessary, be deemed compliance with the five-day notice provision.

CHAPTER 68

(Com. Sub. for H. B. 4257 - By Delegates Iaquinta, Poore, Marshall, Crosier, Fleischauer and Duke)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-2-6a, relating to permitting voter registration in person up to, but not including, the day of the election for any member of a uniformed service of the United States, as defined in 42 U. S. C. §1973ff-6, any member of the Merchant Marine of the United States, any person who resides outside the United States by virtue of his or her employment in support of national security functions or purpose; any spouse or dependent residing with a person who meets the aforesaid criteria; providing for applicability of section; providing that any person who registers pursuant to this section shall vote a provisional ballot; and requiring the Secretary of State to prescribe procedures to implement the section.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §3-2-6a, to read as follows:
ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6a. Extended time for certain persons to register in person.

(a) Notwithstanding the provisions of section six of this article, the following persons are entitled to register to vote, in person, at the office of the clerk of the county commission up to, but not including, the day of the election:

(1) Any member of a uniformed service of the United States, as defined in 42 U. S. C. § 1973ff-6 (7), who is on active duty;

(2) Any member of a uniformed service of the United States, as defined in 42 U. S. C. § 1973ff-6 (7), who is discharged from active duty during the sixty days immediately preceding the election;

(3) Any member of the Merchant Marine of the United States;

(4) Any person residing outside the country by virtue of his or her employment in support of national security functions or purposes and presents appropriate documentation of such employment as prescribed by the Secretary of State; and

(5) Any spouse or dependent residing with a person listed in subdivisions (1), (2), (3) or (4) of this subsection.

(b) The provisions of subsection (a) apply only to those persons who are otherwise qualified to register and who, by reason of such active duty or temporary overseas residency:

(1) Are normally absent from the county in which they reside; or
(2) Have been absent from such county and returned to reside there during the twenty-one days immediately preceding the election.

(c) A person qualifying and registering to vote pursuant to this section, after the close of voter registration set forth in section six, article two of this chapter, shall be required to cast a provisional ballot and that provisional ballot shall be counted during the canvass of the election, unless the voter is determined by the Clerk of the County Commission to otherwise fail to meet the eligibility requirements for voter registration.

(d) The Secretary of State shall prescribe procedures for the addition of persons registered under this section to the lists of registered voters.

CHAPTER 69

(Com. Sub. for H. B. 4238 - By Delegates Poore, Marshall, Fleishcauer and Boggs)
[By Request of the Secretary of State]

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia, 1931, as amended, relating to providing absentee ballots to participants of the Address Confidentiality Program; authorizing program participants to vote an absentee ballot by mail; authorizing the placement of program participants on special absentee voting list; describing duties of the office of the Secretary of State and county officials designated to
supervise and conduct absentee voting; and providing for the removal of program participants from the special absentee voting list.

Be it enacted by the Legislature of West Virginia:

That §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot during the period of early voting in person.

(b) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Illness, injury or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: Provided, That the underlying conviction is not for a crime which is a felony or a violation of section twelve, thirteen or sixteen, article nine of this chapter involving bribery in an election;

(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:
(A) Personal or business travel;

(B) Attendance at a college, university or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less;

(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter’s assigned polling place are inaccessible because of his or her physical disability; and

(6) Any voter who is participating in the Address Confidentiality Program as established by section one hundred three, article twenty-eight-a, chapter forty-eight of this code.
(c) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than thirty days; and

(3) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for
any election held entirely within the municipality, or in the

case of annexation elections, within the area affected. The
terms “clerk” or “clerk of the county commission” or “official
designated to supervise and conduct absentee voting” used
elsewhere in this article means municipal recorder or other
official in the case of municipal elections.

(b) A person authorized and desiring to vote a mail-in
absentee ballot in any primary, general or special election is to
make application in writing in the proper form to the proper
official as follows:

(1) The completed application is to be on a form
prescribed by the Secretary of State and is to contain the
name, date of birth and political affiliation of the voter,
residence address within the county, the address to which the
ballot is to be mailed, the authorized reason, if any, for which
the absentee ballot is requested and, if the reason is illness or
hospitalization, the name and telephone number of the
attending physician, the signature of the voter to a declaration
made under the penalties for false swearing as provided in
section three, article nine of this chapter that the statements
and declarations contained in the application are true, any
additional information which the voter is required to supply,
any affidavit which may be required and an indication as to
whether it is an application for voting in person or by mail; or

(2) For any person authorized to vote an absentee ballot
under the provisions of 42 U.S.C. §1973, et seq., the
Uniformed and Overseas Citizens Absentee Voting Act of
1986, the completed application may be on the federal
postcard application for absentee ballot form issued under
authority of that act, submitted by mail or electronically;

(3) For any person unable to obtain the official form for
absentee balloting at a reasonable time before the deadline for
an application for an absentee ballot by mail is to be received
by the proper official, the completed application may be in a
form set out by the voter, provided all information required to
meet the provisions of this article is set forth and the
application is signed by the voter requesting the ballot; or

(4) A person authorized to vote an absentee ballot who is
participating in the Address Confidentiality Program as
established by section one hundred three, article twenty-eight-
a, chapter forty-eight of this code, may apply to the program
manager within the office of the Secretary of State to vote a
mail-in absentee ballot. The program manager will notify the
designated county contact to coordinate the application and the
provision of an absentee ballot to the program participant.

§3-3-2b. Special absentee voting list.

(a) Any person who is registered and otherwise qualified
to vote and who is permanently and totally physically disabled
and who is unable to vote in person at the polls in an election
may apply to the official designated to supervise and conduct
absentee voting for placement on the special absentee voting
list.

(b) Any person who is registered and otherwise qualified
to vote and who is participating in the Address Confidentiality
Program as established by section one hundred three, article
twenty-eight-a, chapter forty-eight of this code, may apply to
the program manager within the office of the Secretary of State
for placement on the special absentee voting list. The program
manager will notify the designated county contact to
coordinate the provision of an absentee ballot to the program
participant.

(c) The application is to be on a form prescribed by the
Secretary of State which is to include:
(1) The voter’s name and signature;

(2) Residence address unless the applicant is a participant in the Address Confidentiality Program as established by section one hundred three, article twenty-eight-a, chapter forty-eight of this code; and

(3) A statement that the voter is permanently and totally physically disabled and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect; or

(B) A statement that the voter is a program participant in the Address Confidentiality Program.

(d) Upon receipt of a properly completed application, the official designated to supervise and conduct absentee voting shall enter the name on the special absentee voting list, which is to be maintained in a secure and permanent record. The person’s name will remain active on the list until: (1) The person requests in writing that his or her name be removed; (2) the person removes his or her residence from the county, is purged from the voter registration books or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United States postal service; (4) the death of the person; or (5) in the case of a Address Confidentiality Program participant, withdrawal or removal from that program.

(e) The official designated to supervise and conduct absentee voting shall mail an absentee ballot by mail to each person active on the special absentee voting list due to disability not later than forty-six days before each election. The Address Confidentiality Program manager shall, in coordination with the designated county contact, mail to each person on the special absentee voting list due to participation in the Address Confidentiality Program an absentee ballot by mail not later than forty-six days before each election.
AN ACT to amend and reenact §3-6-4a of the Code of West Virginia, 1931, as amended, relating to changing the filing deadline for certified write-in candidates; and removing language that conflicts with other sections of the code relating to the filling of vacancies.

Be it enacted by the Legislature of West Virginia:

That §3-6-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by write-in votes to an office, except delegate to national convention, which is to be filled in a primary, general or special election held under the provisions of this chapter, shall file a write-in candidate's certificate of announcement as provided in this section. No certificate of announcement may be accepted and no person may be certified as a write-in candidate for a
political party nomination for any office or for election as delegate to national convention.

(a) The write-in candidate’s certificate of announcement shall be in a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to give oaths containing the following information:

(1) The name of the office sought and the district and division, if any;

(2) The legal name of the candidate and the first and last name by which the candidate may be identified in seeking the office;

(3) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;

(4) A statement that the person filing the certificate of announcement is a candidate for the office in good faith; and

(5) The words “subscribed and sworn to before me this ______ day of _____________, ____” and a space for the signature of the officer giving the oath.

(b) The certificate of announcement shall be filed with the filing officer for the political division of the office as prescribed in section seven, article five of this chapter.

(c) The certificate of announcement shall be filed with and received by the proper filing officer as follows:

(1) Except as provided in subdivision (2) of this subsection, the certificate of announcement for any office shall be received
36 no later than the close of business on the forty-ninth day before
37 the election at which the office is to be filled;

38 (2) When a vacancy occurs in the nomination of
39 candidates for an office on the ballot resulting from the death
40 of the nominee or from the disqualification or removal of a
41 nominee from the ballot by a court of competent jurisdiction
42 not earlier than the forty-eighth day nor later than the fifth
43 day before the general election, the certificate shall be
44 received no later than the close of business on the fifth day
45 before the election or the close of business on the day
46 following the occurrence of the vacancy, whichever is later.

47 (d) Any eligible person who files a completed write-in
48 candidate's certificate of announcement with the proper filing
49 officer within the required time shall be certified by that
50 filing officer as an official write-in candidate:

51 (1) The Secretary of State shall, immediately following
52 the filing deadline, post the names of all official write-in
53 candidates for offices on the ballot in more than one county
54 and certify the name of each official write-in candidate to the
55 clerks of the county commissions of the appropriate counties.

56 (2) The clerk of the county commission shall,
57 immediately following the filing deadline, post the names of
58 all official write-in candidates for offices on the ballot in one
59 county and certify and deliver to the election officials of the
60 appropriate precincts, the names of all official write-in
61 candidates and the office sought by each for statewide, 
62 district and county offices on the ballot in the precinct for
63 which valid write-in votes will be counted and the names
64 shall be posted at the office where absentee voting is
65 conducted and at the precincts in accordance with section
66 twenty, article one of this chapter.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-8-2c, relating to funding for state executive party headquarters; defining terms; allowing funds to be raised; providing for allowable uses of the funds and prohibitions; setting certain fundraising limits; requiring reports; and requiring legislative rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §3-8-2c, to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2c. Party headquarters committee; detailed accounts and verified financial statements; funding for headquarters; limitations; reporting requirements.

(a) Notwithstanding the definitions contained in section one-a of this article, for purposes of this section:

(1) “Contribution” means a gift, subscription, loan, assessment, payment for services, dues, advance, donation,
pledge, contract, agreement, forbearance or promise of
money or other tangible thing of value, whether conditional
or legally enforceable, or a transfer of money or other
tangible thing of value to a person, made for the purpose of
funding the rental, purchase, construction or financing of the
lease, purchase or construction of a party headquarters, and
for the utilities, maintenance, furniture, fixtures and
equipment for the party headquarters. An offer or tender of
a contribution is not a contribution if expressly and
unconditionally rejected or returned. A contribution does not
include volunteer personal services provided without
compensation: Provided, That a nonmonetary contribution is
to be considered at fair market value for reporting
requirements and contribution limitations.

(2) “Party headquarters” means a physical structure or
structures that is the physical location of the office of a state
executive committee of a political party.

(3) “Party headquarters committee” includes any person,
organization or group of persons soliciting or receiving
contributions for the purpose of funding the lease, purchase,
construction or financing of the lease, purchase or
construction of a party headquarters, including utilities,
maintenance, furniture, fixtures and equipment for the party
headquarters.

(b) A political party may establish a party headquarters
committee to solicit and receive contributions for the
exclusive purpose of the purchase, construction or lease of an
office building or financing of the lease, purchase or
construction of a party headquarters, including utilities,
maintenance, furniture, fixtures and equipment, to be used as
a state political party’s headquarters.

(c) Contributions received pursuant to this section may
not be expended for:
(1) The purchase, construction or lease of satellite offices or other facilities;

(2) Utilities, maintenance, furniture, fixtures, equipment or signage for satellite offices or other facilities; or

(3) Political purposes.

(d) A party headquarters committee may not accept contributions in excess $10,000, in the aggregate, from any person for the purposes of this section.

(e) A party headquarters committee may not receive contributions or make expenditures for the purpose of funding the rental, purchase, construction or financing of a state executive committee headquarters in excess of $1 million.

(f)(1) A party headquarters committee, financial agent or any person or officer acting on behalf of the committee that is subject to the provisions of this section, shall file a verified financial statement with the Secretary of State, on a form prescribed by the secretary, within ninety days of any contribution or expenditure in excess of $250.

(2) Each financial statement shall contain, but is not limited to, the following information:

(A) The name, residence and mailing address and telephone number of the party headquarters committee, financial agent or any person or officer acting on behalf of the committee, filing the financial statement.

(B) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.
(C) The name of any person making a contribution, the amount of the contribution, and the residence and mailing address of the contributor.

(D) The total amount of contributions received during the period covered by the financial statement.

(E) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.

(F) The name, residence and mailing address of any individual or the name and mailing address of each partnership, firm, association, committee, organization or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(G) The total outstanding balance of all loans at the end of the period.

(H) The name, residence and mailing address of any person to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(I) The total amount of expenditures made during the period covered by the financial statement.

(3) The Secretary of State shall file and retain the statements as public records for not less than six years.
(g) Contributions received by a party headquarters committee may be contributed to any educational, cultural or charitable organization.

(h) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

CHAPTER 72

(Com. Sub. for H. B. 4006 - By Delegate Manchin)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 3, 2012.]

AN ACT to amend and reenact §21-3C-1, §21-3C-10a and §21-3C-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-3C-10b, all relating to elevators; defining certain terms; requiring licensure; providing licensure requirements for elevator mechanics, accessibility technicians and limited technicians; providing requirements to obtain a limited use/limited application endorsement; providing requirements for issuance and renewal of licenses; modifying rule-making authority of Commissioner of Labor; and removing reciprocity provisions.

Be it enacted by the Legislature of West Virginia:

That §21-3C-1, §21-3C-10a and §21-3C-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and
that said code be amended by adding thereto a new section, designated §21-3C-10b, all to read as follows:

**ARTICLE 3C. ELEVATOR SAFETY.**

§21-3C-1. Definitions.

1. (1) “Accessibility equipment” means lifting devices designated to remove access barriers in public buildings and private residences for persons with physical challenges, including residential elevators, limited use/limited application elevators, vertical platforms, inclined platform lifts and stairway chairlifts.

2. (2) “Certificate of acceptance” means a certificate issued by the Division of Labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, “Safety Code for Elevators” and ASME A18.1, “Safety Code for Platform Lifts and Stairway Chairlifts.”

3. (3) “Certificate of competency” means a certificate issued by the Division of Labor certifying that an individual is qualified to inspect elevators.

4. (4) “Certificate of operation” means a certificate issued by the Division of Labor certifying that an elevator has been inspected and is safe for operation.

5. (5) “Commissioner” means the Commissioner of the Division of Labor.

6. (6) “Division” means the Division of Labor.

7. (7) “Division inspector” means an employee or contractor of the division who has been examined and issued a
certificate of competency and who only inspects elevators in state owned buildings.

(8) “Elevator” means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides and includes all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, platform lifts for loading docks, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

(9) “Elevator apprentice” means a person who meets the requirements set forth in legislative rule promulgated pursuant to this article.

(10) “Elevator mechanic” means a person who possesses an elevator mechanic’s license in accordance with the provisions of this article and who is engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article.

(11) “Freight elevator” means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

(12) “Inspector” means both a division inspector and a private inspector.

(13) “License” means a license issued to an elevator mechanic, accessibility technician or limited technician pursuant to this article.

(14) “Private residence elevator” means a passenger elevator of which use is limited by size, capacity, rise and
speed, and access is limited by its location, by the requirement of a key for its operation or by other restriction.

(15) “Passenger elevator” means an elevator that is designed to carry persons to its contract capacity.

(16) “Limited Use/Limited Application elevator” means a power elevator in which the use and application is limited by size, capacity, speed and rise.

(17) “Private inspector” means a person who has been examined and issued a certificate of competency to inspect elevators within this state.

§21-3C-10a. License requirements for elevator mechanics, accessibility technicians, limited technicians; contractors license requirements; supervision of elevator apprentices requirements.

(a) 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 in accordance with this article.

(b) A person licensed under this article shall:

(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 unless the work is performed by a historic resort hotel’s regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased
by the historic resort hotel which is not intended for speculative sale or lease;

(c) Elevator mechanic license. --

(1) To obtain an elevator mechanic’s license, a person shall:

(A) Successfully complete educational programs that are registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, including all required examinations and work experience: Provided, That if an applicant successfully completes such educational program prior to being registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, the division may grant a license to the applicant after he or she demonstrates to the commissioner that he or she has successfully completed all the test and work experience requirements; or

(B) (i) Provide to the commissioner an acceptable combination of documented experience and educational credits of not less than four years of recent and active experience in the elevator industry in construction, maintenance, or service/repair or any combination thereof, as verified by current and previous employers listed to do business in this state, on a sworn affidavit; and

(ii) Obtain a score of 70% or better on a written competency examination approved or provided by the division.

(2) A licensed elevator mechanic may work on all elevators covered by this article.

(d) Accessibility technician license. --

(1) To obtain an accessibility technician’s license a person shall:
(A) Provide to the commissioner a certificate of completion of an accessibility training program for the elevator industry such as the Certified Accessibility Training (CAT) program by the National Association of Elevator Contractors, or an equivalent nationally recognized training program; or

(B) (i) Have at least eighteen months experience in the construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit, of accessibility lifts;

(ii) Have at least one year of documented vocational training and/or an associate degree in a related field; and

(iii) Obtain a score of 70% or better on a written competency examination approved or provided by the commissioner.

(2) A person holding an accessibility technician license may only perform work on accessibility equipment.

(3) A person holding an accessibility technician license may obtain a limited use/limited application (LULA) elevator endorsement. To obtain the LULA elevator endorsement, such person shall:

(A) (i) Hold a current accessibility technician license;

(ii) Provide the commissioner with a certificate of LULA manufacturer’s training; and

(iii) Provide at least one year of documented work experience to the commissioner, on a sworn affidavit, in the construction, maintenance, service and repair of LULA elevators and comparable equipment, which was completed under the supervision of a licensed accessibility technician; or
As of July 1, 2012, have at least eighteen months of accessibility technician’s experience in construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit: Provided, That an additional one year of documented work as an accessibility technician with certification of manufacturer's factory training, is required before a LULA endorsement may be obtained.

Any person carrying an accessibility license as of July 1, 2012, shall receive the required endorsement to continue to work on this type of equipment, and will be qualified to supervise future applicants as described in this section.

(e) Limited technician license. --

(1) To obtain a limited technician’s license an applicant shall:

(A) Complete a certified apprenticeship program, registered by the United States Department of Labor established at a historic resort hotel, qualifying for a limited technician license; or

(B) Provide an acceptable combination of documented experience, and educational credits of not less than three years of recent and active experience in the elevator industry, in maintenance, or service/repair or any combination thereof, as verified by current and previous employers authorized to do business in this state, on a sworn affidavit; and obtain a score of 70% or better on a written competency examination approved or provided by the division.

(2) A person holding a limited technician license may only perform work at a historic resort hotel: Provided, That for purposes of this section, “historic resort hotel” has the same meaning ascribed to it in section two, article twenty-five, chapter twenty-nine of this code.
(f) Elevator apprentice. --

(1) An elevator apprentice who is enrolled in an 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:

(A) 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.

(B) An apprentice who has successfully completed the equivalent of at least one year of the program may:

(i) Work under the direct supervision of a licensed elevator mechanic as set forth in subdivision (1) of this subsection; and

(ii) 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) Relamping and fixture maintenance;

(IV) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and

(V) Observing operation of equipment.
§21-3C-10b. Issuance and renewal of licenses.

(a) Upon approval of a properly completed application for licensure, the commissioner may issue a person a license under the provisions of this article.

(b) The licenses issued under the provisions of this article shall be renewed biennially upon application for renewal on a form prescribed by the commissioner and payment of a fee established by legislative rule.

(c) Upon a proper application for renewal, the commissioner shall renew a license, even if the license holder is unemployed or not working in the industry at the time of renewal: Provided, That before the license holder may engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the license holder shall be a contractor, or be employed by a contractor licensed pursuant to the provisions of section ten(a), article eleven, chapter twenty-one of the code.

§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications and procedures for submitting applications, taking examinations, and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in section ten-a of this article;

(2) For the renewal of a license, even if the licensee is unemployed or not working in the industry: Provided, That
to engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant to the provisions of section ten (a), article eleven, chapter twenty-one of the code;

(3) Qualifications and supervision requirements for elevator apprentices;

(4) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(5) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(6) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(7) Continuing education requirements;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and
other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: Provided, That in no event may the fees established for the issuance of certificates of operation exceed $50.

(c) All fees collected pursuant to the provisions of this article shall be deposited in an appropriated special revenue account hereby created in the State Treasury known as the “Elevator Safety Fund” and expended for the implementation and enforcement of this article: Provided, That amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

(e) The commissioner and his or her deputy commissioner or any compliance officer of the division as authorized by the commissioner may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.
AN ACT to amend and reenact §16-4C-6 and §16-4C-9 of the Code of West Virginia, 1931, as amended, all relating to emergency medical services; authorizing the commissioner of the Bureau of Public Health to promulgate rules relating to the temporary suspension of a certification of an individual emergency medical service provider; providing that the commissioner may temporarily suspend the certification of an individual emergency medical service provider in certain circumstances prior to a hearing or notice; permitting the commissioner to rely on information supplied by a physician that serves as a medical director when temporarily suspending the certification of an individual emergency medical service provider; and requiring commissioner institute proceedings for a hearing if an individual emergency medical provider’s certification is temporarily suspended.

Be it enacted by the Legislature of West Virginia:

That §16-4C-6 and §16-4C-9 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. Powers and duties of commissioner.

1 The commissioner has the following powers and duties:
To propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That the rules have been submitted at least thirty days in advance for review by the Emergency Medical Services Advisory Council, who may act only in the presence of a quorum. The rules may include:

1. Standards and requirements for certification and recertification of emergency medical service personnel, including, but not limited to:
   - Age, training, testing and continuing education;
   - Procedures for certification and recertification, and for denying, suspending, revoking, reinstating and limiting a certification or recertification;
   - Levels of certification and the scopes of practice for each level;
   - Standards of conduct; and
   - Causes for disciplinary action and sanctions which may be imposed.

2. Standards and requirements for licensure and licensure renewals of emergency medical service agencies, including:
   - Operational standards, levels of service, personnel qualifications and training, communications, public access, records management, reporting requirements, medical direction, quality assurance and review, and other requirements necessary for safe and efficient operation;
   - Inspection standards and establishment of improvement periods to ensure maintenance of the standards;
(C) Fee schedules for licensure, renewal of licensure and other necessary costs;

(D) Procedures for denying, suspending, revoking, reinstating or limiting an agency licensure;

(E) Causes for disciplinary action against agencies; and

(F) Administrative penalties, fines and other disciplinary sanctions which may be imposed on agencies;

(3) Standards and requirements for emergency medical service vehicles, including classifications and specifications;

(4) Standards and requirements for training institutions, including approval or accreditation of sponsors of continuing education, course curricula and personnel;

(5) Standards and requirements for a State Medical Direction System, including qualifications for a state emergency medical services medical director and regional medical directors, the establishment of a State Medical Policy and Care Committee and the designation of regional medical command centers;

(6) Provision of services by emergency medical services personnel in hospital emergency rooms;

(7) Authorization to temporarily suspend the certification of an individual emergency medical service provider prior to a hearing or notice if the commissioner finds there is probable cause that the conduct or continued service or practice of any individual certificate holder has or may create a danger to public health or safety: Provided, That the commissioner may rely on information received from a physician that serves as a medical director in finding that probable cause exists to temporarily suspend the certification; and
(8) Any other rules necessary to carry out the provisions of this article.

(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 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 encourage and foster the cooperation of all emergency medical service providers and facilities within this state.
§16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The commissioner may at any time upon his or her own motion, and shall, upon the written complaint of any person, cause an investigation to be conducted to determine whether grounds exist for disciplinary action under this article or legislative rules promulgated pursuant to this article.

(b) An investigator or other person who, under the direction of the commissioner or the director, gathers or reports information in good faith to the commissioner or the director, is immune from civil liability.

(c) After reviewing any information obtained through an investigation, the commissioner or director shall determine if probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article, the commissioner or director shall provide a copy of the complaint and notice of hearing to the licensee or certificate holder. Upon a finding of probable cause that the conduct or continued service or practice of any individual certificate holder may create a danger to public health or safety, the commissioner may temporarily suspend the certification prior to a hearing or notice: Provided, That the commissioner may rely on information received from a physician that serves as a medical director in finding that probable cause exists to temporarily suspend the certification: Provided, however, That the commissioner shall simultaneously institute proceedings for a hearing in accordance with section ten of this article.
(e) The commissioner or the director may enter into a consent decree or hold a hearing for the suspension or revocation of the license or certification or the imposition of sanctions against the licensee or certificate holder.

(f) The commissioner or the director issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person or agency regulated by the article.

(g) The commissioner or the director may sign a consent decree or other legal document related to the complaint.

(h) The commissioner shall suspend or revoke any certificate, temporary certificate or license when he or she finds the holder has:

1. Obtained a certificate, temporary certificate or license by means of fraud or deceit; or

2. Been grossly incompetent, and/or grossly negligent as defined by the commissioner in accordance with rules or by prevailing standards of emergency medical services care; or

3. Failed or refused to comply with the provisions of this article or any legislative rule promulgated by the commissioner or any order or final decision of the commissioner; or

4. Engaged in any act during the course of duty which has endangered or is likely to endanger the health, welfare or safety of the public.

(i) The commissioner or the director may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license or certification of, impose probationary conditions upon or take disciplinary action against, any
licensee or certificate holder for any violation of this article or any rule promulgated pursuant to this article, once a violation has been proven by a preponderance of the evidence.

(j) Disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative penalties and fines;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or holder of a certificate to report to the commissioner or director for periodic interviews for a specified period of time;

(7) Other disciplinary action considered by the commissioner or director to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk; or

(8) Other sanctions as set forth by legislative rule promulgated pursuant to this article.

(k) The commissioner shall suspend or revoke any certificate, temporary certificate or license if he or she finds the existence of any grounds which would justify the denial of an application for the certificate, temporary certificate or license if application were then being made for it.
AN ACT to amend and reenact §22-5-19 of the Code of West Virginia, 1931, as amended, relating to the Department of Environmental Protection’s requirements to inventory emissions of greenhouse gases; eliminating unneeded provisions; and allowing reporting of greenhouse gases under the United States Environmental Protection Agency’s Mandatory Reporting of Greenhouse Gases Rule to satisfy greenhouse gas reporting requirements in West Virginia.

Be it enacted by the Legislature of West Virginia:

That §22-5-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-19. Inventory of greenhouse gases.

1 (a) The secretary shall establish a program to inventory greenhouse gas emissions from major sources that are subject to mandatory federal greenhouse gases reporting requirements. The secretary shall obtain available emissions data directly from the appropriate federal entity, including the United States Environmental Protection Agency.
(b) As used in this section, “greenhouse gas” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

CHAPTER 75

(S. B. 75 - By Senator Unger)

[Passed March 10, 2012; in effect July 1, 2012.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-33-1, §19-33-2, §19-33-3, §19-33-4 and §19-33-5, all relating to creating the Equine Rescue Facilities Act; providing definitions; licensing of equine facilities; providing for inspections; authorizing legislative rules; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-33-1, §19-33-2, §19-33-3, §19-33-4 and §19-33-5, all to read as follows:

ARTICLE 33. EQUINE RESCUE FACILITIES ACT.

§19-33-1. Definitions.

For purposes of this article:

(a) “Commissioner” means the Commissioner of Agriculture.
(b) “Equine rescue facility” means a facility that is listed as a nonprofit organization having a legitimate and current status under Title 26 U. S. C. 501(c)(3), as amended, that fosters care to unwanted equines due to age, health or other circumstances that deem the equines homeless.

§19-33-2. Licensing of equine rescue facilities.

No person may operate an equine rescue facility as defined in this section without an equine rescue facility license issued by the Department of Agriculture. The annual fee for an equine rescue facility license is $100, which shall be remitted by the commissioner to the humane officer or animal control officer in the county where the facility is located to offset the expense of inspecting that facility. If the county does not have a humane officer or animal control officer, the commissioner shall remit the license fee to the sheriff of the county where the facility is located.

§19-33-3. Inspections of equine rescue facilities.

Upon application for an equine rescue facility license, the commissioner shall notify the county humane officer or animal control officer in the county where the equine rescue facility is located, who shall inspect the facility prior to issuance of an equine rescue facility license and, thereafter, not less than twice annually. If the county does not have a humane officer or animal control officer, the sheriff of that county is responsible for inspections of equine rescue facilities in the county as set forth in this section.

§19-33-4. Legislative rules.

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

(a) The issuance of equine rescue facility licenses and revocation of the licenses for violations of the provisions of this article or rules adopted hereunder;
(b) Notification of the application and issuance of an equine rescue facility license to the humane officer, animal control officer or county sheriff in the county where the facility is located and providing remittance of the annual equine rescue facility license fee;

(c) Standards for maintenance of the premises, the care and health of the horses kept at equine rescue facilities and standards for inspection of those facilities and horses, using guidelines developed by the West Virginia Livestock Care Standards Board; and

(d) Standards for closure of an equine rescue facility and seizure of horses at the facility where the health and welfare of the horses are endangered.

§19-33-5. Penalties.

Any person who violates any provision of this article or rules adopted hereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for the first offense, and for a second or subsequent offense shall be fined not less than $500 nor more than $2,500.
to the arrest when found not guilty of the offense or charges
have been dismissed; and providing that no filing fees or costs
be charged for processing the action.

Be it enacted by the Legislature of West Virginia:

That §61-11-25 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 11. GENERAL PROVISIONS CONCERNING
CRIMES.

§61-11-25. Expungement of criminal records for those found
not guilty of crimes or against whom charges
have been dismissed.

(a) Any person who has been charged with a criminal
offense under the laws of this state and who has been found
not guilty of the offense, or against whom charges have been
dismissed, and not in exchange for a guilty plea to another
offense, may file a civil petition in the circuit court in which
the charges were filed to expunge all records relating to the
arrest, charge or other matters arising out of the arrest or
charge: Provided, That no record in the Division of Motor
Vehicles may be expunged by virtue of any order of
expungement entered pursuant to section two-b, article five,
chapter seventeen-C of this code: Provided, further, That any
person who has previously been convicted of a felony may
not file a petition for expungement pursuant to this section.
The term records as used in this section includes, but is not
limited to, arrest records, fingerprints, photographs, index
references or other data whether in documentary or electronic
form, relating to the arrest, charge or other matters arising out
of the arrest or charge. Criminal investigation reports and all
records relating to offenses subject to the provisions of article
twelve, chapter fifteen of this code because the person was
found not guilty by reason of mental illness, mental
retardation or addiction are exempt from the provisions of this section.

(b) The expungement petition shall be filed not sooner than sixty days following the order of acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal shall inform the person who has been found not guilty or against whom charges have been dismissed of his or her rights to file a petition for expungement pursuant to this section.

(c) Following the filing of the petition, the court may set a date for a hearing. If the court does so, it shall notify the prosecuting attorney and the arresting agency of the petition and provide an opportunity for a response to the expungement petition.

(d) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the petition and 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 charge, 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.

(e) Upon expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit or other type of application.
55 (f) Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that the interests of justice will be served by granting the petition, it may be granted.

64 (g) There shall be no filing fees charged or costs assessed for filing an action pursuant to this section.

CHAPTER 77

(Com. Sub. for S. B. 149 - By Senators Unger, Miller and Kessler, Mr. President)

[Passed March 10, 2012; in effect ninety days from passage.] [Approved by the Governor on April 12, 2012.]

AN ACT to amend and reenact §36-8A-2, §36-8A-3 and §36-8A-5 of the Code of West Virginia, 1931, as amended, all relating to the disposition of forfeited or abandoned firearms in state custody; requiring additional measures to identify, find and return firearms and ammunition to owners, if they are eligible to own and possess them; and to allow for the sale of firearms to licensed firearms collectors, dealers, importers or manufacturers.

Be it enacted by the Legislature of West Virginia:
That §36-8A-2, §36-8A-3 and §36-8A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD BY LAW-ENFORCEMENT AGENCIES.

§36-8A-2. Unclaimed stolen property reports.

(a) On or before September 1, of each year, each law-enforcement agency which has unclaimed stolen property in its possession shall file an unclaimed stolen property report with the Treasurer which identifies all unclaimed stolen property in its possession at the time the report is filed.

(b) An unclaimed stolen property report shall include the following information with respect to all unclaimed stolen property in the possession of the law-enforcement agency filing it:

1. A description of each item, including a serial number, if applicable;
2. An estimated value for each item;
3. Whether any nonprofit organization has requested that any item be donated to it and whether any nonprofit organization might be considered to receive the item as a donation;
4. Whether the law-enforcement agency could use the item for any legitimate and authorized law enforcement or educational purpose;
5. The chief executive’s recommendation for the disposition of each item; and
(6) If any unclaimed stolen property in the law-enforcement agency’s possession consists of firearms or ammunition, a description of the best efforts used by the chief executive to determine if the firearm has been lost by, stolen or otherwise unlawfully obtained from an innocent owner prior to its disposition by public auction or as otherwise required by section five of this article.

§36-8A-3. Treasurer’s response to unclaimed stolen property report.

Within thirty days of the receipt of an unclaimed stolen property report, the Treasurer shall send a response to the law-enforcement agency submitting it. For each item identified in the unclaimed stolen property report, the Treasurer shall either require that it be delivered to the Treasurer, authorize the law-enforcement agency to sell it at a public sale, authorize the law-enforcement agency to donate it to a nonprofit organization, authorize the law-enforcement agency to use it for any legitimate and authorized law enforcement or educational purpose, or authorize the law-enforcement agency either to sell it at a public sale, to donate it to a nonprofit organization, or to use it for any legitimate and authorized law enforcement or educational purpose. However, the Treasurer may not authorize the law-enforcement agency to donate any firearms or ammunition. The sale of any firearms or ammunition by the law enforcement agency must be at a public sale to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq. and authorized to receive firearms under the terms of their license. If the Treasurer determines that any item identified in an unclaimed stolen property report is of such value that it should be processed by the Treasurer’s office, the Treasurer shall have the authority to require that the item be delivered to the Treasurer.
§36-8A-5. Regarding the disposition of firearms in state custody.

(a) Except as provided in section three of this article, subject to the duty to return firearms to innocent owners pursuant to subsection (b) of this section, all firearms, as defined in section two, article seven, chapter sixty-one of this code, that are forfeited or abandoned to any law-enforcement agency of this state or a political subdivision of this state, including the West Virginia Division of Natural Resources, or that are otherwise acquired by the state or a political subdivision of the state and are no longer needed, shall be transferred to the State Treasurer for disposal as provided in this section.

(b) Except as provided in section three of this article, within thirty days of the receipt of an unclaimed stolen property report, the State Treasurer shall coordinate best efforts with the reporting law-enforcement agency to transfer the firearms and ammunition to the State Treasurer for disposal as provided in subsection (e).

(c) Prior to the disposal of any firearm that has been forfeited or abandoned to the state, the chief executive of each law-enforcement agency shall use best efforts to determine if the firearm has been lost by, stolen or otherwise unlawfully obtained from an innocent owner, and if so, shall return the firearm to its innocent owner, if ascertainable, unless that person is ineligible to receive or possess a firearm under state or federal law.

(d) Upon determination and verification that a lawful owner is unavailable or ineligible to receive or possess a firearm under state or federal law, reporting enforcement agencies may trade the firearms and ammunition to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et
and authorized to receive firearms under the terms of their license, in exchange for new weapons or ammunition, or appropriate the firearms and ammunition for law-enforcement agency use.

(e) Except as provided in subsections (c), (d) and (f) of this section, the State Treasurer shall dispose of the firearms that it receives under subsection (a) by sale at public auction to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq. and authorized to receive firearms under the terms of their license.

(1) The auctions required by this subsection may occur online on a rolling basis or at live events but in no event may occur less frequently than once every six months.

(2) The State Treasurer shall retain only the net proceeds necessary to cover the costs of administering this section, with any surplus to be transferred to the general fund of the state: Provided, That an agency may be reimbursed for any decommissioned firearms formerly in use by the agency that are sold under this section: Provided, however, That an agency may apply to the State Treasurer for payment of the net proceeds generated by the sale of any property by the State Treasurer pursuant to this section.

(3) Employees of the State Police or of the agency from which the firearms are received are not eligible to bid on the firearms at an auction conducted under this section.

(f) The requirements of subsection (d) do not apply to a firearm that the chief executive of the law-enforcement agency or his or her designee certifies is unsafe for use because of wear, damage, age or modification, and any such firearm shall at the discretion of the superintendent be transferred to the State Police forensic laboratory for training.
or experimental purposes or to a museum or historical society or be destroyed.

(g) The State Treasurer shall keep records of all firearms acquired and disposed of under the provisions of this section, as well as the net proceeds of the sales and the disbursement of such proceeds, and shall maintain these records for not less than ten years from the date on which a firearm is disposed of or on which a disbursement of funds is made, as the case may be.

(h) Any firearm or ammunition subject to forfeiture proceedings which is ordered returned to any law enforcement agency for the purposes of public sale or auction may only be sold or transferred to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq.

CHAPTER 78

(Com. Sub. for S. B. 353 - By Senators Unger, Kessler, Mr. President, Browning, Laird, Klempa and Snyder)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, all relating to possession of firearms generally; clarifying what constitutes carrying a handgun concealed in or on a motor vehicle; procedures for obtaining a license to carry a concealed handgun; providing application requirements; requiring
investigations of applicants through a national criminal background check system and the West Virginia database; providing definitions; prohibiting certain persons from possessing or receiving firearms; providing exceptions; allowing licenses to be transferable within the state; requiring reporting of new address; and penalties.

Be it enacted by the Legislature of West Virginia:

That §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

1 As used in this article, unless the context otherwise requires:

2 (1) “Blackjack” means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term “blackjack” shall include, but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

3 (2) “Gravity knife” means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when so released is locked in place by means of a button, spring, lever or other locking or catching device.

4 (3) “Knife” means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting,
stabbing or tearing wounds. The term “knife” shall include, but not be limited to, any dagger, dirk, poniard or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses or a knife designed for use as a tool or household implement shall not be included within the term “knife” as defined herein unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.

(4) “Switchblade knife” means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.

(5) “Nunchuka” means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(6) “Metallic or false knuckles” means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The terms “metallic or false knuckles” shall include any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(7) “Pistol” means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.
(8) “Revolver” means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(9) “Deadly weapon” means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term “deadly weapon” shall include, but not be limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of section one-a, article five, chapter eighteen-a of this code and section eleven-a, article seven of this chapter, in addition to the definition of “knife” set forth in subdivision (3) of this section, the term “deadly weapon” also includes any instrument included within the definition of “knife” with a blade of three and one-half inches or less in length. Additionally, for the purposes of section one-a, article five, chapter eighteen-a of this code and section eleven-a, article seven of this chapter, the term “deadly weapon” includes explosive, chemical, biological and radiological materials. Notwithstanding any other provision of this section, the term “deadly weapon” does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes.

(10) “Concealed” means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee shall be deemed to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.
(11) “Firearm” means any weapon which will expel a projectile by action of an explosion.

(12) “Controlled substance” has the same meaning as is ascribed to that term in subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(13) “Drug” has the same meaning as is ascribed to that term in subsection (1), section one hundred one, article one, chapter sixty-a of this code.

§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, a description of the applicant’s physical features, the applicant’s place of birth, the applicant’s country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U. S. C. §922(g)(5)(B);

(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 as evidenced by either of the following within the three years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony or of an act of a misdemeanor crime of violence involving the misuse of a deadly weapon within the five years immediately preceding the application;
(6) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U. S. C. §921(a)(33), or 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 cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(7) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(8) That the applicant has not been adjudicated to be mentally incompetent. If the applicant has been adjudicated mentally incompetent the applicant must provide a court order reflecting that the applicant is no longer under such disability;

(9) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon: \textit{Provided,} That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

(10) 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) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of checking the National Instant Criminal Background Check System and the West Virginia criminal history record responses in order to verify that the information required in subsection (a) of this section is true and correct.

(c) $60 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 Weapons 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) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. 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 $25 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) 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.

(i) 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.

(j) 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.

(k) 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.

(l) Whenever any person after applying for and receiving a concealed handgun license moves from the address named
in the application to another county within the state, the license remains valid for the remainder of the five years:

Provided, That the licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. 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.

(n) Except when subject to an exception under section six, article seven of this chapter, 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, in violation of this subsection, 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.

(o) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(p) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.
(q) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section.

(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.

§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in section two of this article, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is habitually addicted to alcohol;

(3) Is an unlawful user of or habitually addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or who has been involuntarily committed to a mental institution pursuant to the provisions of chapter twenty-seven of this code: Provided, That once an individual has been adjudicated
as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession: Provided, however, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of
subsection (b) or (c), section nine of said article or a federal
or state statute with the same essential elements in which the
victim was a current or former spouse, current or former
sexual or intimate partner, person with whom the defendant
has a child in common, person with whom the defendant
cohabits or has cohabited, a parent or guardian, the
defendant’s child or ward or a member of the defendant’s
household at the time of the offense or has been convicted in
any court of any jurisdiction of a comparable misdemeanor
crime of domestic violence.

Any person who violates the provisions of this subsection
shall be guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than $100 nor more than
$1,000 or confined in the county jail for not less than ninety
days nor more than one year, or both.

(b) Notwithstanding the provisions of subsection (a) of
this section, any person:

(1) Who has been convicted in this state or any other
jurisdiction of a felony crime of violence against the person
of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other
jurisdiction of a felony controlled substance offense
involving a Schedule I controlled substance other than
marijuana, a Schedule II or a Schedule III controlled
substance as such are defined in sections two hundred four,
two hundred five and two hundred six, article two, chapter
sixty-a of this code and who possesses a firearm as such is
defined in section two of this article shall be guilty of a
felony and, upon conviction thereof, shall be confined in a
state correctional facility for not more than five years or fined
not more than $5,000, or both. The provisions of subsection
(c) of this section shall not apply to persons convicted of
offenses referred to in this subsection or to persons convicted
of a violation of this subsection.
(c) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: Provided, That a person prohibited from possessing a firearm by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to possess a firearm in accordance with the provisions of section five, article seven-a of this chapter.

CHAPTER 79


[Passed February 14, 2012; in effect from passage.]
[Approved by the Governor on February 23, 2012.]

AN ACT to amend and reenact §29-3-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-3-5d, all relating to volunteer firefighters; requiring the State Fire Commission to establish training, equipment and performance standards by legislative rule; and authorizing emergency rules.

Be it enacted by the Legislature of West Virginia:
That §29-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §29-3-5d, all to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5d. Volunteer firefighters’ training.

1 (a) On or before July 30, 2012, the State Fire Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish training requirements for firefighters which:

6 (1) Provide for:

7 (A) Minimum training levels for rescue and fire fighting;

8 (B) Minimum levels of equipment needed to protect life and property within fire service areas;

10 (C) Minimum performance standards the departments must meet in response times, communications, levels of water flow and pressure; and

13 (D) Other performance measures as considered necessary to meet the overall goals of improved fire prevention and control.

16 (2) Allow the training to be offered in segments, blocks or modules: Provided, That no firefighter may engage in fire fighting activities, except in response to wildland fires, until he or she has completed all firefighter one training: Provided, however, That support members may provide ancillary assistance to firefighters as defined by the rule;
(3) Provide for online training;

(4) Allow testing to be done in person or online; and

(5) Establish the testing requirements which include:

(A) If the individual is required to test in person, then the tests must be given regionally at various times throughout the year; or

(B) If the individual is authorized to test online, then the requirements for online testing must be established.

(b) The State Fire Commission may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

(c) The training policies in effect as of the effective date of the enactment of this section during the Regular Session of 2012 will remain in effect until superceded by the emergency rule or legislative rule promulgated pursuant to this section.


(a) The State Fire Commission may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of its office.

(b) The State Fire Commission is responsible for fire programs within this state, including the State Fire Marshal’s office, training, uniform standards and certification, finance and planning and fire prevention.
(c) All state and area training and education in fire service shall be coordinated by the State Fire Commission. The State Fire Marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commission.

(d) The State Fire Commission may make recommendations to the State Insurance Commissioner regarding town classifications for fire insurance rates.

(e) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the State Fire Commission. The State Fire Commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(f) The State Fire Commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: Manpower needs; location of training centers; location of fire prevention and control units; communications; fire fighting facilities; water sources; vehicular needs; public education and information; public participation; standardization in record keeping; evaluation of personnel; reporting of fire hazards; programs on mutual aid; location of public safety agencies; outline of fire prevention programs; and accessibility of fire prevention information.

(g) The State Fire Commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning and certification.

(h) The State Fire Marshal may accept, on behalf of the State Fire Commission, gifts, grants, court ordered civil forfeiture proceedings and bequests of funds or property from individuals, foundations, corporations, the federal
government, governmental agencies and other organizations
or institutions. The State Fire Marshal, acting on behalf of the
State Fire Commission, may enter into, sign and execute any
agreements and do and perform any acts that may be
necessary, useful, desirable or convenient to effectuate the
purposes of this article. Moneys from gifts, grants, civil
forfeiture proceedings and bequests received by the State Fire
Marshal shall be deposited into the special account set forth
in subsection (c), section twelve-b of this article, and the
State Fire Marshal, with the approval of the State Fire
Commission, has the authority to make expenditures of, or
use of any tangible property, in order to effectuate the
purposes of this article.

(i) The State Fire Commission shall establish standards
and procedures by policy to implement the provisions of this
section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment and
training;

(3) Certification;

(4) Training and education in fire service, subject to the
rule-making requirements set forth in section five-d of this
article; and

(5) The creation, operation and responsibilities of fire
departments throughout the state.
AN ACT to amend and reenact §19-1A-4 of the Code of West Virginia, 1931, as amended, relating to permitting the Director of the Division of Forestry to enter into stewardship contracts with the United States Forest Service; authorizing projects by written agreement or contract; and directing annual reports to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §19-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-4. Additional duties of the Director of the Division of Forestry generally.

1 (a) The director shall:

2 (1) Develop, promote and advance the growth of the forest products industries of this state;

4 (2) Cooperate with educational institutions, development agencies and private and public organizations to promote the
expansion of the forest products industries of this state in
local and global markets;

(3) Conduct research on marketing and developing forest
products and forest products industries; conserving,
managing and utilizing the state’s forest land and its multiple
uses; and improving the forestry knowledge and practices of
private landowners; and

(4) Compile its findings and recommendations, and
disseminate the results of its research to the public, the forest
products industry, the Governor and the Legislature.

(b) The director has the power to carry out and effectuate
the purposes of this article, article one-b of this chapter and
article three of chapter twenty of this code, including the
power to:

(1) Accept and use gifts, donations or contributions from
individuals, organizations or corporations, and to acquire by
gift, lease or purchase real estate;

(2) Establish law-enforcement practices and procedures
to address the law-enforcement requirements of the division;

(3) To promulgate rules and regulations, subject to the
provisions of chapter twenty-nine-a of this code; and

(4) Enter into stewardship end-result contract projects
with the United States Forest Service by written agreement or
contract and submit an annual report to the Joint Committee
on Government and Finance, no later than the first day of
October each year, specifying the locations of projects, the
amount of funding received, number of contracts and the
purpose of each contract.
AN ACT to amend and reenact §30-6-3 and §30-6-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section designated §30-6-22a; and to amend and reenact §61-12-9 of said code, all relating to cremation, preneed funeral contracts and disposition of remains generally; adding a definition of persons authorized to order cremation; clarifying required inquiry about deceased’s desires; prioritizing individuals authorized to express desires of the deceased; clarifying funeral directors’ responsibilities; establishing the right to control the disposition of the remains of a deceased person; determining who has that right; setting forth how that right may be forfeited; adding a definition of person authorized to agree to a cremation contract; and establishing an order of precedence among persons as to cremation and disposition of remains.

Be it enacted by the Legislature of West Virginia:

That §30-6-3 and §30-6-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section designated §30-6-22a; and that §61-12-9 of said code be amended and reenacted, all to read as follows:
CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “Apprentice” means a person who is preparing to become a licensed funeral director and embalmer and is learning the practice of embalming, funeral directing or cremation under the direct supervision and personal instruction of a duly licensed embalmer or funeral director.

(b) “Authorized representative” means a person legally authorized or entitled to order the cremation of the deceased, as established by rule. An authorized representative may include in the following order of precedence:

(1) The deceased, who has expressed his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive or preneed funeral contract, as defined in section two, article fourteen, chapter forty-five of this code;

(2) The surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent’s death;

(3) An individual previously designated by the deceased as the person with the right to control disposition of the deceased’s remains in a writing signed and notarized by the deceased: Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time;
(4) The deceased’s next of kin;

(5) A court order;

(6) A public official who is charged with arranging the final disposition of an indigent deceased; or

(7) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science.

(c) “Board” means the West Virginia Board of Funeral Service Examiners.

d) “Certificate” means a certification by the board to be a crematory operator.

(e) “Courtesy card holder” means a person who only practices funeral directing periodically in West Virginia and is a licensed embalmer and funeral director in a state which borders West Virginia.

(f) “Cremated remains” or “cremains” means all human remains, including foreign matter cremated with the human, recovered after the completion of cremation.

(g) “Cremation” means the mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments and then further reduced by additional pulverization, burning or recremating when necessary.

(h) “Crematory” means a licensed place of business where a deceased human body is reduced to ashes and bone fragments and includes a crematory that stands alone or is part of or associated with a funeral establishment.
(i) “Crematory operator” means a person certified by the board to operate a crematory.

(j) “Crematory operator in charge” means a certified crematory operator who accepts responsibility for the operation of a crematory.

(k) “Deceased” means a dead human being for which a death certificate is required.

(l) “Embalmer” means a person licensed to practice embalming.

(m) “Embalming” means the practice of introducing chemical substances, fluids or gases used for the purpose of preservation or disinfection into the vascular system or hollow organs of a dead human body by arterial or hypodermic injection for the restoration of the physical appearance of a deceased.

(n) “Funeral” means a service, ceremony or rites performed for the deceased with a body present.

(o) “Funeral directing” means the business of engaging in the following:

(1) The shelter, custody or care of a deceased;

(2) The preparation of a deceased for burial or other disposition;

(3) The arranging or supervising of a funeral or memorial service for a deceased; and

(4) The maintenance of a funeral establishment for the preparation, care or disposition of a deceased.
(p) “Funeral director” means a person licensed to practice funeral directing.

(q) “Funeral establishment” means a licensed place of business devoted to: the care, preparation and arrangements for the transporting, embalming, funeral, burial or other disposition of a deceased. A funeral establishment can include a licensed crematory.

(r) “Funeral service licensee” means a person licensed after July 1, 2003, to practice embalming and funeral directing.

(s) “License” means a license, which is not transferable or assignable, to:

(1) Practice embalming and funeral directing;

(2) Operate a crematory or a funeral establishment.

(t) “Licensee” means a person holding a license issued under the provisions of this article.

(u) “Licensee in charge” means a licensed embalmer and funeral director who accepts responsibility for the operation of a funeral establishment.

(v) “Memorial service” means a service, ceremony or rites performed for the deceased without a body present.

(w) “Mortuary” means a licensed place of business devoted solely to the shelter, care and embalming of the deceased.

(x) “Person” means an individual, partnership, association, corporation, not-for-profit organization or any other organization.
(y) “Registration” means a registration issued by the board to be an apprentice to learn the practice of embalming, funeral directing or cremation.

(z) “State” means the State of West Virginia.

§30-6-22. Disposition of body of deceased person; penalty.

(a) No public officer, employee, physician or surgeon, or other person having a professional relationship with the deceased, shall send, or cause to be sent to an embalmer, funeral director or crematory operator the body of a deceased without first inquiring the desires of the deceased who has designated his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive or preneed funeral contract, as defined in section two, article fourteen, chapter forty-five of this code; the surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent’s death; and, an individual previously designated by the deceased as the person with the right to control disposition of the deceased’s remains in a writing signed and notarized by the deceased: Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time. If there is no last will and testament, advance directive or preneed funeral contract, surviving spouse, or designated person, then the authority and direction of any next of kin or person who may be chargeable with the funeral expenses of the deceased shall be used as to the disposal of the body of the deceased. The provisions of this subsection are not applicable if the remains of the decedent are subject to disposition pursuant to subsection (b) of this section.

(b) Notwithstanding any provision of this code to the contrary, a United States Department of Defense Record of Emergency Data Form (DD Form 93) executed by a declarant who dies while serving in a branch of the United States
Military as defined in 10 U. S. C. §1481 constitutes a valid form of declaration instrument and governs the disposition of the declarant’s remains. The person named in the form as the person authorized to direct disposition of the remains may arrange for the final disposition of the declarant’s last remains.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500, nor more than $1,000, or imprisoned not less than ten days nor more than ninety days, or both.

§30-6-22a. Right of disposition; preneed contract; affidavit on disposition of remains; role of county commission; liability of funeral home.

(a) Notwithstanding section twenty-two of this article, a person who is eighteen years of age or older and of sound mind, by entering into a preneed funeral contract, as defined in section two, article fourteen, chapter forty-seven of this code, may direct the location, manner and conditions of the disposition of the person’s remains and the arrangements for funeral goods and services to be provided upon the person’s death. The disposition directions and funeral prearrangements that are contained in a preneed funeral contract are not subject to cancellation to revision unless any resources set aside to fund the preneed funeral contract are insufficient under the terms of the preneed funeral contract to carry out the disposition directions and funeral prearrangements contained in the contract.

(b) As to any matter not addressed in a preneed funeral contract as described in subsection (a) of this section and except as provided in subsection (c) of this section, the right to control the disposition of the remains of a deceased person, the location, manner and conditions of disposition, and
arrangements for funeral goods and services to be provided
vests in the following, in the order named, provided that the
person is eighteen years or older and is of sound mind:

(1) (A) A person designated by the decedent as the person
with the right to control the disposition in an affidavit
executed in accordance with paragraph (B) of this
subdivision; and

(B) A person who is eighteen years of age or older and of
sound mind wishing to authorize another person to control
the disposition of his or her remains may execute an affidavit
before a notary public in substantially the following form:

“I, _______________, do hereby designate
____________________ with the right to control the
disposition of my remains upon my death. I ___ have/ ____
have not attached specific directions concerning the
disposition of my remains with which the designee shall
substantially comply, provided that these directions are
lawful and there are sufficient resources in my estate to carry
out the directions.

____________________________
Signed

State of ________________

County of ________________

I, ________________________, a Notary Public of said
County, do certify that ____________________________, as
principal whose name is signed to the writing above bearing
date on the ______ day of __________, 20____, has this day
acknowledged the same before me.

Given under my hand this ______ day of ______, 20__.
My commission expires:__________________________

__________________________
Notary Public”;

(2) The surviving spouse of the decedent;

(3) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one half of the surviving children shall be vested with the rights under this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving children;

(4) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties under this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(5) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than the majority of surviving siblings shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving siblings;

(6) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than the majority of the surviving grandparents shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving grandparents;
(7) The guardian of the person of the decedent at the time
of the decedent’s death if one had been appointed;

(8) The personal representative of the estate of the
decedent;

(9) The person in the classes of the next degree of
kinship, in descending order, under the laws of descent and
distribution to inherit the estate of the decedent. If there is
more than one person of the same degree, any person of that
degree may exercise the right of disposition;

(10) If the disposition of the remains of the decedent is
the responsibility of the state or a political subdivision of the
state, the public officer, administrator or employee
responsible for arranging the final disposition of decedent’s
remains; or

(11) In the absence of any person under subdivisions (1)
through (10) of this subsection, any other person willing to
assume the responsibilities to act and arrange the final
disposition of the decedent’s remains, including the funeral
director with custody of the body, after attesting in writing
that a good-faith effort has been made to no avail to contact
the individuals under subdivisions (1) through (10) of this
subsection.

(c) A person entitled under law to the right of disposition
forfeits that right, and the right is passed on to the next
qualifying person as listed in subsection (b) of this section, in
the following circumstances:

(1) Any person charged with murder or voluntary
manslaughter in connection with the decedent’s death and
whose charges are known to the funeral director. However,
if the charges against that person are dismissed or if the
person is acquitted of the charges, the right of disposition is
returned to the person;
(2) Any person who does not exercise his or her right of disposition within two days of notification of the death of decedent or within three days of decedent’s death, whichever is earlier;

(3) If the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of decedent’s death.

(d) Any person signing a funeral service agreement, cremation authorization form or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated or otherwise disposed of, and the party’s authority to order the disposition. A funeral home has the right to rely on that funeral service agreement or authorization and shall have the authority to carry out the instructions of the person or persons the funeral home reasonably believes holds the right of disposition. The funeral home has no responsibility to independently investigate the existence of any next of kin or relative of the decedent where a means of disposition is fully set forth in a preneed funeral contract or other written directive of the deceased in accordance with this section. If there is more than one person in a class who are equal in priority and the funeral home has no knowledge of any objection by other members of that class, the funeral home may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements, if no other person in that class provides written objections to the funeral home.

(e) No funeral establishment or funeral director who relies in good faith upon the instructions of a preneed funeral contract, written directive of the deceased, or an individual claiming the right of disposition in accordance with this section shall be subject to criminal or civil liability or subject to disciplinary action under this section for carrying out the disposition of the remains in accordance with those instructions.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-9. Permits required for cremation; fee.

(a) It is the duty of any person cremating, or causing or requesting the cremation of, the body of any dead person who died in this state, to secure a permit for the cremation from the Chief Medical Examiner, the county medical examiner or county coroner of the county wherein the death occurred. Any person who willfully fails to secure a permit for a cremation, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200. A permit for cremation shall be acted upon by the Chief Medical Examiner, the county medical examiner or the county coroner after review of the circumstances surrounding the death, as indicated by the death certificate. The person requesting issuance of a permit for cremation shall pay a reasonable fee, as determined by the Chief Medical Examiner, to the county medical examiner or coroner or to the Office of the Chief Medical Examiner, as appropriate, for issuance of the permit.

(b) Any person operating a crematory who does not perform a cremation pursuant to the terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within twenty-one days of receipt of the deceased person’s remains by the crematory, whichever time is less, is guilty of a misdemeanor.

(c) Any person operating a crematory who fails to deliver the cremated remains of a deceased person, pursuant to the terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within thirty-five days of receipt of the deceased person’s remains by the crematory, whichever time is less, is guilty of a misdemeanor.
(d) Any person convicted of a violation of the provisions of subsection (b) or (c) of this section shall be fined not less than $1,000 nor more than $5,000 or confined in jail for a period not to exceed six months, or both.

(e) In any criminal proceeding alleging that a person violated the time requirements of this section, it is a defense to the charge that a delay beyond the time periods provided for in this section were caused by circumstances wholly outside the control of the defendant.

(f) For purposes of this section, “cremation contract” means an agreement to perform a cremation, as a “cremation” is defined in subsection (g), section three, article six, chapter thirty of this code. A cremation contract is an agreement between a crematory and any authorized person or entity, including, but not limited to, the following persons in order of precedence:

(1) The deceased, who has expressed his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive or preneed funeral contract, as defined in section two, article fourteen, chapter forty-five of this code;

(2) The surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent’s death;

(3) An individual previously designated by the deceased as the person with the right to control disposition of the deceased’s remains in a writing signed and notarized by the deceased: Provided, That no person may be designated to serve in such capacity for more than one nonrelative at any one time;

(4) The deceased person’s next of kin;
(5) A public official charged with arranging the final disposition of an indigent deceased person or an unclaimed corpse;

(6) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science;

(7) A public officer required by statute to arrange the final disposition of a deceased person;

(8) Another funeral establishment; or

(9) An executor, administrator or other personal representative of the deceased.

CHAPTER 82

(H. B. 4320 - By Delegates Ferro, Barker and Caputo)

[Passed March 6, 2012; in effect ninety days from passage.] [Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §22-18-17 of the Code of West Virginia, 1931, as amended, relating to the settlement of violations of the Hazardous Waste Management Act by consent agreements, as an alternative to instituting a civil action in the circuit courts of the state.

Be it enacted by the Legislature of West Virginia:

That §22-18-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§22-18-17. Civil penalties and injunctive relief.

(a) (1) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the secretary, of not more than $7,500 for each day of violation, not to exceed a maximum of $22,500. In assessing a penalty, the secretary shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by the secretary by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. The secretary may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the secretary concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the secretary shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty.
Within thirty days after notification of the secretary’s decision, the alleged violator may request a formal hearing before the Environmental Quality Board in accordance with the provisions of article one, chapter twenty-two-b of this code. The authority to levy an administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: *Provided,* That no combination of assessments against a violator under this section may exceed $25,000 per day of each violation: *Provided, however,* That any violation for which the violator has paid a civil administrative penalty assessed under this section may not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules issued pursuant to subsection (a), section six of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the hazardous waste emergency response fund established pursuant to section three, article nineteen of this chapter.

(2) No assessment levied pursuant to subdivision (1), of this subsection becomes due and payable until the procedures for review of the assessment have been completed.

(b) (1) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed $25,000 for each day of violation, which penalty shall be recovered in a civil action either in the circuit court in which the violation occurs or in the circuit court of Kanawha County.

(2) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements,
settlements and otherwise enforce this chapter, the secretary shall propose rules for legislative approval 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.

(c) The secretary may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the secretary to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom the relief is sought.

(d) Upon request of the secretary, the Attorney General, or the prosecuting attorney of the county in which the violation occurs, shall assist the secretary in any civil action under this section.

(e) In any action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney’s fees.
AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §16-5H-1, §16-5H-2, §16-5H-3, §16-5H-4, §16-5H-5, §16-5H-6, §16-5H-7, §16-5H-8, §16-5H-9 and §16-5H-10; to amend and reenact §30-1-7a of said code; to amend and reenact §30-5-3 of said code; to amend and reenact §60A-3-308 of said code; to amend and reenact §60A-9-3, §60A-9-4, §60A-9-5 and §60A-9-7 of said code; to amend said code by adding thereto three new sections, designated §60A-9-4a, §60A-9-5a and §60A-9-8; to amend and reenact §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-7, §60A-10-8 and §60A-10-11 of said code; to amend said code by adding thereto a new section, designated §60A-10-16; and to amend and reenact §61-12-10 of said code, all relating to substance abuse generally; addressing the regulation of opioid treatment programs in this state; updating rules for opioid treatment program facilities to require clinical guidelines, recovery models, education and training requirements for treatment facility staff and treatment limitations and requirements; addressing the licensing and oversight of chronic pain management clinics; creating the Chronic Pain Clinic Licensing Act; providing definitions; establishing requirements for ownership, licensure, operation and management of pain management clinics; establishing
limitations on the dispensing of controlled substances at a pain management clinic; requiring annual inspections of pain management clinics; setting forth exemptions from the act; providing for suspension or revocation of a pain management clinic license and setting forth due process requirements; providing for prohibitions on practicing at or operating a pain management clinic under certain circumstances; providing civil penalties regarding pain management clinics; providing for notice requirements to applicable licensing boards; requiring rules for the licensure of pain management clinics; removing requirement of certain licensed or certified health care professionals to complete continuing education course work on the subject of end-of-life care; requiring certain licensed or certified health care professionals to complete drug diversion training and best practice prescribing of controlled substances training; requiring certain licensing boards to establish drug diversion training and best practice prescribing of controlled substances training; requiring a valid practitioner-patient relationship to exist prior to compounding or dispensing prescriptions; requiring that buprenophine combined with naloxone prescribed or dispensed for treatment for opioid addiction be in the form of sublingual film unless medically contraindicated as of September 1, 2012; clarifying certain circumstances that do not establish a valid practitioner-patient relationship; requiring certain persons to submit information to the Controlled Substances Monitoring Program database within twenty-four hours; requiring additional information to be submitted to the Controlled Substances Monitoring Program database; clarifying that reporting is required for certain amounts of drugs dispensed to patients; requiring verification of certain information reported to the Controlled Substances Monitoring Program database; providing certain requirements and training for law-enforcement officials in order to access the Controlled Substances Monitoring Program database; permitting the Controlled Substances Monitoring Program Database Review Committee to query the Controlled Substances Monitoring Program database; requiring the Board
of Pharmacy to review the Controlled Substances Monitoring Program database in order to issue certain reports; permitting the Board of Pharmacy to share certain information contained in the Controlled Substances Monitoring Program database with the Department of Health and Human Resources; requiring the Board of Pharmacy to establish an advisory committee; setting forth the membership of the advisory committee; outlining the advisory committee’s scope and duties; requiring the Board of Pharmacy to create a Controlled Substances Monitoring Program Database Review Committee; setting forth the membership of the review committee; outlining the review committee’s scope, powers and duties; requiring the Board of Pharmacy to promulgate certain legislative rules; permitting prescribing practitioners to notify law enforcement of certain violations with immunity; requiring the Board of Pharmacy to provide annual reports to the Legislature; requiring various boards that regulate professions with prescriptive authority to require persons licensed by the board to conduct an initial search of the Controlled Substances Monitoring Program database when prescribing a course of treatment that includes prescribing of pain-relieving controlled substances and an annual search of the Controlled Substances Monitoring Program database for certain patients; setting forth penalties for failing to search the Controlled Substances Monitoring Program database in certain circumstances; establishing a felony offense and penalties for unauthorized access, use or disclosure of information contained in the Controlled Substances Monitoring Program database; creating Fight Substance Abuse Fund and setting forth permissible uses for fund; defining terms and updating definitions in the Methamphetamine Laboratory Eradication Act; establishing reduced daily, monthly and annual amount restrictions on the sale, transfer, dispensing or possession of ephedrine, pseudoephedrine and phenylpropanolamine by pharmacies; establishing criminal penalties for purchasing, receiving or possessing certain quantities of ephedrine, pseudoephedrine and phenylpropanolamine; establishing criminal penalties for
pharmacies, wholesalers or other entities which sell, transfer or dispense a product under certain circumstances; amending the restrictions on the sale, transfer or delivery of certain designated precursors to the manufacture of methamphetamine or other controlled substances; requiring offer of patient counseling by a pharmacist upon the sale, transfer or delivery of certain designated precursors to the manufacture of methamphetamine or other controlled substances; requiring certain processing requirements of pharmacists, pharmacy intern and pharmacy technicians; establishing use and requirements of the Multi-State Real-Time Tracking System; requiring pharmacies and retail establishments to electronically submit certain information to the Multi-State Real-Time Tracking System; requiring pharmacies and retail establishments to stop pending sales under certain circumstances; limiting liability of retailers utilizing the Multi-State Real-Time Tracking System under certain circumstances; requiring pharmacies or retail establishments to maintain written logs or electronic record-keeping databases under certain circumstances; providing supersession and preemption of all local laws, ordinances and regulations pertaining to the sale of certain substances; amending reporting requirements and requiring real-time electronic reporting of certain information; providing for law enforcement access to information pertaining to the sale of certain substances; establishing an expiration date for Multi-State Real-Time Tracking System; requiring the National Association of Drug Diversion Investigators to forward certain records to the West Virginia State Police and provide real-time access to the Multi-State Real-Time Tracking System to law enforcement; requiring the West Virginia State Police to submit an annual report with data and statistics on methamphetamine use, production and distribution; and requiring the chief medical officer to provide notice to the Controlled Substances Monitoring Program Database Review Committee in the case of a death caused by overdose.
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; that said code be amended by adding thereto a new article, designated §16-5H-1, §16-5H-2, §16-5H-3, §16-5H-4, §16-5H-5, §16-5H-6, §16-5H-7, §16-5H-8, §16-5H-9 and §16-5H-10; that §30-1-7a of said code be amended and reenacted; that §30-5-3 of said code be amended and reenacted; that §60A-3-308 of said code be amended and reenacted; that §60A-9-3, §60A-9-4, §60A-9-5 and §60A-9-7 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §60A-9-4a, §60A-9-5a and §60A-9-8; that §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-7, §60A-10-8 and §60A-10-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §60A-10-16; and that §61-12-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

(a) 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 intellectual disability centers and any other areas necessary to advise the secretary on rules.

(b) The rules may include, but are not limited to, the regulation of:

(1) 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:

(A) Restrict the subdivision or development of a tract for
any more intense or higher density occupancy than a
single-family dwelling unit;

(B) Propose or enforce rules applicable to single-family
dwelling units for single-family dwelling unit sanitary
sewerage disposal systems; or

(C) Restrict any subdivision or development which might
endanger the public health, the sanitary condition of streams
or sources of water supply;

(2) 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;

(3) 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;

(4) Safe drinking water, including:

(A) 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;

(B) 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; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(C) 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;

(5) 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;
(6) 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. 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;

(7) 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. 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. 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;

(8) 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;

(9) The collection of data on health status, the health system and the costs of health care;
(10) Opioid treatment programs duly licensed and operating under the requirements of chapter twenty-seven of this code.

(A) 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.

(B) No applications for a certificate of need for opioid treatment programs may be approved by the Health Care Authority as of the effective date of the 2007 amendments to this subsection.

(C) 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.

(D) The secretary shall file revised emergency rules with the Secretary of State to regulate opioid treatment programs in compliance with the provisions of this section. 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.

(E) All existing opioid treatment programs shall be subject to monitoring by the secretary. All staff working or volunteering at opioid treatment programs shall complete the minimum education, reporting and safety training criteria established by the secretary. 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:
(i) 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.

(ii) The patient may be admitted to the opioid treatment 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. 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.

(iii) 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.

(iv) That within thirty days after admission of a patient, the opioid treatment program shall develop an individualized treatment plan of care and attach the plan to the patient’s chart no later than five days after the plan is developed. The opioid treatment program shall follow guidelines established by a nationally recognized authority approved by the secretary and include a recovery model in the individualized treatment plan of care. The treatment plan is to reflect that detoxification is an option for treatment and supported by the program; that under the detoxification protocol the strength of maintenance doses of methadone should decrease over time, the treatment should be limited to a defined period of time, and participants are required to work toward a drug-free lifestyle.
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;

(D) Successful completion of the individualized treatment care plan; or

(E) An unexplained reason.

That random drug testing of all patients shall be conducted during the course of treatment at least monthly. For purposes of these rules, “random drug testing” means 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. 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.
(vii) 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, lorazepan, clonazepam and alprazolam;

(D) Cocaine;

(E) Methamphetamine or amphetamine;

(F) Tetrahydrocannabinol, delta-9-tetrahydrocannabinol or dronabinol or other similar substances; or

(G) Other drugs determined by community standards, regional variation or clinical indication.

(viii) That a positive drug 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. 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 of no less than thirty minutes 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 of no less than thirty minutes, 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 of no less than thirty minutes, 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: Provided, That testing positive solely for tetrahydrocannabinol, delta-9-tetrahydrocannabinol or dronabinol or similar substances shall not serve as a basis for discharge from the program.

(ix) 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:

(A) Confirmation that 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) Confirmation that the random drug tests were performed at least monthly for all program participants;

(C) The total number and the number of positive results; and

(D) The number of expulsions from the program.

(x) That all opioid treatment facilities be open for business seven days per week; however, the opioid treatment center may be closed for eight holidays and two training days per year. During all operating hours, every opioid treatment
program shall have a health care professional as defined by
rule promulgated by the secretary actively licensed in this
state present and on duty at the treatment center and a
physician actively licensed in this state available for
consultation.

(xi) That the Office of Health Facility Licensure and
Certification develop policies and procedures in conjunction
with the Board of Pharmacy that will allow physicians
treating patients through an opioid treatment program access
to the Controlled Substances Monitoring Program database
maintained by the Board of Pharmacy at the patient’s intake,
before administration of methadone or other treatment in an
opioid treatment program, after the initial thirty days of
treatment, prior to any take-home medication being granted,
after any positive drug test, and at each ninety-day treatment
review to ensure the patient is not seeking prescription
medication from multiple sources. The results obtained from
the Controlled Substances Monitoring Program database shall
be maintained with the patient records.

(xii) That each opioid treatment program shall establish
a peer review committee, with at least one physician member,
to review whether the program is following guidelines
established by a nationally recognized authority approved by
the secretary. The secretary shall prescribe the procedure for
evaluation by the peer review. Each opioid treatment
program shall submit a report of the peer review results to the
secretary on a quarterly basis.

(xiii) The secretary shall propose a rule for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code for the distribution of state
aid to local health departments and basic public health
services funds.
The rule shall include the following provisions:

- Base allocation amount for each county;
- 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;
- A calculation of funds utilized for state support of local health departments;
- 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;
- A hold-harmless provision to provide that each local health department receives no less in state support for a period of four years beginning in the 2009 budget year.

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.

(xiv) Other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.
ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

§16-5H-1. Purpose and short title.

This article shall be known as the Chronic Pain Clinic Licensing Act. The purpose of this act is to establish licensing requirements for facilities that treat patients for chronic pain management in order to ensure that patients may be lawfully treated for chronic pain by physicians in facilities that comply with oversight requirements developed by the Department of Health and Human Resources.


(a) “Chronic pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. For purposes of this article, “chronic pain” does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(b) “Director” means the Director of the Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(c) “Owner” means any person, partnership, association or corporation listed as the owner of a pain management clinic on the licensing forms required by this article.

(d) “Pain management clinic” means all privately owned pain management clinics, facilities or offices not otherwise exempted from this article and which meets both of the following criteria:
(1) Where in any month more than fifty percent of patients of the prescribers or dispensers are prescribed or dispensed opioids or other controlled substances specified in rules promulgated pursuant to this article for chronic pain resulting from non-malignant conditions;

(2) The facility meets any other identifying criteria established by the secretary by rule.

(e) “Physician” means an individual authorized to practice medicine or surgery or osteopathic medicine or surgery in this state.

(f) “Prescriber” means an individual who is authorized by law to prescribe drugs or drug therapy related devices in the course of the individual’s professional practice, including only a medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant or osteopathic physician assistant who holds a certificate to prescribe drugs; or an advanced nurse practitioner who holds a certificate to prescribe.

(g) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources. The secretary may define in rules any term or phrase used in this article which is not expressly defined.

§16-5H-3. Pain management clinics to obtain license; application; fees and inspections.

(a) No person, partnership, association or corporation may operate a pain management clinic without first obtaining a license from the secretary in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.
(b) Any person, partnership, association or corporation desiring a license to operate a pain management clinic in this state shall file with the Office of Health Facility Licensure and Certification an application in such form as the secretary shall prescribe and furnish accompanied by a fee to be determined by the secretary.

(c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect each facility prior to issuing a license and review all documentation submitted with the application. The secretary shall issue a license if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(d) A license shall expire one year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted on forms furnished by the secretary. A license shall be renewed if the secretary determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A license issued to one facility pursuant to this article is not transferable or assignable. A change of ownership of a licensed pain management clinic requires submission of a new application.

(e) The secretary or his or her designee shall inspect on a periodic basis all pain management clinics that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

§16-5H-4. Operational requirements.

(a) Any person, partnership, association or corporation that desires to operate a pain management clinic in this state must submit to the director documentation that the facility meets all of the following requirements:
(1) The clinic shall be licensed in this state with the secretary, the Secretary of State, the State Tax Department and all other applicable business or license entities.

(2) The application shall list all owners of the clinic. At least one owner shall be a physician actively licensed to practice medicine, surgery or osteopathic medicine or surgery in this state. The clinic shall notify the secretary of any change in ownership within ten days of the change and must submit a new application within the time frame prescribed by the secretary.

(3) Each pain management clinic shall designate a physician owner who shall practice at the clinic and who will be responsible for the operation of the clinic. Within ten days after termination of a designated physician, the clinic shall notify the director of the identity of another designated physician for that clinic. Failing to have a licensed designated physician practicing at the location of the clinic may be the basis for a suspension or revocation of the clinic license. The designated physician shall:

(A) Have a full, active and unencumbered license to practice medicine, surgery or osteopathic medicine or surgery in this state:

(B) Meet one of the following training requirements:

(i) Complete a pain medicine fellowship that is accredited by the Accreditation Council for Graduate Medical Education or such other similar program as may be approved by the secretary; or

(ii) Hold current board certification by the American Board of Pain Medicine or current board certification by the American Board of Anesthesiology or such other board certification as may be approved by the secretary.
(C) Practice at the licensed clinic location for which the physician has assumed responsibility;

(D) Be responsible for complying with all requirements related to the licensing and operation of the clinic;

(E) Supervise, control and direct the activities of each individual working or operating at the facility, including any employee, volunteer or individual under contract, who provides treatment of chronic pain at the clinic or is associated with the provision of that treatment. The supervision, control and direction shall be provided in accordance with rules promulgated by the secretary.

(4) All persons employed by the facility shall comply with the requirements for the operation of a pain management clinic established by this article or by any rule adopted pursuant to this article.

(5) No person may own or be employed by or associated with a pain management clinic who has previously been convicted of, or pleaded guilty to, any felony in this state or another state or territory of the United States. All owners, employees, volunteers or associates of the clinic shall undergo a criminal records check prior to operation of the clinic or engaging in any work, paid or otherwise. The application for license shall include copies of the background check for each anticipated owner, physician, employee, volunteer or associate. The secretary shall review the results of the criminal records check and may deny licensure for any violation of this requirement. The facility shall complete a criminal records check on any subsequent owner, physician, employee, volunteer or associate of the clinic and submit the results to the secretary for continued review.

(6) The clinic may not be owned by, nor may it employ or associate with, any physician or prescriber:
(A) Whose Drug Enforcement Administration number has ever been revoked;

(B) Whose application for a license to prescribe, dispense or administer a controlled substance has been denied by any jurisdiction; or

(C) Who, in any jurisdiction of this state or any other state or territory of the United States, has been convicted of or plead guilty or nolo contendere to an offense that constitutes a felony for receipt of illicit and diverted drugs, including controlled substances, as defined by section one hundred one, article one, chapter sixty-a of this code.

(7) A person may not dispense any medication, including a controlled substance, as defined by section one hundred one, article one, chapter sixty-a of this code, on the premises of a licensed pain management clinic unless he or she is a physician or pharmacist licensed in this state. Prior to dispensing or prescribing controlled substances, as defined by section one hundred one, article one, chapter sixty-a of this code, at a pain management clinic, the treating physician must access the Controlled Substances Monitoring Program database maintained by the Board of Pharmacy to ensure the patient is not seeking controlled substances from multiple sources. If the patient receives ongoing treatment, the physician shall also review the Controlled Substances Monitoring Program database at each patient examination or at least every ninety days. The results obtained from the Controlled Substances Monitoring Program database shall be maintained with the patient’s medical records.

(8) Each clinic location shall be licensed separately, regardless of whether the clinic is operated under the same business name or management as another clinic.
(9) A pain management clinic shall not dispense to any patient more than a seventy-two-hour supply of a controlled substance, as defined by section one hundred one, article one, chapter sixty-a of this code.

(10) The pain management clinic shall develop patient protocols, treatment plans and profiles, as prescribed by the secretary by rule, and which shall include, but not be limited by, the following guidelines:

(A) When a physician diagnoses an individual as having chronic pain, the physician may treat the pain by managing it with medications in amounts or combinations that may not be appropriate when treating other medical conditions. The physician’s diagnosis shall be made after having the individual evaluated by one or more other physicians who specialize in the treatment of the area, system or organ of the body perceived as the source of the pain unless the individual has been previously diagnosed as suffering from chronic pain and is referred to the pain management clinic by such diagnosing physician. The physician’s diagnosis and treatment decisions shall be made according to accepted and prevailing standards for medical care.

(B) The physician shall maintain a record of all of the following:

(i) Medical history and physical examination of the individual;

(ii) The diagnosis of chronic pain, including signs, symptoms and causes;

(iii) The plan of treatment proposed, the patient’s response to the treatment and any modification to the plan of treatment;
(iv) The dates on which any medications were prescribed, dispensed or administered, the name and address of the individual to or for whom the medications were prescribed, dispensed or administered and the amounts and dosage forms for the drugs prescribed, dispensed or administered;

(v) A copy of the report made by the physician to whom referral for evaluation was made.

(C) A physician, physician assistant, certified registered nurse anesthetist or advanced nurse practitioner shall perform a physical examination of a patient on the same day that the physician initially prescribes, dispenses or administers a controlled substance to a patient and at least four times a year thereafter at a pain management clinic according to accepted and prevailing standards for medical care.

(D) A physician authorized to prescribe controlled substances who practices at a pain management clinic is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing controlled substance pain medication. The physician shall comply with all state and federal requirements for tamper-resistant prescription paper. In addition to any other requirements imposed by statute or rule, the physician shall notify the secretary in writing within twenty-four hours following any theft or loss of a prescription blank or breach of any other method for prescribing pain medication.

(c) Upon satisfaction that an applicant has met all of the requirements of this article, the secretary may issue a license to operate a pain management clinic. An entity that obtains this license may possess, have custody or control of, and dispense drugs designated as Schedule II or Schedule III in sections two hundred six or two hundred eight, article two, chapter sixty-a of this code.
§16-5H-5. Exemptions.

1. (a) The following facilities are not pain management clinics subject to the requirements of this article:

2. (1) A facility that is affiliated with an accredited medical school at which training is provided for medical or osteopathic students, residents or fellows, podiatrists, dentists, nurses, physician assistants, veterinarians or any affiliated facility to the extent that it participates in the provision of the instruction;

3. (2) A facility that does not prescribe or dispense controlled substances for the treatment of chronic pain;

4. (3) A hospital licensed in this state, a facility located on the campus of a licensed hospital that is owned, operated or controlled by that licensed hospital, and an ambulatory health care facility as defined by section two, article two-d, chapter sixteen of this code that is owned, operated or controlled by a licensed hospital;

5. (4) A physician practice owned or controlled, in whole or in part, by a licensed hospital or by an entity that owns or controls, in whole or in part, one or more licensed hospitals;

6. (5) A hospice program licensed in this state;

7. (6) A nursing home licensed in this state;

8. (7) An ambulatory surgical facility as defined by section two, article two-d, chapter sixteen of this code; and

9. (8) A facility conducting clinical research that may use controlled substances in studies approved by a hospital-based institutional review board or an institutional review board accredited by the association for the accreditation of human research protection programs.
petition to the secretary for an exemption from the
requirements of this article. All such petitions are subject to
the administrative procedures requirements of chapter
twenty-nine-a of this code.

§16-5H-6. Inspection.

(a) The Office of Health Facility Licensure and
Certification shall inspect each pain management clinic
annually, including a review of the patient records, to ensure
that it complies with this article and the applicable rules.

(b) During an onsite inspection, the inspector shall make
a reasonable attempt to discuss each violation with the
designated physician or other owners of the pain management
clinic before issuing a formal written notification.

(c) Any action taken to correct a violation shall be
documented in writing by the designated physician or other
owners of the pain management clinic and verified by
follow-up visits by the Office of Health Facility Licensure
and Certification.

§16-5H-7. Suspension; revocation.

(a) The secretary may suspend or revoke a license issued
pursuant to this article if the provisions of this article or of
the rules promulgated pursuant to this article are violated.
The secretary may revoke a clinic’s license and prohibit all
physicians associated with that pain management clinic from
practicing at the clinic location based upon an annual or
periodic inspection and evaluation.

(b) Before any such license is suspended or revoked,
however, written notice shall be given the licensee, stating
the grounds of the complaint, and the date, time and place set
for the hearing on the complaint, which date shall not be less than thirty days from the time notice is given. The notice shall be sent by certified mail to the licensee at the address where the pain management clinic concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(c) If a license is revoked as herein provided, a new application for a license shall be considered by the secretary if, when and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection therewith.

(e) Any applicant or licensee who is dissatisfied with the decision of the secretary as a result of the hearing provided in this section may, within thirty days after receiving notice of the decision, appeal the decision to the Circuit Court of Kanawha County, in term or in vacation, for judicial review of the decision.

(f) The court may affirm, modify or reverse the decision of the secretary and either the applicant or licensee or the secretary may appeal from the court’s decision to the Supreme Court of Appeals.

(g) If the license of a pain management clinic is revoked or suspended, the designated physician of the clinic, any other owner of the clinic or the owner or lessor of the clinic
property shall cease to operate the facility as a pain management clinic as of the effective date of the suspension or revocation. The owner or lessor of the clinic property is responsible for removing all signs and symbols identifying the premises as a pain management clinic within thirty days.

(h) Upon the effective date of the suspension or revocation, the designated physician of the pain management clinic shall advise the secretary and the Board of Pharmacy of the disposition of all drugs located on the premises. The disposition is subject to the supervision and approval of the secretary. Drugs that are purchased or held by a pain management clinic that is not licensed may be deemed adulterated.

(i) If the license of a pain management clinic is suspended or revoked, any person named in the licensing documents of the clinic, including persons owning or operating the pain management clinic, may not, as an individual or as part of a group, apply to operate another pain management clinic for five years after the date of suspension or revocation.

(j) The period of suspension for the license of a pain management clinic shall be prescribed by the secretary, but may not exceed one year.

§16-5H-8. Violations; penalties; injunction.

(a) Any person, partnership, association or corporation which establishes, conducts, manages or operates a pain management clinic without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule lawfully promulgated pursuant to this article, shall be assessed a civil penalty by the secretary in accordance with this subsection. Each day of continuing violation after conviction shall be considered a separate violation:
(1) If a pain management clinic or any owner or designated physician is found to be in violation of any provision of this article, unless otherwise noted herein, the secretary may suspend or revoke the clinic’s license.

(2) If the clinic’s designated physician knowingly and intentionally misrepresents actions taken to correct a violation, the secretary may impose a civil penalty not to exceed $10,000, and, in the case of an owner-operated pain management clinic, revoke or deny a pain management clinic’s license.

(3) If an owner or designated physician of a pain management clinic concurrently operates an unlicensed pain management clinic, the secretary may impose a civil penalty upon the owner or physician, or both, not to exceed $5,000 per day.

(4) If the owner of a pain management clinic that requires a license under this article fails to apply for a new license for the clinic upon a change-of-ownership and operates the clinic under the new ownership, the secretary may impose a civil penalty not to exceed $5,000.

(5) If a physician knowingly operates, owns or manages an unlicensed pain management clinic that is required to be licensed pursuant to this article; knowingly prescribes or dispenses or causes to be prescribed or dispensed, controlled substances in an unlicensed pain management clinic that is required to be licensed; or licenses a pain management clinic through misrepresentation or fraud; procures or attempts to procure a license for a pain management clinic for any other person by making or causing to be made any false representation, the secretary may assess a civil penalty of not more than $20,000. The penalty may be in addition to or in lieu of any other action that may be taken by the secretary or any other board, court or entity.
(b) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, or corporation to restrain or prevent the establishment, conduct, management or operation of any pain management clinic or violation of any provisions of this article or any rule lawfully promulgated thereunder without first obtaining a license therefor in the manner hereinbefore provided.

(c) In determining whether a penalty is to be imposed and in fixing the amount of the penalty, the secretary shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the pain management clinic’s actions or the actions of the designated or practicing physician, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated;

(2) What actions, if any, the owner or designated physician took to correct the violations;

(3) Whether there were any previous violations at the pain management clinic; and

(4) The financial benefits that the pain management clinic derived from committing or continuing to commit the violation.

(d) Upon finding that a physician has violated the provisions of this article or rules adopted pursuant to this article, the secretary shall provide notice of the violation to the applicable licensing board.


(a) The Secretary of the Department of Health and Human Resources, in collaboration with the West Virginia
Board of Medicine and the West Virginia Board of Osteopathy, shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code for the licensure of pain management clinics to ensure adequate care, treatment, health, safety, welfare and comfort of patients at these facilities. These rules shall include, at a minimum:

(1) The process to be followed by applicants seeking a license;

(2) The qualifications and supervision of licensed and non-licensed personnel at pain management clinics and training requirements for all facility health care practitioners who are not regulated by another board;

(3) The provision and coordination of patient care, including the development of a written plan of care;

(4) The management, operation, staffing and equipping of the pain management clinic;

(5) The clinical, medical, patient and business records kept by the pain management clinic;

(6) The procedures for inspections and for the review of utilization and quality of patient care;

(7) The standards and procedures for the general operation of a pain management clinic, including facility operations, physical operations, infection control requirements, health and safety requirements and quality assurance;

(8) Identification of drugs that may be used to treat chronic pain that identify a facility as a pain management clinic, including, at a minimum, tramadol and carisoprodol;

(9) Any other criteria that identify a facility as a pain management clinic;
(10) The standards and procedures to be followed by an owner in providing supervision, direction and control of individuals employed by or associated with a pain management clinic;

(11) Data collection and reporting requirements; and

(12) Such other standards or requirements as the secretary determines are appropriate.

(b) The rules authorized by this section may be filed as emergency rules if deemed necessary to promptly effectuate the purposes of this article.

§16-5H-10. Advertisement disclosure.

Any advertisement made by or on behalf of a pain management clinic through public media, such as a telephone directory, medical directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication, concerning the treatment of chronic pain, as defined in section two of this article, shall include the name of, at a minimum, one physician owner responsible for the content of the advertisement.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO STATE BOARDS.

§30-1-7a. Continuing education.

(a) Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.
(b) Notwithstanding any other provision of this code or the provision of any rule to the contrary, each person issued a license to practice medicine and surgery or a license to practice podiatry or licensed as a physician assistant by the West Virginia Board of Medicine, each person issued a license to practice dentistry by the West Virginia Board of Dental Examiners, each person issued a license to practice optometry by the West Virginia Board of Optometry, each person licensed as a pharmacist by the West Virginia Board of Pharmacy, each person licensed to practice registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia Board of Examiners for Registered Professional Nurses, each person licensed as a licensed practical nurse by the West Virginia State Board of Examiners for Licensed Practical Nurses and each person licensed to practice medicine and surgery as an osteopathic physician and surgeon or licensed or certified as an osteopathic physician assistant by the West Virginia Board of Osteopathy shall complete drug diversion training and best practice prescribing of controlled substances training, as the trainings are established by his or her respective licensing board, if that person prescribes, administers, or dispenses a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code.

(1) Notwithstanding any other provision of this code or the provision of any rule to the contrary, the West Virginia Board of Medicine, the West Virginia Board of Dental Examiners, the West Virginia Board of Optometry, the West Virginia Board of Pharmacy, the West Virginia Board of Examiners for Registered Professional Nurses, the West Virginia State Board of Examiners for Licensed Practical Nurses and the West Virginia Board of Osteopathy shall establish continuing education requirements and criteria appropriate to their respective discipline on the subject of drug diversion training and best practice prescribing of controlled substances training for each person issued a license or certificate by their respective board who prescribes,
administers or dispenses a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code, and shall develop a certification form pursuant to subdivision (b)(2) of this section.

(2) Each person who receives his or her initial license or certificate from any of the boards set forth in subsection (b) shall complete the continuing education requirements set forth in subsection (b) within one year of receiving his or her initial license from that board and each person licensed or certified by any of the boards set forth in subsection (b) who has held his or her license or certificate for longer than one year shall complete the continuing education requirements set forth in subsection (b) as a prerequisite to each license renewal: Provided, That a person subject to subsection (b) may waive the continuing education requirements for license renewal set forth in subsection (b) if he or she completes and submits to his or her licensing board a certification form developed by his or her licensing board attesting that he or she has not prescribed, administered, or dispensed a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code, during the entire applicable reporting period.

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

§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

(a) It is unlawful for any person not a pharmacist, or who does not employ a pharmacist, to conduct any pharmacy or
store for the purpose of retailing, compounding or dispensing prescription drugs or prescription devices.

(b) It is unlawful for the proprietor of any store or pharmacy, any ambulatory health care facility, as that term is defined in section one, article five-b, chapter sixteen of this code, that offers pharmaceutical care, or a facility operated to provide health care or mental health care services free of charge or at a reduced rate and that operates a charitable clinic pharmacy to permit any person not a pharmacist to compound or dispense prescriptions or prescription refills or to retail or dispense the poisons and narcotic drugs named in sections two, three and six, article eight, chapter sixteen of this code: Provided, That a licensed intern may compound and dispense prescriptions or prescription refills under the direct supervision of a pharmacist: Provided, however, That registered pharmacy technicians may assist in the preparation and dispensing of prescriptions or prescription refills, including, but not limited to, reconstitution of liquid medications, typing and affixing labels under the direct supervision of a licensed pharmacist.

(c) It is the duty of a pharmacist or employer who employs an intern to license the intern with the board within ninety days after employment. The board shall furnish proper forms for this purpose and shall issue a certificate to the intern upon licensure.

(d) The experience requirement for licensure as a pharmacist shall be computed from the date certified by the supervising pharmacist as the date of entering the internship. If the internship is not registered with the Board of Pharmacy, then the intern shall receive no credit for the experience when he or she makes application for examination for licensure as a pharmacist: Provided, That credit may be given for the unregistered experience if an appeal is made and evidence
produced showing experience was obtained but not registered and that failure to register the internship experience was not the fault of the intern.

(e) An intern having served part or all of his or her internship in a pharmacy in another state or foreign country shall be given credit for the same when the affidavit of his or her internship is signed by the pharmacist under whom he or she served, and it shows the dates and number of hours served in the internship and when the affidavit is attested by the secretary of the State Board of Pharmacy of the state or country where the internship was served.

(f) Up to one third of the experience requirement for licensure as a pharmacist may be fulfilled by an internship in a foreign country.

(g) No pharmacist may compound or dispense any prescription order when he or she has knowledge that the prescription was issued by a practitioner without establishing a valid practitioner-patient relationship. An online or telephonic evaluation by questionnaire, or an online or telephonic consultation, is inadequate to establish a valid practitioner-patient relationship: Provided, That this prohibition does not apply:

(1) In a documented emergency;

(2) In an on-call or cross-coverage situation; or

(3) Where patient care is rendered in consultation with another practitioner who has an ongoing relationship with the patient and who has agreed to supervise the patient’s treatment, including the use of any prescribed medications.
CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-308. Prescriptions.

(a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the lawful prescription of a practitioner.

(b) In emergency situations, as defined by rule of the said appropriate department, board or agency, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescription shall be retained in conformity with the requirements of section three hundred six of this article. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under appropriate state or federal statute, shall not be dispensed without a lawful prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(d) (1) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medicinal purpose: Provided, That buprenorphine shall be dispensed only by prescription pursuant to subsections (a), (b) and (c) of this section: Provided, however, That the
controlled substances included in subsection (e), section two
hundred twelve, article two of this chapter shall be dispensed,
sold or distributed only by a physician, in a pharmacy by a
pharmacist or pharmacy technician, or health care
professional.

(2) If the substance described in subsection (e), section
two hundred twelve, article two of this chapter is dispensed,
sold or distributed in a pharmacy:

(A) The substance shall be dispensed, sold or distributed
only by a pharmacist or a pharmacy technician; and

(B) Any person purchasing, receiving or otherwise
acquiring any such substance shall produce a photographic
identification issued by a state or federal governmental entity
reflecting his or her date of birth.

(e) Notwithstanding any provision of this code to the
contrary, on or after September 1, 2012, any practitioner or
entity prescribing or dispensing a combination of
buprenorphine and naloxone to treat opioid addiction shall
only prescribe or dispense said product in the form of
sublingual film unless the sublingual film is clinically
contraindicated. If the prescriber or dispenser determines that
sublingual film is contraindicated he or she shall document
the reasons for not dispensing sublingual film in the patient’s
file or chart.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-3. Reporting system requirements; implementation;
central repository requirement.

(a) On or before September 1, 2002, the Board of
Pharmacy shall implement a program wherein a central
repository is established and maintained which shall contain
such information as is required by the provisions of this article regarding Schedule II, III and IV controlled substance prescriptions written or filled in this state. In implementing this program, the Board of Pharmacy shall consult with the West Virginia State Police, the licensing boards of practitioners affected by this article and affected practitioners.

(b) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The State Board of Pharmacy shall allow reporting of the required information by electronic data transfer where feasible, and where not feasible, on reporting forms promulgated by the Board of Pharmacy. The information required to be submitted by the provisions of this article shall be required to be filed no more frequently than within twenty-four hours.

(c) (1) The State Board of Pharmacy shall provide for the electronic transmission of the information required to be provided by this article by and through the use of a toll-free telephone line.

(2) A dispenser, who does not have an automated record-keeping system capable of producing an electronic report in the established format may request a waiver from electronic reporting. The request for a waiver shall be made to the State Board of Pharmacy in writing and shall be granted if the dispenser agrees in writing to report the data by submitting a completed “Pharmacy Universal Claim Form” as defined by legislative rule.

§60A-9-4. Required information.

(a) Whenever a medical services provider dispenses a controlled substance listed in Schedule II, III or IV, as
established under the provisions of article two of this chapter or whenever a prescription for the controlled substance is filled by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the Board of Pharmacy under this article, report the following information, as applicable:

(1) The name, address, pharmacy prescription number and Drug Enforcement Administration controlled substance registration number of the dispensing pharmacy or the dispensing physician or dentist;

(2) The full legal name, address and birth date of the person for whom the prescription is written;

(3) The name, address and Drug Enforcement Administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II, III and IV controlled substance dispensed;

(5) The quantity and dosage of the Schedule II, III and IV controlled substance dispensed;

(6) The date the prescription was written and the date filled;

(7) The number of refills, if any, authorized by the prescription;

(8) If the prescription being dispensed is being picked up by someone other than the patient on behalf of the patient, the
full legal name, address and birth date of the person picking up the prescription as set forth on the person’s government-issued photo identification card shall be retained in either print or electronic form until such time as otherwise directed by rule promulgated by the board of pharmacy; and

(9) The source of payment for the controlled substance dispensed.

(b) The Board of Pharmacy may prescribe by rule promulgated under this article the form to be used in prescribing a Schedule II, III and IV substance if, in the determination of the board, the administration of the requirements of this section would be facilitated.

(c) Products regulated by the provisions of article ten of this chapter shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.

(d) Reporting required by this section is not required for a drug administered directly to a patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a patient by a practitioner: Provided, That the quantity dispensed may not exceed an amount adequate to treat the patient for a maximum of seventy-two hours with no greater than two seventy-two-hour cycles dispensed in any fifteen-day period of time.

§60A-9-4a. Verification of identity.

Prior to releasing a Schedule II, III or IV controlled substance sold at retail, a pharmacist or pharmacy shall verify the full legal name, address and birth date of the person receiving or otherwise acquiring the controlled substance by requiring the presentation of a valid government-issued photo identification card. This information shall be reported in accordance with the provisions of this article information
§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

(a) (1) The information required by this article to be kept by the State Board of Pharmacy is confidential and not subject to the provisions of chapter twenty-nine-b of this code or obtainable as discovery in civil matters absent a court order and is open to inspection only by inspectors and agents of the State Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as members of a federally affiliated drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief Medical Examiner for use in post-mortem examinations, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III and IV controlled substances, prescribing practitioners and pharmacists and persons with an enforceable court order or regulatory agency administrative subpoena: Provided, That all law-enforcement personnel who have access to the Controlled Substances Monitoring Program database shall be granted access in accordance with applicable state laws and Board of Pharmacy legislative rules, shall be certified as a West Virginia law-enforcement officer and shall have successfully completed United States Drug Enforcement Administration Diversion Training and National Association of Drug Diversion Investigation Training. All information released by the State Board of Pharmacy must be related to a specific patient or a specific individual or entity under investigation.
by any of the above parties except that practitioners who
prescribe or dispense controlled substances may request
specific data related to their Drug Enforcement
Administration controlled substance registration number or
for the purpose of providing treatment to a patient: Provided,
however, That the West Virginia Controlled Substances
Monitoring Program Database Review Committee established
in subsection (b) of this section is authorized to query the
database to comply with said subsection.

(2) Subject to the provisions of subdivision (1) of this
subsection, the board shall also review the West Virginia
Controlled Substance Monitoring Program database and issue
reports that identify abnormal or unusual practices of patients
who exceed parameters as determined by the advisory
committee established in this section. The board shall
communicate with prescribers and dispensers to more
effectively manage the medications of their patients in the
manner recommended by the advisory committee. All other
reports produced by the board shall be kept confidential. The
board shall maintain the information required by this article
for a period of not less than five years. Notwithstanding any
other provisions of this code to the contrary, data obtained
under the provisions of this article may be used for
compilation of educational, scholarly or statistical purposes,
and may be shared with the West Virginia Department of
Health and Human Resources for those purposes, as long as
the identities of persons or entities and any personally
identifiable information, including protected health
information, contained therein shall be redacted, scrubbed or
otherwise irreversibly destroyed in a manner that will
preserve the confidential nature of the information. No
individual or entity required to report under section four of
this article may be subject to a claim for civil damages or
other civil relief for the reporting of information to the Board
of Pharmacy as required under and in accordance with the
provisions of this article.
(3) The board shall establish an advisory committee to develop, implement and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients in this state. This advisory committee shall:

(A) Consist of the following members: A physician licensed by the West Virginia Board of Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed by the West Virginia Board of Osteopathy, a licensed physician certified by the American Board of Pain Medicine, a licensed physician board certified in medical oncology recommended by the West Virginia State Medical Association, a licensed physician board certified in palliative care recommended by the West Virginia Center on End of Life Care, a pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the West Virginia Academy of Family Physicians, an expert in drug diversion and such other members as determined by the board.

(B) Recommend parameters to identify abnormal or unusual usage patterns of controlled substances for patients in order to prepare reports as requested in accordance with subsection (a), subdivision (2) of this section.

(C) Make recommendations for training, research and other areas that are determined by the committee to have the potential to reduce inappropriate use of prescription drugs in this state, including, but not limited to, studying issues related to diversion of controlled substances used for the management of opioid addiction.

(D) Monitor the ability of medical services providers, health care facilities, pharmacists and pharmacies to meet the twenty-four hour reporting requirement for the Controlled Substances Monitoring Program set forth in section three of this article, and report on the feasibility of requiring real-time reporting.
(E) Establish outreach programs with local law enforcement to provide education to local law enforcement on the requirements and use of the Controlled Substances Monitoring Program database established in this article.

(b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring Program Database Review Committee of individuals consisting of two prosecuting attorneys from West Virginia counties, two physicians with specialties which require extensive use of controlled substances and a pharmacist who is trained in the use and abuse of controlled substances. The review committee may determine that an additional physician who is an expert in the field under investigation be added to the team when the facts of a case indicate that the additional expertise is required. The review committee, working independently, may query the database based on parameters established by the advisory committee. The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by law enforcement or the licensing board having jurisdiction over the prescribers or dispensers under consideration. The review committee shall also review notices provided by the chief medical examiner pursuant to subsection (h), section ten, article twelve, chapter sixty-one of this code and determine on a case-by-case basis whether a practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose may have breached professional or occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. Only in those cases in which there is reasonable cause to believe a breach of professional or occupational standards or a criminal act may have occurred, the review committee shall notify the appropriate professional licensing agency having jurisdiction
over the applicable prescriber or dispenser and appropriate law-enforcement agencies and provide pertinent information from the database for their consideration. The number of cases identified shall be determined by the review committee based on a number that can be adequately reviewed by the review committee. The information obtained and developed may not be shared except as provided in this article and is not subject to the provisions of chapter twenty-nine-b of this code or obtainable as discovering in civil matters absent a court order.

(c) The Board of Pharmacy is responsible for establishing and providing administrative support for the advisory committee and the West Virginia Controlled Substances Monitoring Program Database Review Committee. The advisory committee and the review committee shall elect a chair by majority vote. Members of the advisory committee and the review committee may not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) The board shall promulgate rules with advice and consent of the advisory committee, in accordance with the provisions of article three, chapter twenty-nine-a of this code on or before June 1, 2013. The legislative rules must include, but shall not be limited to, the following matters: (1) Identifying parameters used in identifying abnormal or unusual prescribing or dispensing patterns; (2) processing parameters and developing reports of abnormal or unusual prescribing or dispensing patterns for patients, practitioners and dispensers; (3) establishing the information to be contained in reports and the process by which the reports will be generated and disseminated; and (4) setting up processes and procedures to ensure that the privacy, confidentiality, and security of information collected, recorded, transmitted and maintained by the review committee is not disclosed except as provided in this section.
(e) All practitioners, as that term is defined in section one hundred-one, article two of this chapter who prescribe or dispense schedule II, III or IV controlled substances shall, on or before July 1, 2011, have online or other form of electronic access to the West Virginia Controlled Substances Monitoring Program database;

(f) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program database pursuant to this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database;

(g) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or declining to prescribe or dispense a schedule II, III or IV controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense; and

(h) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in the prescribing or dispensing practitioner’s judgment, may be in violation of section four hundred ten, article four of this chapter, based on information obtained and reviewed from the controlled substances monitoring database. A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune from any civil, administrative or criminal liability that otherwise might be incurred or imposed because of the notification if the notification is made in good faith.

(i) Nothing in the article may be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program database except as provided in section five-a of this article.
(j) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled Substance Monitoring Program to the Legislative Oversight Commission on Health and Human Resources Accountability with recommendations for needed legislation no later than January 1 of each year.

§60A-9-5a. Practitioner requirements to conduct annual search of the database; required rulemaking.

(a) Upon initially prescribing or dispensing any pain-relieving controlled substance for a patient and at least annually thereafter should the prescriber or dispenser continue to treat the patient with controlled substances, all persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement Administration registration identification number and, who are licensed by the Board of Medicine as set forth in article three, chapter thirty of this code, the Board of Registered Professional Nurses as set forth in article seven, chapter thirty of this code, the Board of Dental Examiners as set forth in article four, chapter thirty of this code and the Board of Osteopathy as set forth in article fourteen, chapter thirty of this code shall access the West Virginia Controlled Substances Monitoring Program database for information regarding specific patients for whom they are providing pain-relieving controlled substances as part of a course of treatment for chronic, nonmalignant pain but who are not suffering from a terminal illness. The information obtained from accessing the West Virginia Controlled Substances Monitoring Program database for the patient shall be documented in the patient’s medical record. A pain-relieving controlled substance shall be defined as set forth in section one, article three-a, chapter thirty of this code.

(b) The various boards mentioned in subsection (a) above shall promulgate both emergency and legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.
§60A-9-7. Criminal penalties.

(a) Any person who is required to submit information to the state Board of Pharmacy pursuant to the provisions of this article who fails to do so as directed by the board is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500.

(b) Any person who is required to submit information to the state Board of Pharmacy pursuant to the provisions of this article who knowingly and willfully refuses to submit the information required by this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than six months or fined not more than $1,000, or both confined or fined.

(c) Any person who is required by the provisions of this article to submit information to the state Board of Pharmacy who knowingly submits thereto information known to that person to be false or fraudulent is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year or fined not more than $5,000, or both confined or fined.

(d) Any prescriber or dispenser who is required to access the information contained in the West Virginia Controlled Substances Monitoring Program database as set forth in subsection (a) of section five-a of this article and fails to do so as directed by the rules of their licensing board shall be subject to such discipline as the licensing board deems appropriate.

(e) Any person granted access to the information required by the provisions of this article to be maintained by the state Board of Pharmacy, who shall willfully disclose the information required to be maintained by this article in a manner inconsistent with a legitimate law-enforcement
purpose, a legitimate professional regulatory purpose, the terms of a court order or as otherwise expressly authorized by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months or fined not more than $1,000, or both confined or fined.

(f) Unauthorized access or use or unauthorized disclosure for reasons unrelated to the purposes of this article of the information in the database is a felony punishable by imprisonment in a state correctional facility for not less than one year nor more than five years or fined not less than $3,000 nor more than $10,000, or both imprisoned or fined.


There is hereby created a special revenue account in the state treasury, designated the Fight Substance Abuse Fund, which shall be an interest-bearing account and may be invested in accordance with the provisions of article six, chapter twelve of this code, with interest income a proper credit to the fund. The fund shall consist of appropriations by the Legislature, gifts, donations or any other source. Expenditures from the fund shall be for the following purposes: to provide funding for substance abuse prevention, treatment, treatment coordination, recovery and education.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-3. Definitions.

In this article:

(a) “Board of Pharmacy” or “board” means the West Virginia Board of Pharmacy established by the provisions of article five, chapter thirty of this code.
(b) “Designated precursor” means any drug product made subject to the requirements of this article by the provisions of section seven of this article.

(c) “Distributor” means any person within this state or another state, other than a manufacturer or wholesaler, who sells, delivers, transfers or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.

(d) “Drug product” means a pharmaceutical product that contains ephedrine, pseudoephedrine or phenylpropanolamine or a substance identified on the supplemental list provided in section seven of this article which may be sold without a prescription and which is labeled for use by a consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(e) “Ephedrine” means ephedrine, its salts or optical isomers or salts of optical isomers.

(f) “Manufacturer” means any person within this state who produces, compounds, packages or in any manner initially prepares for sale or use any drug product or any such person in another state if they cause the products to be compounded, packaged or transported into this state.

(g) “National Association of Drug Diversion Investigators” or “NADDI” means the non-profit 501(c)(3) organization established in 1989, made up of members who are responsible for investigating and prosecuting pharmaceutical drug diversion, and that facilitates cooperation between law enforcement, health care professionals, state regulatory agencies and pharmaceutical manufacturers in the investigation and prevention of prescription drug abuse and diversion.
(h) “Multi-State Real-Time Tracking System” or “MSRTTS” means the real-time electronic logging system provided by NADDI at no cost to states that have legislation requiring real-time electronic monitoring of precursor purchases, and agree to use the system. MSRTTS is used by pharmacies and law enforcement to track sales of over-the-counter (OTC) cold and allergy medications containing precursors to the illegal drug, methamphetamine.

(i) “Phenylpropanolamine” means phenylpropanolamine, its salts, optical isomers and salts of optical isomers.

(j) “Pseudoephedrine” means pseudoephedrine, its salts, optical isomers and salts of optical isomers.

(k) “Precursor” means any substance which may be used along with other substances as a component in the production and distribution of illegal methamphetamine.

(l) “Pharmacist” means an individual currently licensed by this state to engage in the practice of pharmacy and pharmaceutical care as defined in subsection (t), section one-b, article five, chapter thirty of this code.

(m) “Pharmacy intern” has the same meaning as the term “intern” as set forth in section one-b, article five, chapter thirty of this code.

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

(o) “Pharmacy counter” means an area in the pharmacy restricted to the public where controlled substances are stored and housed and where controlled substances may only be
§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance; offenses; exceptions; penalties.

(a) A pharmacy may not sell, transfer or dispense to the same person, and a person may not purchase more than three and six-tenths grams per day, more than seven and two-tenths grams in a thirty-day period or more than forty-eight grams annually of ephedrine, pseudoephedrine or...
phenylpropanolamine without a prescription. The limits shall apply to the total amount of ephedrine, pseudoephedrine and phenylpropanolamine contained in the products, and not the overall weight of the products.

(1) Any person who or knowingly purchases, receives or otherwise possesses more than seven and two-tenths grams in a thirty-day period of ephedrine, pseudoephedrine or phenylpropanolamine in any form without a prescription is guilty of a misdemeanor and, upon conviction, shall be confined in a jail for not more than one year, fined not more than $1,000, or both fined and confined.

(2) Any pharmacy, wholesaler or other entity operating the retail establishment which sells, transfers or dispenses a product in violation of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000 for the first offense, or more than $10,000 for each subsequent offense.

(b) Notwithstanding the provisions of subdivision (a)(1) of this section, any person convicted of a second or subsequent violation of the provisions of said subdivision or a statute or ordinance of the United States or another state which contains the same essential elements is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than $25,000, or both imprisoned and fined.

(c) The provisions of subsection (a) of this section shall not apply to:

(1) Products dispensed pursuant to a valid prescription;

(2) Drug products which are for pediatric use primarily intended for administration to children under the age of twelve;
(3) Drug products containing ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers or salts of optical isomers or other designated precursor which have been determined by the Board of Pharmacy to be in a form which is not feasible for being used for the manufacture of methamphetamine; or

(4) Persons lawfully possessing drug products in their capacities as distributors, wholesalers, manufacturers, pharmacists, pharmacy interns, pharmacy technicians, or health care professionals.

(d) Notwithstanding any provision of this code to the contrary, any person who knowingly possesses any amount of ephedrine, pseudoephedrine, phenylpropanolamine or other designated precursor with the intent to use it in the manufacture of methamphetamine or who knowingly possesses a substance containing ephedrine, pseudoephedrine or phenylpropanolamine or their salts, optical isomers or salts of optical isomers in a state or form which is, or has been altered or converted from the state or form in which these chemicals are, or were, commercially distributed is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than two nor more than ten years, fined not more than $25,000, or both imprisoned and fined.

(e) (1) Any pharmacy, wholesaler, manufacturer or distributor of drug products containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers or salts of optical isomers or other designated precursor shall obtain a registration annually from the State Board of Pharmacy as described in section six of this article. Any such pharmacy, wholesaler, manufacturer or distributor shall keep complete records of all sales and transactions as provided in section eight of this article. The records shall be gathered and maintained pursuant to legislative rule promulgated by the Board of Pharmacy.
(2) Any drug products possessed without a registration as provided in this section are subject to forfeiture upon conviction for a violation of this section.

(3) In addition to any administrative penalties provided by law, any violation of this subsection is a misdemeanor, punishable upon conviction by a fine in an amount not more than $10,000.

§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products; penalties.

(a) No pharmacy or individual may display, offer for sale or place a drug product containing ephedrine, pseudoephedrine or phenylpropanolamine or other designated precursor where the public may freely access the drug product. All such drug products or designated precursors shall be placed behind a pharmacy counter where access is restricted to a pharmacist, a pharmacy intern, a pharmacy technician or other pharmacy employee.

(b) All storage of drug products regulated by the provisions of this section shall be in a controlled and locked access location that is not accessible by the general public and shall maintain strict inventory control standards and complete records of quantity of the product maintained in bulk form.

(c) No pharmacy may sell, deliver or provide any drug product regulated by the provisions of this section to any person who is under the age of eighteen.

(d) If a drug product regulated by the provisions of this section is transferred, sold or delivered, the individual, pharmacy or retail establishment transferring, selling or delivering the drug product shall offer to have a pharmacist provide patient counseling, as defined by section one-b,
article five, chapter thirty of this code and the rules of the
Board of Pharmacy, to the person purchasing, receiving or
acquiring the drug product in order to improve the proper use
of the drug product and to discuss contraindications.

(e) If a drug product regulated by the provisions of this
section is transferred, sold or delivered, the individual,
pharmacy or retail establishment transferring, selling or
delivering the drug product shall require the person
purchasing, receiving or otherwise acquiring the drug product
to:

(1) Produce a valid government-issued photo
identification showing his or her date of birth; and

(2) Sign a logbook, in either paper or electronic format,
containing the information set forth in subsection (b), section
eight of this article and attesting to the validity of the
information.

(f) Any person who knowingly makes a false
representation or statement pursuant to the requirements of
this section is guilty of a misdemeanor and, upon conviction,
be confined in a jail for not more than six months, fined not
more than $5,000, or both fined and confined.

(g) (1) The pharmacist, pharmacy intern or pharmacy
technician processing the transaction shall determine that the
name entered in the logbook corresponds to the name
provided on the identification.

(2) Beginning January 1, 2013, a pharmacy or retail
establishment shall, before completing a sale under this
section, electronically submit the information required by
section eight of this article to the Multi-State Real-Time
Tracking System (MSRTTS) administered by the National
Association of Drug Diversion Investigators (NADDI):
Provided, That the system is available to retailers in the state without a charge for accessing the system. This system shall be capable of generating a stop-sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in this article. The seller may not complete the sale if the system generates a stop-sale alert. The system shall contain an override function that may be used by a dispenser of a drug product who has a reasonable fear of imminent bodily harm if he or she does not complete a sale. Each instance in which the override function is utilized shall be logged by the system. Absent negligence, wantonness, recklessness or deliberate misconduct, any retailer utilizing the Multi-State Real-Time Tracking System in accordance with this subdivision may not be civilly liable as a result of any act or omission in carrying out the duties required by this subdivision and is immune from liability to any third party unless the retailer has violated any provision of this subdivision in relation to a claim brought for the violation.

(3) If a pharmacy or retail establishment selling a nonprescription product containing ephedrine, pseudoephedrine or phenylpropanolamine experiences mechanical or electronic failure of the Multi-State Real-Time Tracking System and is unable to comply with the electronic sales tracking requirement, the pharmacy or retail establishment shall maintain a written log or an alternative electronic record keeping mechanism until such time as the pharmacy or retail establishment is able to comply with the electronic sales tracking requirement.

(h) This section does not apply to drug products that are dispensed pursuant to a prescription, are pediatric products primarily intended for administration, according to label instructions, to children under twelve years of age.
(i) Any violation of this section is a misdemeanor, punishable upon conviction by a fine in an amount not more than $10,000.

(j) The provisions of this section supersede and preempt all local laws, ordinances, rules and regulations pertaining to the sale of any compounds, mixtures or preparation containing ephedrine, pseudoephedrine or phenylpropanolamine.

§60A-10-7. Restricted products; rule-making authority.

(a) On or before July 1, 2005, the Board of Pharmacy shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement a program wherein the Board of Pharmacy shall consult with the Superintendent of the State Police in identifying drug products which are a designated precursor, in addition to those that contain ephedrine, pseudoephedrine or phenylpropanolamine, that are commonly being used in the production and distribution of methamphetamine. Those drug products which the Superintendent of the State Police have demonstrated by empirical evidence are commonly used in the manufacture of methamphetamine shall be added to a supplemental list and shall be subject to all of the restrictions of this article. These rules established pursuant to this section shall include:

(1) A process whereby pharmacies are made aware of all drug products that contain ephedrine, pseudoephedrine and phenylpropanolamine that will be listed as a Schedule V substance and must be sold, transferred or dispensed from behind a pharmacy counter;

(2) A process whereby pharmacies and retail establishments are made aware of additional drug products added to Schedule V that are required to be placed behind the
pharmacy counter for sale, transfer or distribution can be periodically reviewed and updated.

(b) At any time after July 1, 2005, the Board of Pharmacy, upon the recommendation of the Superintendent of the State Police, shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement an updated supplemental list of products containing the controlled substances ephedrine, pseudoephedrine or phenylpropanolamine as an active ingredient or any other drug used as a precursor in the manufacture of methamphetamine, which the Superintendent of the State Police has demonstrated by empirical evidence is being used in the manufacture of methamphetamine. This listing process shall comport with the requirements of subsection (a) of this section.

§60A-10-8. Reporting requirements; confidentiality.

(a) Until January 1, 2013, upon each sale, retail, transfer or distribution of any drug product referred to in section seven of this article or another designated precursor, the pharmacist, pharmacy intern, or pharmacy technician making the sale, transfer or distribution shall report the following information for inclusion in the central repository established and maintained by the Board of Pharmacy:

(1) The date of the transaction;

(2) The name, address and driver’s license or state-issued identification number of the person; and

(3) The name, quantity of packages and total gram weight of the product or products purchased, received or otherwise acquired.
(b) The information required to be reported by this section shall be reported by paper log maintained at the point of sale: Provided, That, beginning on January 1, 2007, reporting shall be by electronic transmission to the Board of Pharmacy no more frequently than once a week. Beginning on January 1, 2013, the electronic transmission of the information required to be reported in subsection (a) of this section shall be reported to the MSRTTS, and shall be made in real time at the time of the transaction.

(c) The information required by this section shall be the property of the state. The information shall be disclosed as appropriate to the federal Drug Enforcement Administration and to state and local law-enforcement agencies. The information shall not be accessed, used or shared for any purpose other than to ensure compliance with this article and federal law. NADDI shall forward state transaction records in the MSRTTS to the West Virginia State Police weekly, and provide real-time access to MSRTTS information through the MSRTTS online portal to authorized agents of the federal Drug Enforcement Administration and certified law enforcement in this and other states for use in the detection of violations of this article or of federal laws designed to prevent the illegal use, production or distribution of methamphetamine.

§60A-10-11. Reporting to the Legislative Oversight Commission on Health and Human Resources Accountability.

Beginning July 1, 2013, the Superintendent of the West Virginia State Police shall submit an annual report no later than July 1 of each year to the Legislative Oversight Commission on Health and Human Resources Accountability with data and statistics related to methamphetamine use, production and distribution in this state including, but not limited to, the number of clandestine methamphetamine lab incidents per year.
§60A-10-16. Expiration of enactments made during two thousand twelve regular session.

1 The provisions of this article enacted during the 2012 regular legislative session establishing the Multi–State Real-Time Tracking System shall expire on June 30, 2015.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.

1 (a) If in the opinion of the chief medical examiner, or of the county medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy shall be conducted by the chief medical examiner or his or her designee, by a member of his or her staff, or by a competent pathologist designated and employed by the chief medical examiner under the provisions of this article. For this purpose, the chief medical examiner may employ any county medical examiner who is a pathologist who holds board certification or board eligibility in forensic pathology or has completed an American Board of Pathology fellowship in forensic pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be in addition to the fee provided for investigations pursuant to section eight of this article. A full record and report of the findings developed by the autopsy shall be filed with the office of the chief medical examiner by the person making the autopsy.

22 (b) Within the discretion of the chief medical examiner, or of the person making the autopsy, or if requested by the
prosecuting attorney of the county, or of the county where
any injury contributing to or causing the death was sustained,
a copy of the report of the autopsy shall be furnished to the
prosecuting attorney.

(c) The office of the chief medical examiner shall keep
full, complete and properly indexed records of all deaths
investigated, containing all relevant information concerning
the death and the autopsy report if an autopsy report is made.
Any prosecuting attorney or law-enforcement officer may
secure copies of these records or information necessary for
the performance of his or her official duties.

d) Copies of these records or information shall be
furnished, upon request, to any court of law, or to the parties
therein to whom the cause of death is a material issue, except
where the court determines that interests in a civil matter
conflict with the interests in a criminal proceeding, in which
case the interests in the criminal proceeding shall take
precedence. The office of chief medical examiner shall be
reimbursed a reasonable rate by the requesting party for costs
incurred in the production of records under this subsection
and subsection (c) of this section.

(e) The chief medical examiner is authorized to release
investigation records and autopsy reports to the
multidisciplinary team authorized by section three, article
two-d, chapter forty-nine of this code and as authorized in
subsection (h) of this section. At the direction of the
Secretary of the Department of Health and Human Resources
the chief medical examiner may release records and
information to other state agencies when considered to be in
the public interest.

(f) Any person performing an autopsy under this section
is empowered to keep and retain, for and on behalf of the
chief medical examiner, any tissue from the body upon which
the autopsy was performed which may be necessary for
further study or consideration.
(g) In cases of the death of any infant in the State of West Virginia where sudden infant death syndrome is the suspected cause of death and the chief medical examiner or the medical examiner of the county in which the death in question occurred considers it advisable to perform an autopsy, it is the duty of the chief medical examiner or the medical examiner of the county in which the death occurred to notify the sudden infant death syndrome program within the division of maternal and child health and to inform the program of all information to be given to the infant’s parents.

(h) If the chief medical officer determines that a drug overdose is the cause of death of a person, the chief medical examiner shall provide notice of the death to the West Virginia Controlled Substances Monitoring Program Database Review Committee established pursuant to subsection (b), section five, article nine, chapter sixty-a of this code and shall include in the notice any information relating to the cause of the fatal overdose.

CHAPTER 84

(Com. Sub. for S. B. 109 - By Senators Jenkins and Foster)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended, all relating to permitting unlicensed personnel to administer or assist with administration of medications in certain circumstances; defining terms; and providing exemptions from licensure.
Be it enacted by the Legislature of West Virginia:

That §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5O. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-5O-2. Definitions.

As used in this article, unless a different meaning appears from the context, the following definitions apply:

(a) “Administration of medication” means:

(1) Assisting a person in the ingestion, application or inhalation of medications, including prescription drugs, or in the use of universal precautions or rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or authorized practitioner, or as written on the prescription label; and

(2) Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken. However, for purposes of this article, “administration” does not include judgment, evaluation, assessments, injections of medication, monitoring of medication or self-administration of medications, including prescription drugs and self-injection of medication by the resident.

(b) “Authorizing agency” means the department's office of Health Facility Licensure and Certification.

(c) “Department” means the Department of Health and Human Resources.
(d) “Facility” means an ICF/ID, assisted living, behavioral health group home, private residence in which health care services are provided under the supervision of a registered nurse or an adult family care home that is licensed by or approved by the department.

(e) “Facility staff member” means an individual employed by a facility but does not include a health care professional acting within the scope of a professional license or certificate.

(f) “Health care professional” means a medical doctor or doctor of osteopathy, a podiatrist, registered nurse, practical nurse, registered nurse practitioner, physician's assistant, dentist, optometrist or respiratory care professional licensed under chapter thirty of this code.

(g) “ICF/ID” means an intermediate care facility for individuals with an intellectual disability which is certified by the department.

(h) “Location of medication administration” means a facility or location where the resident requires administration of medication or assistance in taking medications.

(i) “Medication” means a drug, as defined in section one hundred one, article one, chapter sixty-a of this code, which has been prescribed by a duly authorized health care professional to be ingested through the mouth, applied to the outer skin, eye or ear, or applied through nose drops, vaginal or rectal suppositories.

(j) “Registered professional nurse” means a person who holds a valid license pursuant to article seven, chapter thirty of this code.

(k) “Resident” means a resident of a facility.
(l) “Secretary” means the Secretary of the Department of Health and Human Resources or his or her designee.

(m) “Self-administration of medication” means the act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by a physician, in opening and accessing prepackaged drug containers, accurately identifying and taking the correct dosage of the drugs as ordered by the physician, at the correct time and under the correct circumstances.

(n) “Self-administration of medication with assistance” means assisting residents who are otherwise able to self administer their own medications except their physical disabilities prevent them from completing one or more steps in the process.

(o) “Supervision of self-administration of medication” means a personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication, checking the self administered dosage against the label on the container and reassuring residents that they have obtained and are taking the dosage as prescribed.

§16-5O-3. Administration of medications in facilities.

(a) The secretary is authorized to establish and implement a program for the administration of medications in locations of medication administration where the resident requires administration of or assistance in taking medications. The program shall be developed and conducted in cooperation with the appropriate agencies, advisory bodies and boards.

(b) Administration of medication pursuant to this article shall be performed only by:
(1) Registered professional nurses;

(2) Other licensed health care professionals; or

(3) Facility staff members who have been trained and retrained every two years and who are subject to the supervision of and approval by a registered professional nurse.

(c) Subsequent to assessing the health status of an individual resident, a registered professional nurse, in collaboration with the resident’s attending physician and the facility staff member, may recommend that the facility authorize a facility staff member to administer medication if the staff member:

(1) Has been trained pursuant to the requirements of this article;

(2) Is considered by the registered professional nurse to be competent;

(3) Consults with the registered professional nurse or attending physician on a regular basis; and

(4) Is monitored or supervised by the registered professional nurse.

(d) Nothing in this article may be construed to prohibit any facility staff member from administering medications or providing any other prudent emergency assistance to aid any person who is in acute physical distress or requires emergency assistance.

(e) Supervision of self-administration of medication by facility staff members who are not licensed health care professionals may be permitted in certain circumstances, when the substantial purpose of the setting is other than the provision of health care.
§16-5O-4. Exemption from licensure; statutory construction.

(a) Any individual who is not otherwise authorized by law to administer medication may administer medication in locations covered by this article if he or she meets the requirements and provisions of this article. Any person who administers medication pursuant to the provisions of this article shall be exempt from the licensing requirements of chapter thirty of this code.

(b) All licensed health care professionals as defined in this article remain subject to the provisions of their respective licensing laws.

(c) Notwithstanding any other provision of law to the contrary, this article shall not be construed to violate or be in conflict with any of the provisions of articles seven or seven-a, chapter thirty of this code.

(d) Any parent or guardian may administer medication to his or her adult or minor child regardless of whether or not the parent or guardian receives compensation for caring for said child.

CHAPTER 85
(H. B. 4481 - By Delegates Hatfield,
Hall, Moore, Morgan, L. Phillips,
D. Campbell and Butcher)

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to repeal §16-42-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-42-3 of said code, relating to the Comprehensive Behavioral Health Commission;
increasing the membership of the Commission and the membership of the Advisory Board to the Commission; reestablishing the Advisory Board; and repealing the termination date of the commission.

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

That §16-42-7 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-42-3 of said code be amended and reenacted, all to read as follows:

**ARTICLE 42. COMPREHENSIVE BEHAVIORAL HEALTH COMMISSION.**


(a) Effective July 1, 2011, the Comprehensive Behavioral Health Commission is reestablished to continue the study of the current behavioral health system of care, including services to adults and children, 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, who is a nonvoting member;
The Commissioner of the Bureau for Behavioral Health and Health Facilities or a designee, who is a nonvoting member;

(6) The Commissioner of the Bureau for Children and Families or a designee, who is a nonvoting member;

(7) The Chancellor for Higher Education or a designee, who is a nonvoting member;

(8) One physician with a specialty in psychiatry appointed by the Governor from a list provided by the West Virginia Medical Association;

(9) One physician with a specialty in child psychiatry, appointed by the Governor from a list of names provided by the West Virginia Medical Association;

(10) One member of the advisory board, selected by the advisory board, who shall serve as the vice chairperson of the commission;

(11) The director of the Division of Rehabilitative Services or his or her designee;

(12) The executive director of a behavioral health consumer’s organization or his or her designee;

(13) The director of the West Virginia Coalition Against Domestic Violence or his or her designee;

(14) One member of the House of Delegates, who is a nonvoting member, appointed by the speaker; and

(15) 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.

(d) The commission shall elect a chairperson from those who are appointed. The chairperson’s term shall be no longer than two consecutive years whereupon the chairperson is to be replaced by a vote of the membership.

(e) The commission shall add or delete additional members of the advisory board at the time when it is apparent that certain expertise is needed and the members of the commission so decide.

(f) Effective July 1, 2012, the Comprehensive Behavioral Health Commission 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 of three candidates provided by the West Virginia Chapter of the National Association of Social Workers;

(2) One member from a list of three candidates provided by the West Virginia Hospital Association;

(3) One member who is a psychologist from a list of three candidates provided by the West Virginia Psychological Association;

(4) One representative from each medical school affiliated with some aspect of behavioral health from a list of three candidates provided by the Dean of West Virginia University School of Medicine, the Dean of Marshall University School of Medicine and the Dean of the West Virginia School of Osteopathic Medicine;
(5) The executive director of the Primary Care Association or his or her designee;

(6) One member who is the chief executive officer of a comprehensive behavioral health center;

(7) Two members who are the chairperson or the chief executive officer of a not-for-profit corporation, that provides residential or nonresidential care or treatment for children in West Virginia;

(8) One member from a list of three candidates provided by the Council of Churches;

(9) A consumer of behavioral health services to be selected by the commission;

(10) A child advocate to be selected by the commission from suggestions by FAST (Family Advocacy, Support and Training);

(11) A representative of the West Virginia Coalition Against Domestic Violence to be selected by the commission; and

(12) One representative of the county probation program from a list of three candidates provided to the Governor by the Supreme Court of Appeals.

(g) Those persons serving on the commission and the advisory board on July 1, 2011, may continue serving on the reestablished commission and advisory board and the person so designated as chairperson of the commission shall remain as chairperson until an election occurs as provided in this section.
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.

CHAPTER 86

(Com. Sub. for H. B. 4327 - By Delegates Hatfield, D. Poling, Brown and Staggers)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-44-1 and §16-44-2, all relating to requiring pulse oximetry testing for newborns; setting forth legislative findings; authorizing the Commissioner of the Bureau of Public Health to require testing; providing timing requirements for testing; and requiring the commissioner to adopt procedural and legislative rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-44-1 and §16-44-2, all to read as follows:
ARTICLE 44. THE PULSE OXIMETRY NEWBORN TESTING ACT.

§16-44-1. Legislative findings.

The Legislature finds and declares that:

1. Congenital heart defects are structural abnormalities of the heart that are present at birth; congenital heart defects range in severity from simple problems such as holes between chambers of the heart, to severe malformations, such as the complete absence of one or more chambers or valves; some critical congenital heart defects can cause severe and life-threatening symptoms which require intervention within the first days of life;

2. According to the United States Secretary of Health and Human Services’ Advisory Committee on Heritable Disorders in Newborns and Children, congenital heart disease affects approximately seven to nine of every thousand live births in the United States and Europe; the federal Centers for Disease Control and Prevention states that congenital heart defects are the leading cause of infant death due to birth defects;

3. Current methods for detecting congenital heart defects generally include prenatal ultrasound screening and repeated clinical examinations; while prenatal ultrasound screenings can detect some major congenital heart defects, these screenings, alone, identify less than half of all congenital heart defect cases, and critical congenital heart defect cases are often missed during routine clinical exams performed prior to a newborn's discharge from a birthing facility;

4. Pulse oximetry is a noninvasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen; when performed on a newborn when the baby is
twenty-four to forty-eight hours of age, or as late as possible if the baby is to be discharged from the hospital before he or she is twenty-four hours of age, pulse oximetry screening is often more effective at detecting critical, life-threatening congenital heart defects which otherwise go undetected by current screening methods; newborns with abnormal pulse oximetry results require immediate confirmatory testing and intervention; and

(5) Many newborn lives could potentially be saved by earlier detection and treatment of congenital heart defects if birthing facilities in the state were required to perform this simple, noninvasive newborn screening in conjunction with current congenital heart defect screening methods.

§16-44-2. Pulse oximetry screening required; definition; rules.

(a) The Commissioner of the Bureau for Public Health shall require each birthing facility licensed by the Department of Health and Human Resources to perform a pulse oximetry screening on every newborn in its care, when the baby is twenty-four to forty-eight hours of age, or as late as possible if the baby is to be discharged from the hospital before he or she is twenty-four hours of age.

(b) As used in this article, “birthing facility” means an inpatient or ambulatory health care facility licensed by the Department of Health and Human Resources that provides birthing and newborn care services.

(c) The commissioner shall adopt procedural rules and propose legislative rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, that are necessary to carry out the purposes of this article.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2L-1, §16-2L-2, §16-2L-3, §16-2L-4, §16-2L-5, §16-2L-6 and §16-2L-7; and to amend said code by adding thereto a new article, designated §33-25G-1, §33-25G-2, §33-25G-3, §33-25G-4 and §33-25G-5, all relating to provider sponsored networks; stating the purpose; making legislative findings; defining terms; authorizing the Secretary of the Department of Health and Human Resources to contract with provider sponsored networks to provide services to Medicaid beneficiaries; assigning certain Medicaid beneficiaries to provider sponsored networks; guaranteeing Medicaid beneficiaries’ freedom to choose a managed care plan; providing an exemption from antitrust laws; requiring reports to the Legislature; providing for shared savings with the state; authorizing the Insurance Commissioner to license provider sponsored networks; subjecting provider sponsored networks generally to the laws governing HMOs; providing for participation of health care providers in a provider sponsored network; permitting lower or different minimum capital and surplus amounts; and providing rule-making authority, including emergency rules.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-2L-1, §16-2L-2, §16-2L-3, §16-2L-4, §16-2L-5, §16-2L-6 and §16-2L-7; and that said code be amended by adding thereto a new article, designated §33-25G-1, §33-25G-2, §33-25G-3, §33-25G-4 and §33-25G-5, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 2L. PROVIDER SPONSORED NETWORKS.

§16-2L-1. Legislative purpose.

The Legislature finds that it inures to the benefit of the state and its Medicaid populations to foster the development of care systems and Medicaid options that allow for the functional integration and participation of privately practicing physicians with provider sponsored networks who have patient-centered medical home resources and who are willing to share access and use of those resources; that privately practicing physicians provide indispensable and important health care services to Medicaid enrollees in West Virginia but many do not have the resources to develop patient-centered medical homes in their respective practices; that federally qualified health centers are deeply engaged with integrating behavioral health providers and other community services in their care of Medicaid beneficiaries and that such centers lead in the development and implementation of recognized medical homes in West Virginia; and that better health outcomes can be achieved and inappropriate utilization avoided through the integration and coordination of physical health care with mental health care. Therefore, in order to develop innovative means of meeting the health care needs of the state’s citizens and to address the impact on the state’s budget arising from the growing cost of Medicaid, and in recognition of the important role that federally qualified health centers play in providing health
Chapter 87: Health Insurance

25  care services to Medicaid beneficiaries, the Legislature
26  authorizes the secretary to enter into contracts with provider
27  sponsored networks.

§16-2L-2. Definitions.

1  As used in this article, unless the context requires
2  otherwise:

3  (1) “Continuity-of-care” means the clinical practice of a
4  medical professional who provides care to patients in which:

5    (A) In addition to episodic or urgent care provided from
6    time to time as needed, preventive care and counseling is
7    provided and a patient’s overall health status is monitored
8    even when illness is not present or not in crisis; and

9    (B) Without being limited to discrete episodes of care,
10   medical records and care processes are used that track and
11   manage health status over time and allow the medical
12   professional to refer care to, and receive reports from, other
13   medical professionals and other care team members
14   responsible for a patient’s care.

15  (2) “Federally Qualified Health Center” means an entity

17  (3) “Medicaid beneficiary” means any person
18  participating, through either a state plan amendment or
19  waiver demonstration, in any Medicaid program administered
20  by the West Virginia Department of Health and Human
21  Resources or its Bureau for Medical Services.

22  (4) “Medical home” means a team-based model of care in
23  a patient-centered medical home.
(5) “Participating provider” means a licensed health care provider who has entered into a contract with a provider sponsored network to provide services to Medicaid enrollees.

(6) “Participating primary care provider” is a primary care provider who is also a participating provider.

(7) “Patient-centered medical home” means a health care setting as described in section nine, article twenty-nine-h of this chapter.

(8) “Primary care provider” means a licensed behavioral health professional or a person licensed as an allopathic or osteopathic physician primarily practicing internal medicine, family or general practice, obstetrics and gynecology, or pediatrics who provides continuity-of-care services to the majority of his or her patients.

(9) “Provider sponsored network” means an entity licensed by the West Virginia insurance commissioner in accordance with article twenty-five-g, chapter thirty-three of this code.

(10) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources.


(a) The secretary is authorized to enter into contracts with any provider sponsored network licensed by the insurance commissioner in accordance with the provisions of article twenty-five-g, chapter thirty-three of this code, to arrange for the provision of health care, services and supplies for Medicaid beneficiaries. Such contract:

(1) Shall be subject to the same criteria and standards applied to other managed care organizations; and
(2) May provide that the provider sponsored network will share with the department up to 25% of any net profits realized during the period of the contract.

(b) The service, administrative and performance criteria to be met by provider sponsored networks shall be the same as required of other managed care organizations providing services to Medicaid beneficiaries in the state.

(c) A licensed provider sponsored network shall be deemed an HMO for the purposes of federal regulations governing the Medicaid program to the extent permitted by such regulations.

§16-2L-4. Options for Medicaid beneficiaries; assignment of enrollees.

(a) Notwithstanding the prior availability or utilization of other options, every licensed provider sponsored network available in a county shall be offered by the secretary as an enrollment option to that county’s Medicaid beneficiaries. A provider sponsored network is deemed to be “available in a county” if the secretary has entered into a contract with it to provide services to Medicaid beneficiaries in that county.

(b) The secretary shall require that each eligible Medicaid beneficiary be given the option to choose any available managed care plan, including a provider sponsored network, to arrange for and provide his or her medical services under the Medicaid program, and nothing in this article shall be construed to remove or diminish the right of Medicaid beneficiaries to choose among such available options.

(c) The secretary shall seek approval from the Centers for Medicare and Medicaid Services to permit the assignment to an available provider sponsored network of any Medicaid beneficiary who does not exercise the option to choose a
managed care plan or provider sponsored network offered to him or her. The secretary shall promulgate emergency rules and shall propose for legislative approval legislative rules as may be necessary to implement such assignment process.

(d) A Medicaid beneficiary assigned to a provider sponsored network or another managed care organization may change enrollment to any other available provider sponsored network or managed care organization as such options may be available, and nothing in this article requires that a Medicaid beneficiary who is a patient of a participating provider must remain an enrollee in the provider sponsored network with which such participating provider has a contract.

§16-2L-5. Anti-trust exemption.

Because agreement and coordination among health care providers, who may be potential competitors with each other, is required to establish and operate provider sponsored networks, an exemption from anti-trust laws for these activities will further the purposes of this article. Therefore, the West Virginia Anti-Trust Act, article eighteen, chapter forty-seven of this code, is inapplicable to the development of provider sponsored networks, activities necessary to operate provider sponsored networks or any arrangements or agreements between or among provider sponsored networks and participating providers that are performed or entered into consistent with and pursuant to the provisions of this article and the provisions of article twenty-five-g, chapter thirty-three of this code. It is the intent of the Legislature that the federal anti-trust statutes be interpreted in this manner as well.

§16-2L-6. Rulemaking authority.

The secretary may promulgate emergency rules and shall propose for legislative approval 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.

§16-2L-7. Reports to the Legislature.

The secretary shall include in his or her annual report to
the Legislature the status of the provider sponsored network
programs operating during the previous fiscal year.

CHAPTER 33. INSURANCE.

ARTICLE 25G. PROVIDER SPONSORED NETWORKS.

§33-25G-1. Legislative findings.

The Legislature finds that, in light of the need to provide
health care to a Medicaid population that is expected to rise
dramatically in the near future, new models of managed care
should be explored in order to enhance the state’s ability to
improve health outcomes and to manage the financial risk
associated with the provision of such care. This article
provides a licensing and regulatory scheme for provider
sponsored networks, an alternative managed care model
recognized in federal law, that recognizes the unique features
of such entities.


(a) “Federally Qualified Health Center” means an entity
as defined in 42 U.S.C. §1396d(1)(2)(B).

(b) “Medicaid beneficiary” means any person
participating, through either a state plan amendment or
waiver demonstration, in any Medicaid program administered
by the West Virginia Department of Health and Human
Resources or its Bureau for Medical Services.
(c) “Participating provider” means a licensed health care provider who has entered into a contract with a provider sponsored network to provide services to Medicaid enrollees.

(d) “Provider sponsored network” means an entity that satisfies the definition of a “Medicaid managed care organization” set forth in 42 U.S.C. §1396b(m)(1)(A), is controlled by one or more Federally Qualified Health Centers, as set forth in 42 U.S.C. §1396b(m)(1)(C)(ii)(IV), and provides or otherwise makes available health care services solely to Medicaid beneficiaries or beneficiaries of medicaid or medicare pursuant to contract with the secretary executed in accordance with article two-l, chapter sixteen of this code.

(e) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources.


(a) Except to the extent provided otherwise in this article, a provider sponsored network is subject to the provisions of article twenty-five-a of this chapter to the same extent as an HMO.

(b) Notwithstanding the provisions of section four, article twenty-five-a of this chapter, in determining whether a provider sponsored network has demonstrated in its application for a certificate of authority or at a later time that it is financially responsible and may reasonably be expected to meet its obligations to Medicaid beneficiaries, the commissioner may, in his or her sole discretion and after consultation with the secretary, impose lower or different solvency requirements, including lower surplus and capital. In deciding whether to permit lower or different solvency standards, the commissioner shall consider actuarial evaluations and other qualified technical standards and may also consider factors such as a lower risk of insolvency, any
18 transfer of risk to a third party, and the restriction of the
19 provider sponsored network to the provision of Medicaid-
20 related services; these same factors may also be considered in
21 reviewing and acting upon a provider sponsored network’s
22 RBC report.
23
24 (c) A provider sponsored network may at any time seek
25 to convert its certificate of authority granted pursuant to this
26 article to a certificate of authority to operate as an HMO by
27 filing an application in accordance with the provisions of
28 article twenty-five-a of this chapter.

§33-25G-4. Provider participation.
1 (a) Any willing physician or licensed behavioral health
2 provider is entitled to participate in a provider sponsored
3 network provided that he or she is willing to participate in the
4 health care delivery approach designed by the provider
5 sponsored network and such other applicable requirements of
6 the Department of Health and Human Resources.
7
8 (b) As a condition of provider participation, including
9 participation by hospitals, a provider sponsored network may
10 require that its care management protocols be observed,
11 including provisions for designations of certain services that
12 may be provided only by designated providers or classes of
13 providers, requirements that providers be credentialed before
14 they may provide certain services, and requirements that
15 providers comply with utilization management programs and
16 referral systems as established by the provider sponsored
17 network. A provider sponsored network may not require a
18 participating physician provider to sell or transfer ownership
19 of his, her or its assets or practice operations to the provider
20 sponsored network or any of its participating providers as a
21 condition of participation or of being permitted access or use
22 of the provider sponsored network’s medical home resources
23 and care management systems.
(c) A participating provider shall have the right to participate in, and contract with, other networks or other managed care organizations to provide services to Medicaid beneficiaries.


1 The commissioner may promulgate emergency rules and shall propose for legislative approval 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.

CHAPTER 88

(H. B. 4126 - By Delegates M. Poling, Paxton, Perry, Moye and Fragale)

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

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 higher education; legislative rules; authorizing a rule for the Higher Education Policy Commission regarding tuition and fees; and authorizing a rule for the Council for Community and Technical College Education regarding the Workforce Development Initiative Program and tuition and fees.

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.


(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 (Guidelines for Governing Boards in Employing and Evaluating Presidents) is authorized.

(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.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program) is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized, with the following amendment:
On page 28, subsection 9.1.b, following the words “Good cause shall consist of” by inserting the words “any one or more of the following”.

(o) The legislative rule filed in the State Register on December 12, 2011, relating to the Higher Education Policy Commission (Tuition and Fee Policy) 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.

(h) The legislative rule filed in the State Register on June 15, 2011, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program) is authorized.

(i) The legislative rule filed in the State Register on October 26, 2011, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees) is authorized.

CHAPTER 89
(Com. Sub. for S. B. 498 - By Senators Foster and Klempa)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, all relating to adult protective services and reports of abuse, neglect or exploitation of vulnerable adults; permitting distribution of adult protective services records to certain individuals and entities; permitting
distribution of a summary of those records to certain other individuals and entities; protecting the confidentiality of the identity of the reporter; and requiring a program for notifying mandatory reporters at the outset and conclusion of investigations.

Be it enacted by the Legislature of West Virginia:

That §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-8. Confidentiality of records.

(a) Except as otherwise provided in this section, all records of the department, state and regional long-term care ombudsmen, nursing home or facility administrators, the office of health facility licensure and certification and all protective services agencies concerning an adult or facility resident under this article are confidential and may not be released, except in accordance with the provisions of section eleven of this article.

(b) Unless the adult concerned is receiving adult protective services or unless there are pending proceedings with regard to the adult, the records maintained by the adult protective services agency shall be destroyed thirty years following their preparation.

(c) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, all records concerning reports of abuse, neglect or exploitation of vulnerable adults, including all records generated as a result of such reports, may be made available to:
(1) Employees or agents of the department who need access to the records for official business.

(2) Any law-enforcement agency investigating a report of known or suspected abuse, neglect or exploitation of a vulnerable adult.

(3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect or exploitation occurred.

(4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court shall, before permitting use of the records in connection with any court proceeding, review the records for relevancy and materiality to the issues in the proceeding. The court may issue an order to limit the examination and use of the records or any part of the record.

(5) A grand jury, by subpoena, upon its determination that access to the records is necessary in the conduct of its official business.

(6) The recognized protection and advocacy agency for the disabled of the State of West Virginia.

(7) The victim.

(8) The victim’s legal representative, unless he or she is the subject of an investigation under this article.

(d) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, summaries concerning substantiated investigative reports of abuse, neglect or exploitation of adults may be made available to:
(1) Any person who the department has determined to have abused, neglected or exploited the victim.

(2) Any appropriate official of the state or regional long-term care ombudsman investigating a report of known or suspected abuse, neglect or exploitation of a vulnerable adult.

(3) Any person engaged in bona fide research or auditing, as defined by the department. However, information identifying the subjects of the report may not be made available to the researcher.

(4) Employees or agents of an agency of another state that has jurisdiction to investigate known or suspected abuse, neglect or exploitation of vulnerable adults.

(5) A professional person when the information is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult.

(6) A department administrative hearing officer when the hearing officer determines the information is necessary for the determination of an issue before the officer.

(e) The identity of any person reporting abuse, neglect or exploitation of a vulnerable adult may not be released, without that person’s written consent, to any person other than employees of the department responsible for protective services or the appropriate prosecuting attorney or law-enforcement agency. This subsection grants protection only for the person who reported the abuse, neglect or exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect or exploitation when deemed necessary by the prosecuting attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.
§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

(a) If any medical, dental or mental health professional, Christian Science practitioner, religious healer, social service worker, law-enforcement officer, humane officer, state or regional ombudsman or any employee of any nursing home or other residential facility has reasonable cause to believe that an incapacitated adult or facility resident is or has been neglected, abused or placed in an emergency situation, or if such person observes an incapacitated adult or facility resident being subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of section eleven of this article: Provided, That nothing in this article is intended to prevent individuals from reporting on their own behalf.

(b) In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation, any other person may make such a report.

(c) The secretary shall develop a form for the filing of written complaints, as provided by section eleven of this article, and provide these forms to all nursing homes or other residential facilities, hospitals, ombudsmen and adult protective service agencies in this state. The forms shall be designed to protect the identity of the complainant, if desired, and to facilitate the prompt filing of complaints.

(d) The Department of Health and Human Resources shall develop and implement a procedure to notify any person mandated to report suspected abuse and neglect of an incapacitated adult or facility resident of whether an investigation into the reported suspected abuse or neglect has been initiated and when the investigation is completed.
AN ACT to amend and reenact §30-29-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-2-14a of said code; and to amend said code by adding a new section, designated §61-2-17, all relating to kidnapping and human trafficking; authorizing the Governor’s Committee on Crime, Delinquency and Correction to establish standards governing training to effectively investigate human trafficking offenses and procedures for implementation of a course in investigation of human trafficking offenses; amending the elements of the crime of kidnapping and providing certain defenses and exceptions; creating the new criminal offense of human trafficking; defining certain terms; specifying the penalties for the new human trafficking offense; and including human trafficking as a qualifying offense in the prohibition against operating a criminal enterprise.

Be it enacted by the Legislature of West Virginia:

That §30-29-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-2-14a of said code be amended and reenacted; and that said code be amended by adding a new section, designated §61-2-17, all to read as follows:
CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-3. Duties of the Governor’s committee and the subcommittee.

1 (a) Upon recommendation of the subcommittee, the Governor’s committee shall, by or pursuant to rules proposed for legislative approval in accordance with article three, chapter twenty-nine-a of this code:

5 (1) Provide funding for the establishment and support of law-enforcement training academies in the state;

7 (2) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state, in order to provide access to each law-enforcement agency in the state in accordance with available funds;

12 (3) Establish minimum law-enforcement instructor qualifications;

14 (4) Certify qualified law-enforcement instructors;

15 (5) Maintain a list of approved law-enforcement instructors;

17 (6) Promulgate standards governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of four hundred classroom hours, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training
academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months, or a full-time curricula;

(7) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

(8) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(9) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined in article thirteen, chapter sixty-one of this code, while preventing racial profiling, as defined in section ten of this article, for entry level training curricula and for law-enforcement officers who have not received such training as certified by the Governor’s committee as required in this section;

(10) Establish, no later than July 1, 2011, procedures for implementation of a course in investigation of organized criminal enterprises which includes an anti-racial training module to be available on the Internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive training in investigation of organized criminal enterprises and anti-racial profiling, and a time frame for which all law-enforcement officers must receive such training: Provided, That all law-enforcement officers in this state shall receive such training no later than July 1, 2012. In order to implement and carry out the intent of this section, the Governor’s committee may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code;
(11) Certify or decertify or reactivate law-enforcement officers, as provided in sections five and eleven of this article;

(12) Establish standards and procedures for the reporting of complaints and certain disciplinary matters concerning law-enforcement officers and for reviewing the certification of law-enforcement officers. These standards and procedures shall provide for preservation of records and access to records by law-enforcement agencies and conditions as to how the information in those records is to be used regarding an officer’s law-enforcement employment by another law-enforcement agency;

(A) The subcommittee shall establish and manage a database that is available to all law-enforcement agencies in the state concerning the status of any person’s certification.

(B) Personnel or personal information not resulting in a criminal conviction is exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code.

(13) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article;

(14) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the committee; and

(15) Submit, on or before September 30 of each year, to the Governor, and upon request to individual members of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.
(b) In addition to the duties authorized and established by this section, the Governor’s committee may:

(1) Establish training to effectively investigate human trafficking offenses as defined in article two, chapter sixty-one of this code, for entry level training curricula and for law-enforcement officers who have not received such training as certified by the committee as required by this section; and

(2) Establish procedures for the implementation of a course in investigation of human trafficking offenses. The course may include methods of identifying and investigating human trafficking and methods for assisting trafficking victims. In order to implement and carry out the intent of this subdivision, the committee may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnapping; penalty.

(a) Any person who unlawfully restrains another person with the intent:

(1) To hold another person for ransom, reward, or concession;

(2) To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person; or

(3) To use another person as a shield or hostage, shall be guilty of a felony and, upon conviction, shall be punished by confinement by the division of corrections for life, and, notwithstanding the provisions of article twelve, chapter sixty-two of this code, shall not be eligible for parole.
(b) The following exceptions shall apply to the penalty contained in subsection (a):

(1) A jury may, in their discretion, recommend mercy, and if such recommendation is added to their verdict, such person shall be eligible for parole in accordance with the provisions of said article twelve;

(2) If such person pleads guilty, the court may, in its discretion, provide that such person shall be eligible for parole in accordance with the provisions of said article twelve, and, if the court so provides, such person shall be eligible for parole in accordance with the provisions of said article twelve in the same manner and with like effect as if such person had been found guilty by the verdict of a jury and the jury had recommended mercy;

(3) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but after ransom, money or other thing, or any concession or advantage of any sort has been paid or yielded, the punishment shall be confinement by the division of corrections for a definite term of years not less than twenty nor more than fifty; or

(4) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but without ransom, money or other thing, or any concession or advantage of any sort having been paid or yielded, the punishment shall be confinement by the division of corrections for a definite term of years not less than ten nor more than thirty.

(c) For purposes of this section: “To use another as a hostage” means to seize or detain and threaten to kill or injure
another in order to compel a third person or a governmental
organization to do or abstain from doing any legal act as an
explicit or implicit condition for the release of the person
detained.

(d) Notwithstanding any other provision of this section,
if a violation of this section is committed by a family member
of a minor abducted or held hostage and he or she is not
motivated by monetary purposes, but rather intends to
conceal, take, remove the child or refuse to return the child to
his or her lawful guardian in the belief, mistaken or not, that
it is in the child’s interest to do so, he or she shall be guilty of
a felony and, upon conviction thereof, be confined in a
correctional facility for not less than one or more than five
years or fined not more than one thousand dollars, or both.

(e) Notwithstanding any provision of this code to the
contrary, where a law-enforcement agency of this state or a
political subdivision thereof receives a complaint that a
violation of the provisions of this section has occurred, the
receiving law-enforcement agency shall notify any other
law-enforcement agency with jurisdiction over the offense,
including, but not limited to, the state police and each agency
so notified, shall cooperate in the investigation forthwith.

(f) It shall be a defense to a violation of subsection (d) of
this section, that the accused’s action was necessary to
preserve the welfare of the minor child and the accused
promptly reported his or her actions to a person with lawful
custody of the minor, to law-enforcement or to Child
Protective Services division of the Department of Health and
Human Resources.

§61-2-17. Human trafficking; criminal penalties.

(a) As used in this section:
“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services or those of a person under the debtor’s control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Forced labor or services” means labor or services that are performed or provided by another person and are obtained or maintained through a person’s:

(A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services that person or another person would suffer serious bodily harm or physical restraint: Provided, That this does not include work or services provided by a minor to the minor’s parent or legal guardian so long as the legal guardianship or custody of the minor was not obtained for the purpose compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services.

(B) Physically restraining or threatening to physically restrain a person;

(C) Abuse or threatened abuse of the legal process; or

(D) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person.

“Forced labor or services” does not mean labor or services required to be performed by a person in compliance
with a court order or as a required condition of probation, parole, or imprisonment.

(3) “Human trafficking” means the labor trafficking or sex trafficking involving adults or minors where two or more persons are trafficked within any one year period.

(4) “Labor trafficking” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:

(A) Debt bondage or forced labor or services;

(B) Slavery or practices similar to slavery.

(5) “Sex trafficking of minors” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person under the age of eighteen by any means, whether a United States citizen or foreign national, for the purpose of causing the minor to engage in sexual acts, or in sexual conduct violating the provisions of subsection (b), section five, article eight of this chapter or article eight-c of this chapter.

(6) “Sex trafficking of adults” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person eighteen years of age or older, whether a United States citizen or foreign national, for the purposes of engaging in violations of subsection (b), section five, article eight of this chapter by means of force, threat or deception.

(b) Any person who knowingly and wilfully engages in human trafficking is guilty of a felony and upon conviction shall be incarcerated in a state correctional facility for an indeterminate sentence of not less than three nor more than fifteen years or fined not more than $200,000, or both.
AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to hunting; adding coyote and fox to the list of species in which any color artificial light is permitted for hunting at night; removing redundant language relating to hunting while under the influence of alcohol; and referencing Class Y special crossbow hunting permits.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;
(2) Dig out, cut out or smoke out, or in any manner take
or attempt to take, any live wild animal or wild bird out of its
den or place of refuge except as may be authorized by rules
promulgated by the director or by law;

(3) Make use of, or take advantage of, any artificial light
in hunting, locating, attracting, taking, trapping or killing any
wild bird or wild animal, or to attempt to do so, while having
in his or her possession or subject to his or her control, or for
any person accompanying him or her to have in his or her
possession or subject to his or her control, any firearm,
whether cased or uncased, bow, arrow, or both, or other
implement or device suitable for taking, killing or trapping a
wild bird or animal: Provided, That it is lawful to hunt or
take coyote, fox, raccoon, opossum or skunk by the use of
artificial light subject to the restrictions set forth in this
subdivision. No person is guilty of a violation of this
subdivision merely because he or she looks for, looks at,
attracts or makes motionless a wild bird or wild animal with
or by the use of an artificial light, unless at the time he or she
has in his or her possession a firearm, whether cased or
uncased, bow, arrow, or both, or other implement or device
suitable for taking, killing or trapping a wild bird or wild
animal, or unless the artificial light (other than the head
lamps of an automobile or other land conveyance) is attached
to, a part of or used from within or upon an automobile or
other land conveyance.

Any person violating the provisions of this subdivision is
guilty of a misdemeanor and, upon conviction thereof, shall
for each offense be fined not less than $100 nor more than
$500 and shall be confined in jail for not less than ten days
nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or
wild birds from an airplane, or other airborne conveyance, an
automobile, or other land conveyance, or from a motor-driven
(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state unless he or she has in his or her possession a permit in writing issued to him or her by the director: Provided, That this section does not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Have in his or her possession a crossbow with a nocked bolt, a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm or crossbow, being lawfully carried in accordance with the foregoing provisions, may be so carried only when in a case or taken apart and securely wrapped.
During the period from July 1 to September 30, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: Provided, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock antemeridian on that Sunday: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday and the person so doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals. Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, is subject to a $100 fine;

(11) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

(12) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(13) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means other than by rod, line and
hooks with natural or artificial lures unless otherwise authorized by law or rules issued by the Director: Provided, that snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(14) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or rules of the director or the sale of which is prohibited;

(15) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, August 16, 1916, and February 7, 1936, except during the time and in the manner and numbers prescribed by the federal Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and regulations made thereunder;

(16) Kill, take, catch or have in his or her possession, living or dead, any wild bird other than a game bird; or expose for sale or transport within or without the state any bird except as aforesaid. No part of the plumage, skin or body of any protected bird may be sold or had in possession for sale except mounted or stuffed plumage, skin, bodies or heads of the birds legally taken and stuffed or mounted, irrespective of whether the bird was captured within or without this state, except the English or European sparrow (passer domesticus), starling (sturnus vulgaris) and cowbird (molothrus ater), which may not be protected and the killing thereof at any time is lawful;
(17) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than $500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(18) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(19) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife except as otherwise provided in section 42w of this article;

(20) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(21) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(22) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(23) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between May 1 and the August 15 next following: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands
at any time: Provided, however, That nonresidents may not
train dogs in this state at any time except during the legal
small game hunting season: Provided further, That the person
training said dogs does not have firearms or other implements
in his or her possession during the closed season on wild
animals and wild birds, whereby wild animals or wild birds
could be taken or killed;

(24) Conduct or participate in a field trial, shoot-to-
retrieve field trial, water race or wild hunt hereafter referred
to as trial: Provided, That any person, group of persons, club
or organization may hold the trial at any time of the year
upon obtaining a permit as is provided in section fifty-six of
this article. The person responsible for obtaining the permit
shall prepare and keep an accurate record of the names and
addresses of all persons participating in said trial and make
same readily available for inspection by any natural resources
police officer upon request;

(25) Except as provided in section four of this article,
hunt, catch, take, kill or attempt to hunt, catch, take or kill
any wild animal, wild bird or wild fowl except during the
open season established by rule of the director as authorized
by subdivision (6), section seven, article one of this chapter;

(26) Hunting on public lands on Sunday after five o'clock
antemeridian is prohibited;

(27) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement which wildlife can be taken, on
private lands on Sunday after the hour of five o'clock
antemeridian: Provided, That the provisions of this
subdivision do not apply in any county until the county
commission of the county holds an election on the question
of whether the provisions of this subdivision prohibiting
hunting on Sunday shall apply within the county and the
voters approve the allowance of hunting on Sunday in the
In a county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall hunting on Sunday be authorized in ________ County?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred four weeks. If a majority votes “yes,” no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county
equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: Provided, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision; and

(28) Hunt or conduct hunts for a fee where the hunter is not physically present in the same location as the wildlife being hunted within West Virginia.

 CHAPTER 92

(H. B. 4328 - By Delegates Talbott, Crosier, R. Phillips, Anderson, Azinger, Rodighiero, Hamilton and Hall)
[By Request of the Division of Natural Resources]

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §20-2-22 of the Code of West Virginia, 1931, as amended, relating to tagging of certain game animals; and removing bobcats from the list of species requiring a field tag.
Be it enacted by the Legislature of West Virginia:

That §20-2-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22. Tagging, removing, transporting and reporting bear, deer, wild boar and wild turkey.

(a) Each person killing a bear, deer, wild boar or wild turkey found in a wild state shall either attach a completed field tag to the animal or remain with the animal and have upon his or her person a completed field tag before removing the carcass in any manner from where it was killed.

(b) While transporting the carcass of a bear, deer, wild boar or wild turkey from where it was killed, each person shall either attach a completed field tag to the animal or have upon his or her person a completed field tag.

(c) Upon arriving at a residence, camp, hunting lodge, vehicle or vessel each person shall attach a field tag to the killed bear, deer, wild boar or wild turkey. The field tag shall remain on the carcass until it is retagged with a game tag by a natural resources police officer or an official checking station. The game tag shall remain on the carcass until it is dressed for consumption.

(d) If a person who does not possess a field tag kills a bear, deer, wild boar or wild turkey, he or she shall make a tag. The field tag shall bear the name, address and, if applicable, the license number of the hunter and the time, date and county of killing.

(e) The carcass of a wild turkey shall be delivered to a natural resources police officer or an official checking station
for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.

(f) The fresh skin and head or carcass of the deer shall be delivered to a natural resources police officer or an official checking station for checking and retagging before it is transported beyond the boundaries of the county adjacent to that in which the kill was made.

(g) A person who kills a bear shall treat the carcass and remains in accordance with the provisions of section twenty-two-a of this article.

(h) For each violation of this section a person is subject to the penalties provided in this article.

CHAPTER 93
(Com. Sub. for S. B. 478 - By Senators Unger, Klempa and Kessler, Mr. President)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §20-2-30a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-42y, all relating to creating apprentice hunting and trapping licenses; exempting hunter training requirements for apprentice hunting and trapping licenses; and establishing penalties.
Be it enacted by the Legislature of West Virginia:

That §20-2-30a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §20-2-42y, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.

(a) Notwithstanding any other provisions of this article, no base hunting license may be issued to any person who was born on or after January 1, 1975, unless the person submits to the person authorized to issue hunting licenses a certificate of training as provided in this section or proof of completion of any course which promotes as a major objective safety in the handling of firearms and of bow and arrows and which course is approved by the hunter education association or the director, or provides a State of West Virginia resident or nonresident hunting license from the previous hunting season that displays a certification of training, or attests that a hunter training course has been completed when purchasing a license or stamp online: Provided, That after January 1, 2013, a person may be issued a Class AH, Class AHJ, Class AAH and Class AAHJ apprentice hunting and trapping license pursuant to the provisions of section forty-two-y of this article and is exempt from the hunter training requirements set forth herein.

(b) The director shall establish a course in the safe handling of firearms and of bows and arrows, such as the course approved by the Hunter Education Association. This course shall be given at least once per year in each county in
this state and shall be taught by instructors certified by the
director. In establishing and conducting this course, the
director may cooperate with any reputable association or
organization which promotes as a major objective safety in
the handling of firearms and of bows and arrows: Provided,
That any person holding a Class A-L or AB-L lifetime
resident license obtained prior to his or her fifteenth birthday
shall be required to obtain a certificate of training as provided
in this section before hunting or trapping pursuant to said
license. This course of instruction shall be offered without
charge, except for materials or ammunition consumed. Upon
satisfactory completion of the course, each person instructed
in the course shall be issued a certificate of training for the
purposes of complying with the requirements of subsection
(a) of this section. The certificate shall be in the form
prescribed by the director and shall be valid for hunting
license application purposes.

(c) (1) Upon satisfactory completion of this course, any
person whose hunting license has been revoked for a
violation of the provisions of this chapter may petition the
director for a reduction of his or her revocation time.
However, under no circumstances may the time be reduced
to less than one year.

(2) Successful completion of this course shall be required
to consider the reinstatement of a hunting license of any
person whose license has been revoked due to a conviction
for negligent shooting of a human being or of livestock under
the provisions of section fifty-seven of this article, and who
petitions the director for an early reinstatement of his or her
hunting privileges. Such a petitioner shall also comply with
the other requirements for consideration of reinstatement
contained in section thirty-eight of this article.
(d) It is unlawful for any person to falsify, alter, forge, counterfeit or utter a certificate of training. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, or confined in jail for a period not to exceed one year, or both fined and imprisoned.

(e) Nothing herein contained shall mandate that any county school district in the state be responsible for implementing hunter safety education programs.

§20-2-42y. Class AH, AHJ, AAH, AAHJ apprentice hunting and trapping licenses; penalties.

(a) Except for persons otherwise exempted, Class AH, AHJ, AAH, and AAHJ licenses are apprentice hunting and trapping licenses and entitle the licensee to hunt and trap for all legal species of wild animals and wild birds. The licenses shall be base licenses and entitle the licensee to a deferral of the proof of a certificate of training required under the provisions of section thirty-a of this article.

(b) The apprentice hunting and trapping licensee shall not hunt or trap unless he or she is in possession of all other required documentation and stamps and is accompanied and directly supervised by an adult eighteen years of age or older who either possesses a valid West Virginia hunting license or has the lawful privilege to hunt pursuant to the provisions of this chapter. For purposes of this section, “accompanied and directly supervised” means that a person maintains a close visual and verbal contact with, provides adequate direction to and can assume control of the firearm from the apprentice hunter.
(c) The cost of the Class AH license for residents who have reached their eighteenth birthday shall be $19 and shall have the same privileges associated with Class A base license. The cost of the Class AAH license for nonresidents who have reached their eighteenth birthday shall be $119 and shall have the same privileges associated with a Class E base license. The cost of the Class AHJ license shall be $16 for residents who have reached their fifteenth birthday and who have not reached their eighteenth birthday, and shall have the same privileges associated with Class XJ base license. The cost of the Class AAHJ license shall be $16 for nonresidents who have not reached their eighteenth birthday and shall have the same privileges associated with a Class XXJ base license.

(d) An apprentice hunting and trapping license is a yearly license and may only be purchased electronically in a manner designated by the director. No person who has ever had a valid base hunting license, other than a Class AH, Class AHJ, Class AAH, or Class AAHJ license, may be issued one of the apprentice hunting and trapping licenses. Further, no person may purchase more than three apprentice hunting and trapping licenses, and the purchases must occur within a period of five consecutive years.

(e) The director may promulgate rules in accordance with chapter twenty-nine-a of this code regulating the issuance of apprentice hunting and trapping licenses.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the punishment and penalties prescribed in section nine, article seven of this chapter.
AN ACT to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-16B-6e of said code; to amend and reenact §33-16-3v of said code; to amend and reenact §33-24-7k of said code; and to amend and reenact §33-25A-8j of said code, all relating to insurance coverage for autism spectrum disorders; specifying application of benefit caps; clarifying time frames; adding evaluation of autism spectrum disorder to included coverage; clarifying diagnosis, evaluation and treatment requirements; clarifying reporting requirements; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-16B-6e of said code be amended and reenacted; that §33-16-3v of said code be amended and reenacted; that §33-24-7k of said code be amended and reenacted; and that §33-25A-8j of said code be amended and reenacted, all to read as follows:
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.

§5-16-7. Authorization to establish group hospital and surgical
insurance plan, group major medical insurance
plan, group prescription drug plan and group life
and accidental death insurance plan; rules for
administration of plans; mandated benefits; what
plans may provide; optional plans; separate rating
for claims experience purposes.

(a) The agency shall establish a group hospital and
surgical insurance plan or plans, a group prescription drug
insurance plan or plans, a group major medical insurance
plan or plans and a group life and accidental death insurance
plan or plans for those employees herein made eligible, and
to establish and promulgate rules for the administration of
these plans, subject to the limitations contained in this article.

Those plans shall include:

(1) Coverages and benefits for X ray and laboratory
services in connection with mammograms when medically
appropriate and consistent with current guidelines from the
United States Preventive Services Task Force; pap smears,
either conventional or liquid-based cytology, whichever is
medically appropriate and consistent with the current
guidelines from either the United States Preventive Services
Task Force or The American College of Obstetricians and
Gynecologists; and a test for the human papilloma virus
(HPV) when medically appropriate and consistent with
current guidelines from either the United States Preventive
Services Task Force or The American College of
Obstetricians and Gynecologists, when performed for cancer
screening or diagnostic services on a woman age eighteen or
over;

(2) Annual checkups for prostate cancer in men age fifty
and over;

(3) Annual screening for kidney disease as determined to
be medically necessary by a physician using any combination
of blood pressure testing, urine albumin or urine protein
testing and serum creatinine testing as recommended by the
National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for
inpatient care in a duly licensed health care facility for a
mother and her newly born infant for the length of time
which the attending physician considers medically necessary
for the mother or her newly born child: Provided, That no
plan may deny payment for a mother or her newborn child
prior to forty-eight hours following a vaginal delivery, or
prior to ninety-six hours following a caesarean section
delivery, if the attending physician considers discharge
medically inappropriate;

(5) For plans which provide coverages for post-delivery
care to a mother and her newly born child in the home,
coverage for inpatient care following childbirth as provided
in subdivision (4) of this subsection if inpatient care is
determined to be medically necessary by the attending
physician. Those plans may also include, among other
things, medicines, medical equipment, prosthetic appliances
and any other inpatient and outpatient services and expenses
considered appropriate and desirable by the agency; and
(6) Coverage for treatment of serious mental illness.

(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section, “serious mental illness” means an illness included in the American Psychiatric Association’s diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to any covered individual who has not yet attained the age of nineteen years, “serious mental illness” also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, in the event that the agency can demonstrate that its total costs for the treatment of mental illness for any plan exceeded two percent of the total costs for such plan in any experience period, then the agency may apply whatever additional cost-containment measures may be necessary, including, but not limited to, limitations on inpatient and outpatient benefits, to maintain costs below two percent of the total costs for the plan for the next experience period.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness, and it may use recognized health care quality and cost management tools, including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures,
preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks and using patient cost sharing in the form of copayments, deductibles and coinsurance.

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled, and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia;

(B) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8)(A) Any plan issued or renewed on or after January 1, 2012, shall include coverage for diagnosis, evaluation and treatment of autism spectrum disorder in individuals ages eighteen months to eighteen years. To be eligible for
coverage and benefits under this subdivision, the individual
must be diagnosed with autism spectrum disorder at age eight
or younger. Such policy shall provide coverage for
treatments that are medically necessary and ordered or
prescribed by a licensed physician or licensed psychologist
and in accordance with a treatment plan developed from a
comprehensive evaluation by a certified behavior analyst for
an individual diagnosed with autism spectrum disorder.

(B) The coverage shall include, but not be limited to,
applied behavior analysis. Applied behavior analysis shall be
provided or supervised by a certified behavior analyst. The
annual maximum benefit for applied behavior analysis
required by this subdivision shall be in an amount not to
exceed $30,000 per individual, for three consecutive years
from the date treatment commences. At the conclusion of the
third year, coverage for applied behavior analysis required by
this subdivision shall be in an amount not to exceed $2,000
per month, until the individual reaches eighteen years of age,
as long as the treatment is medically necessary and in
accordance with a treatment plan developed by a certified
behavior analyst pursuant to a comprehensive evaluation or
reevaluation of the individual. This subdivision shall not be
construed as limiting, replacing or affecting any obligation to
provide services to an individual under the Individuals with
Disabilities Education Act, 20 U.S.C. 1400 et seq., as
amended from time to time or other publicly funded
programs. Nothing in this subdivision shall be construed as
requiring reimbursement for services provided by public
school personnel.

(C) The certified behavior analyst shall file progress
reports with the agency semiannually. In order for treatment
to continue, the agency must receive objective evidence or a
clinically supportable statement of expectation that:
(i) The individual’s condition is improving in response to treatment; and

(ii) A maximum improvement is yet to be attained; and

(iii) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(D) On or before January 1 each year, the agency shall file an annual report with the Joint Committee on Government and Finance describing its implementation of the coverage provided pursuant to this subdivision. The report shall include, but shall not be limited to, the number of individuals in the plan utilizing the coverage required by this subdivision, the fiscal and administrative impact of the implementation, and any recommendations the agency may have as to changes in law or policy related to the coverage provided under this subdivision. In addition, the agency shall provide such other information as may be required by the Joint Committee on Government and Finance as it may from time to time request.

(E) For purposes of this subdivision, the term:

(i) “Applied Behavior Analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(ii) “Autism spectrum disorder” means any pervasive developmental disorder, including autistic disorder,
Asperger’s Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(iii) “Certified behavior analyst” means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(iv) “Objective evidence” means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required, but their use will enhance the justification for continued treatment.

(F) To the extent that the application of this subdivision for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year the agency may apply additional cost containment measures.

(G) To the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the Public Employees Insurance Agency.

(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each
employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent; and with full authorization to the agency to make the optional coverage available and provide an opportunity of purchase to each employee.

(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. In the event that a Medicare specific plan would no longer be available or advantageous for the agency and the retirees, the retirees shall remain eligible for coverage through the agency.
ARTICLE 16B. WEST VIRGINIA CHILDREN’S HEALTH INSURANCE PROGRAM.

§5-16B-6e. Coverage for treatment of autism spectrum disorders.

(a) To the extent that the diagnosis, evaluation and treatment of autism spectrum disorders are not already covered by this agency, on or after January 1, 2012, a policy, plan or contract subject to this section shall provide coverage for such diagnosis, evaluation and treatment, for individuals ages eighteen months to eighteen years. To be eligible for coverage and benefits under this section, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(b) The coverage shall include, but not be limited to, applied behavior analysis. Applied behavior analysis shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for applied behavior analysis required by this subsection shall be in an amount not to exceed $30,000 per individual, for three consecutive years from the date treatment commences. At the conclusion of the third year, coverage for applied behavior analysis required by this subsection shall be in an amount not to exceed $2,000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This section shall not be construed as limiting, replacing or affecting any obligation to
provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time, or other publicly funded programs. Nothing in this section shall be construed as requiring reimbursement for services provided by public school personnel.

(c) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

(1) The individual’s condition is improving in response to treatment; and

(2) A maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(d) On or before January 1 each year, the agency shall file an annual report with the Joint Committee on Government and Finance describing its implementation of the coverage provided pursuant to this section. The report shall include, but shall not be limited to, the number of individuals in the plan utilizing the coverage required by this section, the fiscal and administrative impact of the implementation, and any recommendations the agency may have as to changes in law or policy related to the coverage provided under this section. In addition, the agency shall provide such other information as may be requested by the Joint Committee on Government and Finance as it may from time to time request.

(e) For purposes of this section, the term:
(1) “Applied Behavior Analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(2) “Autism spectrum disorder” means any pervasive developmental disorder, including autistic disorder, Asperger’s Syndrome, Rett syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(3) “Certified behavior analyst” means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(4) “Objective evidence” means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required, but their use will enhance the justification for continued treatment.

(f) To the extent that the application of this section for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year the agency may apply additional cost containment measures.

(g) To the extent that the provisions of this section require benefits that exceed the essential health benefits
specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of the West Virginia Children’s Health Insurance Program.

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3v. Required coverage for treatment of autism spectrum disorders.

(a) Any insurer who, on or after January 1, 2012, delivers, renews or issues a policy of group accident and sickness insurance in this state under the provisions of this article shall include coverage for diagnosis, evaluation and treatment of autism spectrum disorder in individuals ages eighteen months to eighteen years. To be eligible for coverage and benefits under this section, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(b) Coverage shall include, but not be limited to, applied behavior analysis. Applied behavior analysis shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for applied behavior analysis required by this subsection shall be in an amount not to exceed $30,000 per individual, for three consecutive years from the date treatment commences. At the conclusion of the
third year, required coverage shall be in an amount not to exceed $2,000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This section shall not be construed as limiting, replacing or affecting any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this section shall be construed as requiring reimbursement for services provided by public school personnel.

(c) The certified behavior analyst shall file progress reports with the insurer semiannually. In order for treatment to continue, the insurer must receive objective evidence or a clinically supportable statement of expectation that:

(1) The individual’s condition is improving in response to treatment; and

(2) A maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(d) For purposes of this section, the term:

(1) “Applied Behavior Analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.
(2) “Autism spectrum disorder” means any pervasive developmental disorder, including autistic disorder, Asperger’s Syndrome, Rett syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(3) “Certified behavior analyst” means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(4) “Objective evidence” means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required, but their use will enhance the justification for continued treatment.

(e) The provisions of this section do not apply to small employers. For purposes of this section a small employer means any person, firm, corporation, partnership or association actively engaged in business in the State of West Virginia who, during the preceding calendar year, employed an average of no more than twenty-five eligible employees.

(f) To the extent that the application of this section for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year the insurer may apply additional cost containment measures.

(g) To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and
Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered by a health care insurer in this state.

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-7k. Coverage for diagnosis and treatment of autism spectrum disorders.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article, for policies issued or renewed on or after January 1, 2012, which delivers, renews or issues a policy of group accident and sickness insurance in this state under the provisions of this article shall include coverage for diagnosis and treatment of autism spectrum disorder in individuals ages eighteen months to eighteen years. To be eligible for coverage and benefits under this section, the individual must be diagnosed with autism spectrum disorder at age eight or younger. The policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(b) Coverage shall include, but not be limited to, applied behavior analysis. Applied behavior analysis shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for applied behavior analysis required by this subsection shall be in an amount not to exceed $30,000 per individual, for three consecutive years from the date treatment commences. At the conclusion of the
third year, coverage for applied behavior analysis required by this subsection shall be in an amount not to exceed $2,000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This section shall not be construed as limiting, replacing or affecting any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this section shall be construed as requiring reimbursement for services provided by public school personnel.

(c) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the insurer must receive objective evidence or a clinically supportable statement of expectation that:

(1) The individual’s condition is improving in response to treatment; and

(2) A maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(d) For purposes of this section, the term:

(1) “Applied Behavior Analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and
functional analysis of the relationship between environment and behavior.

(2) “Autism spectrum disorder” means any pervasive developmental disorder, including autistic disorder, Asperger’s Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(3) “Certified behavior analyst” means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(4) “Objective evidence” means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required, but their use will enhance the justification for continued treatment.

(e) The provisions of this section do not apply to small employers. For purposes of this section a small employer means any person, firm, corporation, partnership or association actively engaged in business in the State of West Virginia who, during the preceding calendar year, employed an average of no more than twenty-five eligible employees.

(f) To the extent that the application of this section for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year the corporation may apply additional cost containment measures.
(g) To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered by a corporation in this state.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article for policies issued or renewed on or after January 1, 2012, which delivers, renews or issues a policy of group accident and sickness insurance in this state under the provisions of this article shall include coverage for diagnosis, evaluation and treatment of autism spectrum disorder in individuals ages eighteen months to eighteen years. To be eligible for coverage and benefits under this section, the individual must be diagnosed with autism spectrum disorder at age eight or younger. The policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(b) Coverage shall include, but not be limited to, applied behavior analysis. Applied behavior analysis shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for applied behavior analysis
required by this subsection shall be in amount not to exceed $30,000 per individual, for three consecutive years from the date treatment commences. At the conclusion of the third year, coverage for applied behavior analysis required by this subsection shall be in an amount not to exceed $2,000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This section shall not be construed as limiting, replacing or affecting any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this section shall be construed as requiring reimbursement for services provided by public school personnel.

(c) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

(1) The individual’s condition is improving in response to treatment; and

(2) A maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(d) For purposes of this section, the term:

(1) “Applied Behavior Analysis” means the design, implementation, and evaluation of environmental
52 modifications using behavioral stimuli and consequences, to
53 produce socially significant improvement in human behavior,
54 including the use of direct observation, measurement, and
55 functional analysis of the relationship between environment
56 and behavior.

(2) “Autism spectrum disorder” means any pervasive
devvelopmental disorder, including autistic disorder,
Asperger’s Syndrome, Rett syndrome, childhood
disintegrative disorder, or Pervasive Development Disorder
as defined in the most recent edition of the Diagnostic and
Statistical Manual of Mental Disorders of the American
Psychiatric Association.

(3) “Certified behavior analyst” means an individual who
is certified by the Behavior Analyst Certification Board or
certified by a similar nationally recognized organization.

(4) “Objective evidence” means standardized patient
assessment instruments, outcome measurements tools or
measurable assessments of functional outcome. Use of
objective measures at the beginning of treatment, during and
after treatment is recommended to quantify progress and
support justifications for continued treatment. The tools are
not required, but their use will enhance the justification for
continued treatment.

(e) The provisions of this section do not apply to small
employers. For purposes of this section a small employer
means any person, firm, corporation, partnership or
association actively engaged in business in the State of West
Virginia who, during the preceding calendar year, employed
an average of no more than twenty-five eligible employees.

(f) To the extent that the application of this section for
autism spectrum disorder causes an increase of at least one
percent of actual total costs of coverage for the plan year the
health maintenance organization may apply additional cost
containment measures.

(g) To the extent that the provisions of this section
require benefits that exceed the essential health benefits
specified under section 1302(b) of the Patient Protection and
Affordable Care Act, Pub. L. No. 111-148, as amended, the
specific benefits that exceed the specified essential health
benefits shall not be required of a health benefit plan when
the plan is offered by a health maintenance organization in
this state.

CHAPTER 95

(Com. Sub. for H. B. 4486 - By Delegates
Miley, Hatfield, Ellem, Poore,
Reynolds, Hunt, Walters and Manchin)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §33-6F-2, relating
to the disclosure of certain information regarding liability
insurance coverage.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §33-6F-2, to read as
follows:
§33-6F-2. Disclosure of certain insurance information required.

Notwithstanding the provisions of section one, article six-f, of this chapter:

(a) Each insurer that may provide personal lines liability insurance coverage as that term is defined in section nine, article twelve of this chapter to pay all or a portion of a claim asserted against an insurance policy insuring a motor vehicle shall provide, within thirty days of its receipt of a written request from a claimant’s attorney who has given written notice that he or she represents the claimant: (1) A response providing the following information relating to each of the insurer’s known policies of insurance, including excess or umbrella insurance, which does or may provide liability coverage for the claim:

(A) The name of the insurer;

(B) The name of each named insured of the subject policy; and

(C) The limits of any motor vehicle liability insurance policy at the time of the events that are the subject of the claim; or

(2) The declarations page of any motor vehicle liability policy applicable at the time of the events that are the subject of the claim, appropriately redacted to comply with applicable privacy laws or regulations;
(b) Any written request by the claimant’s attorney under this section must include: (1) The date and location of the events that are the subject of the claim; (2) the name and, if known, the last known address of the insured; (3) a copy of the accident or incident report, if any; (4) the insurer’s claim number; (5) a good faith estimate and documentation of all of the claimant’s medical expenses if any and any wage loss documentation as of the date of the request, if any; and (6) documentation as of the date of the request of any and all property damage.

(c) Disclosure of the information required by subsection (a) of this section shall not constitute an admission that the alleged injury or damage is subject to the policy, nor shall such disclosure waive any reservation of rights an insurer may have.

(d) No information disclosed by any party pursuant to this section shall be, by reason of such disclosure, admissible as evidence at trial.

(e) An insurer’s compliance with this section does not constitute a violation of this article, or subsection twelve, section eleven, article six of this chapter.

(f) An insurer that fails to comply with this section is subject to a penalty of five hundred dollars, plus reasonable attorneys’ fees and expenses incurred in obtaining disclosure of the information required by subsection (a) of this section. This penalty is the sole and exclusive remedy for an insurer’s failure to comply with this section.
AN ACT to amend and reenact §33-31-2 of the Code of West Virginia, 1931, as amended, relating to captive insurance; limiting risk retention groups’ risks on single subjects of insurance; and requiring captive insurance companies to notify the insurance commissioner of any material changes to certain information.

Be it enacted by the Legislature of West Virginia:

That §33-31-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-2. Licensing; authority.

(a) Any captive insurance company, when permitted by its articles of association, charter or other organizational document, may apply to the commissioner for a license to do any and all insurance comprised in section ten, article one of this chapter: Provided, That all captive insurance companies, except pure captive insurance companies, shall maintain their principal office and principal place of business in this state: Provided, however, That:
(1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

(2) No association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies;

(3) No industrial insured captive insurance company may insure any risks other than those of the industrial insureds that comprise the industrial insured group, and their affiliated companies;

(4) No risk retention group may insure any risks other than those of its members and owners;

(5) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(6) No captive insurance company may accept or cede reinsurance except as provided in section eleven of this article;

(7) No risk retention group may retain any risk on any one subject of insurance, whether located or to be performed in West Virginia or elsewhere, in an amount exceeding ten percent of the surplus required by section four of this article, unless approved by the commissioner;

(8) Any captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the federal law or laws of the state having jurisdiction over the transaction. Any captive insurance company, unless prohibited by federal law, may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies; and
(9) Any captive insurance company which insures risks described in subsections (a) and (b) of section ten, article one of this chapter shall comply with all applicable state and federal laws.

(b) No captive insurance company may do any insurance business in this state unless:

(1) It first obtains from the commissioner a license authorizing it to do insurance business in this state;

(2) Its board of directors, or, in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one meeting each year in this state; and

(3) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state:

Provided, That whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Secretary of State shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c)(1) Before receiving a license, a captive insurance company shall:

(A) File with the commissioner a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

(B) Submit to the commissioner for approval a description of the coverages, deductibles, coverage limits and rates, together with such additional information as the commissioner may reasonably require. In the event of any subsequent material change in any item in such description,
the captive insurance company shall submit to the commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates within thirty days of the adoption of such change.

(2) Each applicant captive insurance company shall also file with the commissioner evidence of the following:

(A) The amount and liquidity of its assets relative to the risks to be assumed;

(B) The adequacy of the expertise, experience and character of the person or persons who will manage it;

(C) The overall soundness of its plan of operation;

(D) The adequacy of the loss prevention programs of its insureds; and

(E) Such other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Information submitted pursuant to this subsection shall be and remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(A) Such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:
(i) The information sought is relevant to and necessary for the furtherance of such action or case;

(ii) The information sought is unavailable from other nonconfidential sources; and

(iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner: Provided, That the provisions of subdivision (3) of this subsection shall not apply to any risk retention group; and

(B) The commissioner may, in the commissioner's discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, if:

(i) The public official shall agree in writing to maintain the confidentiality of such information; and

(ii) The laws of the state in which such public official serves require such information to be and to remain confidential.

(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for examining, investigating and processing its application for license, and the commissioner is authorized to retain legal, financial and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of subsection (r), section nine, article two of this chapter shall apply to examinations, investigations and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each year thereafter of $300.
(e) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this article, the commissioner may grant a license authorizing it to do insurance business in this state until May 31, thereafter, which license may be renewed.

(f) A captive insurance company shall notify the commissioner in writing within thirty days of becoming aware of any material change in information previously submitted to the commissioner, including information submitted in or with the license application.

CHAPTER 97

(Com. Sub. for S. B. 621 - By Senator Unger)

[Passed March 8, 2012; in effect ninety days from passage.]  
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §8A-5-7 of the Code of West Virginia, 1931, as amended, relating to the approval of major subdivision or land development plans and plats; and requiring a letter from the Division of Highways stating there is sufficient access to state roads.

Be it enacted by the Legislature of West Virginia:

That §8A-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

§8A-5-7. Contents of a major subdivision or land development plan and plat.

(a) A land development plan and plat must include everything required by the governing body’s subdivision and land development ordinance.

(b) If a governing body does not have a subdivision and land development ordinance or if a governing body’s subdivision and land development ordinance does not specify what may be included in a subdivision or land development plan and plat, then the following may be included, when applicable, in a subdivision or land development plan and plat:

(1) Show that the subdivision or land development conforms to the governing body’s comprehensive plan;

(2) A method of payment to cover the cost of the water and sewer service infrastructure, which can include, but is not limited to, bonds, impact fees, escrow fees and proffers;

(3) Coordination among land development with adjoining land owners, including, but not limited to, facilities and streets;

(4) Distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience and the harmonious development of the municipality or county;

(5) Show that there is a fair allocation of areas for different uses, including, but not limited to, streets, parks,
(6) Show that there is a water and sewer supply;

(7) Setback and lot size measures were used;

(8) The standards used for designating land which is subject to flooding or subsidence, details for making it safe, or information showing that such land will be set aside for use which will not endanger life or property and will not further aggravate or increase the existing menace;

(9) The control measures for drainage, erosion and sediment;

(10) The coordination of streets, sidewalks and pedestrian pathways in and bordering the land development, including a letter from the Division of Highways stating that the plan provides sufficient access to state roads; and

(11) The design, construction and improvement measures to be used for the streets, sidewalks, easements, rights-of-way, drainage, utilities, walkways, curbs, gutters, street lights, fire hydrants, water and wastewater facilities, and other improvements installed, including the width, grade and location for the purpose of accommodating prospective traffic, customers and facilitating fire protection.
CHAPTER 98

(Com. Sub. for H. B. 3177 - By Delegates Lawrence, Marshall, Doyle, Pino, Hunt and Frazier)

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §38-1-16, relating to the status and rights of parties under a preexisting tenancy and lease when residential rental property is sold by a trustee pursuant to a deed of trust; declaring the rights of new owner to terminate tenancy with notice; providing a right of existing tenant to terminate tenancy; creating minimum notice requirements; setting requirements for providing notice; declaring that the terms and conditions of the preexisting lease survive the trustee sale; naming certain exceptions; and setting effective date.

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 §38-1-16, to read as follows:
ARTICLE 1. VENDOR’S AND TRUST DEED LIENS.

§38-1-16. Sale of real property pursuant to a deed of trust; preexisting tenancy.

(a) Notwithstanding the notice requirements of section five, article six, chapter thirty-seven of this code, following the conveyance of residential rental property to a purchaser by a trustee pursuant to a deed of trust, the tenancy of a tenant occupying the property under an unexpired written lease that is either not of record or was placed of record after the deed of trust under which the trustee sold the residential rental property was placed of record, may be terminated by giving ninety days written notice or by giving written notice not less than thirty days prior to the expiration of the lease, whichever is shorter. However, the tenancy of a tenant occupying the property under a month to month or other tenancy may be terminated by giving thirty days written notice. The terms and conditions of the lease of the property remain fully enforceable during the notice period. If the tenant fails to timely comply with the terms of the lease, the new owner, or the agent of the new owner, may proceed under article three-a of chapter fifty-five of this code, notwithstanding the provisions of this section. The tenancy of a factory built home may only be terminated as provided in section six, article fifteen, chapter thirty-seven of this code.

(b) The notice required by subsection (a) of this section shall, at a minimum, identify the residential real property occupied by the tenant, state the date of the trustee’s sale at which the residential real property was purchased, state the book and page number at which the trustee’s deed to the purchaser appears of record, state the date on which the tenancy will expire, and identify the purchaser, including information sufficient to contact the purchaser.

(c) Service of written notice upon the tenant, or anyone else holding the leased premises, or any part thereof, under
the tenant is sufficient if made by regular mail addressed to
the tenant or person holding under the tenant at the address of
the property and by either personal delivery to the tenant or
person holding under the tenant, by posting a copy of the
notice on the front door of the rental real property or by
certified mail addressed to the tenant or person holding under
the tenant at the address of the property. When notice is given
by the tenant, it may be served upon any person owning the
premises, in whole or in part, or the agent of an owner.

(d) The provisions of this section take effect on the first
day of January, two thousand thirteen.

CHAPTER 99

(H. B. 4634 - By Delegate White)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §49-6C-1 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §60-2-
21 of said code, all relating to fiscal audits conducted by the
Legislative Auditor of the Alcohol Beverage Control
Commission and the Children’s Trust Fund; increasing audits
of the Alcohol Beverage Control Commission from two fiscal
years to five fiscal years; and increasing audits of the
Children’s Trust Fund from three fiscal years to five fiscal
years.

Be it enacted by the Legislature of West Virginia:
That §49-6C-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-2-21 of said code be amended and reenacted, all to read as follows:

CHAPTER 49. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.

ARTICLE 6C. CHILDREN’S TRUST FUND.

§49-6C-1. Continuation and transfer of control of trust fund.

(a) The Children’s Fund, created for the sole purpose of awarding grants, loans and loan guarantees for child abuse and neglect prevention activities by enactment of chapter twenty-seven, Acts of the Legislature, 1984, as last amended and reenacted by chapter one hundred fifty-nine, Acts of the Legislature, 1999, is hereby continued and renamed the West Virginia Children’s Trust Fund: Provided, That upon the effective date of the enactment of this section during the second extraordinary session of the 2007 Legislature, the fund shall be administered by the Commissioner of the Bureau for Children and Families. Gifts, bequests or donations for this purpose, in addition to appropriations to the fund, shall be deposited in the State Treasury in a special revenue account under the control of the Secretary of the Department of Health and Human Resources or his or her designee.

(b) Each state taxpayer may voluntarily contribute a portion of the taxpayer’s state income tax refund to the Children’s Trust Fund by designating the contribution on the state personal income tax return form. The bureau shall approve the wording of the designation on the income tax return form. The State Tax Commissioner shall determine by July 1, of each year the total amount designated pursuant to this subsection and shall report that amount to the State Treasurer, who shall credit that amount to the Children’s Trust Fund.
(c) All interest accruing from investment of moneys in the Children’s Trust Fund shall be credited to the fund. The Legislative Auditor shall conduct an audit of the fund at least every five fiscal years.

(d) Grants, loans and loan guarantees may be awarded from the Children’s Trust Fund by the Commissioner of the Bureau for Children and Families for child abuse and neglect prevention activities.

(e) Upon the effective date of the enactment of this section, all employees, records, responsibilities, obligations, assets and property, of whatever kind and character, of the Governor’s Cabinet on Children and Families are hereby transferred to the Bureau for Children and Families within the Department of Health and Human Resources, including, but not limited to, all rights and obligations held by the Governor’s Cabinet on Children and Families under any grants, loans or loan guarantees previously awarded from the Children’s Trust Fund.

(f) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective by the Governor, by any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which have been transferred to the Bureau for Children and Families within the Department of Health and Human Resources, and were in effect on the date the transfer occurred continue in effect, for the benefit of the department, according to their terms until modified, terminated, superseded, set aside or revoked in accordance with the law by the Governor, the Secretary of the Department of Health and Human Resources or other authorized official, a court of competent jurisdiction or by operation of law.
CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOLIC BEVERAGE CONTROL COMMISSIONER.


At least every five fiscal years, the Legislative Auditor shall audit the affairs of the West Virginia Alcohol Beverage Control Commissioner and report the results of the audit to the Governor. The cost of the audit shall be paid from the operating fund.

CHAPTER 100

(Com. Sub. for H. B. 4142 - By Delegates Brown, D. Poling, Fleischauer, Talbott and Overington)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Administration; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing
certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Administration to promulgate a legislative rule relating to certification for small, women and minority-owned businesses; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service, loan and employer error interest factors; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Division of Personnel to promulgate a legislative rule relating to the administration of the Division; and authorizing the Division of Personnel to promulgate a legislative rule relating to Workers’ Compensation temporary total disability.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

1 The legislative rule filed in the State Register on the fifteenth day of July, two thousand eleven, authorized under the authority of section fifty-nine, article three, chapter five-a, of this code, modified by the Department of Administration
to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of September, two thousand eleven, relating to the Department of Administration (certification for small, women and minority-owned businesses, 148 CSR 22), is authorized.


(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand eleven, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-third day of September, two thousand eleven, relating to the Consolidated Public Retirement Board (Public Employees Retirement System, 162 CSR 5), is authorized, with the following amendment:

On page three, section eight, subsection 8.1, after the words “fourteen and five-tenths (14.5%) of each compensation payment of all its employees who are members of the Public Employees Retirement System” by changing the period to a colon and inserting the following: “And provided further, that beginning July 1, 2012, each participating public employer shall contribute fourteen percent (14%) of each compensation payment of all its employees who are members of the Public Employees Retirement System”.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand eleven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (refund, reinstatement, retroactive service, loan and employer error interest factors, 162 CSR 7), is authorized.
(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand eleven, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (West Virginia State Police, 162 CSR 9), is authorized, with the following amendment:

On page eight, section fourteen, subsection 14.1, line 10, after the words “seventeen and five-tenths (17.5%) of the monthly salary of each member of the West Virginia State Police Retirement System to the West Virginia State Police Retirement System” by changing the period to a colon and inserting the following: “And provided further, that beginning July 1, 2012, the West Virginia State Police shall contribute fifteen and five-tenths percent (15.5%) of the monthly salary of each member of the West Virginia State Police Retirement System to the West Virginia State Police Retirement System”.


(a) The legislative rule filed in the State Register on the twenty-second day of July, two thousand eleven, authorized under the authority of section ten, article six, chapter twenty-nine, of this code, modified by the Division of Personnel to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of November, two thousand eleven, relating to the Division of Personnel (administrative rule of the West Virginia Division of Personnel, 143 CSR 1), is authorized, with the following amendments:

On page 10, line 3, by striking out the subsection designation “3.80” and inserting in lieu thereof the subsection designation “3.81”, and re-designating the remaining subsections accordingly;

On page forty-six, subdivision 12.4.(i), after the words “after layoff shall” by inserting the word “not”;
On page seventy, after subdivision 21.3.(b), by inserting a new section, designated section 22, to read as follows:

Section. Grievance Procedure.

An employee hired for permanent employment may file a grievance with the West Virginia Public Employees Grievance Board as provided in W. Va. Code §6C-2-1 et seq.;

And,

By renumbering the remaining sections.

(b) The legislative rule filed in the State Register on the twenty-second day of July, two thousand eleven, authorized under the authority of section one, article four, chapter twenty-three, of this code, modified by the Division of Personnel to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of November, two thousand eleven, relating to the Division of Personnel (Workers’ Compensation temporary total disability, 143 CSR 3), is authorized.

CHAPTER 101

(Com. Sub. for S. B. 253 - By Senator Minard)

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization
for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to solid waste management; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from the combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources which cause or contribute to nonattainment areas; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of
Environmental Protection to promulgate a legislative rule relating to determining conformity of general federal actions to applicable implementation plans; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the greenhouse gas emissions inventory program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; and authorizing the Department ofEnvironmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section five, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (solid waste management, 33 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four,
article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 8), is authorized.

(d) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality, 45 CSR 14), is authorized.

(e) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(f) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.

(g) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources which cause or contribute to nonattainment areas, 45 CSR 19), is authorized.

(h) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the
Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(i) The legislative rule filed in the State Register on March 16, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (requirements for operating permits, 45 CSR 30), is authorized.

(j) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(k) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (determining conformity of general federal actions to applicable implementation plans (general conformity), 45 CSR 35), is authorized.

(l) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (greenhouse gas emissions inventory program, 45 CSR 42), is authorized.

(m) The legislative rule filed in the State Register on July 8, 2011, authorized under the authority of section four, article eleven, chapter twenty-two of this code, approved for promulgation by the Legislature on March 18, 2011, relating to the Department of Environmental Protection (National Pollutant Discharge Elimination System (NPDES) Program, 47 CSR 10), is authorized with the following amendments:
On page one, subsection 2.6., by striking out “2006” and inserting in lieu thereof “2009”; 

On page fifteen, subparagraph 4.4.c.1.J., by striking out “40 C.F.R. §412(C) or (D)” and inserting in lieu thereof “40 C.F.R. Part 412, Subpart C or D”; 

And, 

On page forty-seven, paragraph 13.1.f.2., by striking out all of paragraph 13.1.f.2. and inserting in lieu thereof a new paragraph 13.1.f.2. to read as follows: 

13.1.f.2. Expansion of AFO to CAFO. For other operations (e.g. resulting from an increase in the number of animals), the owner or operator must seek to obtain coverage under a permit as soon as possible, but no later than ninety (90) days after becoming defined as a CAFO. 

(n) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section three, article twenty-two, chapter twenty-two of this code, relating to the Department of Environmental Protection (voluntary remediation and redevelopment, 60 CSR 3), is authorized with the following amendments: 

On page seventy-eight, by striking out all of the de minimis values for the parameter “Hexachloroethane” and inserting in lieu thereof new de minimis values for the parameter “Hexachloroethane” to read as follows: 

“Residential Soil - 1.2E+01, Industrial Soil - 6.2E+02, Ground Water - 1.7E+00, Migration to Groundwater - 2.0E-02”; 

And,
On page eighty-two, by striking out all of the de minimis values for the parameter “Trichloroethylene (TCE)” and inserting in lieu thereof new de minimis values for the parameter “Trichloroethylene (TCE)” to read as follows:

“Residential Soil - 4.8E-01, Industrial Soil - 2.1E+01, Ground Water - 5.0E+00, Migration to Groundwater - 3.6E-02”.

CHAPTER 102

(Com. Sub. for S. B. 245 - By Senator Minard)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 3, 2012.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to
and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to credentialing verification organizations; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to a safety and treatment program; authorizing the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to promulgate a legislative rule relating to an all-payer claims database—data submission requirements; authorizing the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems operators; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to wastewater systems and operations; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to vital statistics; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to manufactured home communities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems design standards; authorizing the Division of Human Services to promulgate a legislative rule relating to family child care facility licensing requirements; authorizing the Division of Human Services to promulgate a legislative rule relating to family child care home registration requirements; authorizing the Division of Human Services to promulgate a legislative rule relating to a child care quality rating and improvement system;
authorizing the Commission for the Deaf and Hard of Hearing to promulgate a legislative rule relating to fees for qualified interpreters; and authorizing the Commission for the Deaf and Hard of Hearing to promulgate a legislative rule relating to the establishment of required qualifications and ethical standards for interpreters and transliterators.

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

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section three, article two, chapter thirty-three of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2011, relating to the Department of Health and Human Resources (credentialing verification organizations, 64 CSR 89B), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section three, article five-a, chapter seventeen-c of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2011, relating to the Department of Health and Human Resources (safety and treatment program, 64 CSR 98), is authorized.
(c) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section eight, article four-a, chapter thirty-three of this code, modified by the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2011, relating to the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority (all-payer claims database — data submission requirements, 114A CSR 1), is authorized with the following amendments:

On page four, subsection 3.2., by striking out “OIC” and inserting in lieu thereof the words “Offices of the Insurance Commissioner”;

On page four, subdivision 3.2.a., by striking out “OIC” and inserting in lieu thereof the words “Offices of the Insurance Commissioner”;

And,

On page seven, by striking out all of subdivision 7.1.e. and inserting in lieu thereof a new subdivision 7.1.e., to read as follows:

“7.1.e. The Director of the Public Employees Insurance Agency or his or her designee, the Commissioner of the Bureau for Medical Services or his or her designee and the Director of the Children’s Health Insurance Program or his or her designee.”.

(d) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section eight, article four-a, chapter thirty-three of this code, relating to the

(a) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (public water systems, 64 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 30, 2011, relating to the Department of Health and Human Resources (public water systems operators, 64 CSR 4), is authorized with the following amendments:

On page three, subsection 3.23., after the words “Water Distribution” by inserting the word “System”;

And,

On page six, subdivision 5.5.c., by striking out the word “subsection” and inserting in lieu thereof the word “subdivision”.

(c) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four,
article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 30, 2011, relating to the Department of Health and Human Resources (wastewater systems and operations, 64 CSR 5), is authorized with the following amendments:

On page three, subsection 3.26., by striking out the words “West Virginia Department of Environmental Protection (WVDEP)” and inserting in lieu thereof “WV DEP”;

On page four, subdivision 4.1.e., by striking out the word “Extended” and inserting in lieu thereof the words “This class includes extended”;

On page five, by striking out “5.4.a.2.” and inserting in lieu thereof “5.4.a.1.A.”;

On page five, by striking out “5.4.a.3.” and inserting in lieu thereof “5.4.a.1.B.”;

On page seven, subsection 6.2., after the words “based on” by inserting the words “his or her”;

On page nine, subdivision 7.7.a., by striking out the word “requirement” and inserting in lieu thereof the word “requirements”;

On page ten, subsection 10.1., by striking out the word “applications” and inserting in lieu thereof the word “application”;

On page ten, subsection 10.4., by striking out the word “Applicant” and inserting in lieu thereof the words “An applicant”;
On page eleven, subdivision 12.1.d., after the word “one” by inserting “(1)”;

On page twelve, subdivision 12.1.g., after the word “three” by inserting “(3)”;

On page twelve, subdivision 12.1.h., after the words “with this rule,” by inserting the word “an”;

On page twelve, subdivision 12.1.h., line eight, following the words “under this rule shall”, by striking out the word “take” and inserting in lieu thereof “complete”;

On page twelve, subdivision 12.1.h., line ten, following the words “advanced certified operator”, by inserting the words “without examination”;

And,

On page fifteen, Table 64-5B, in the row beginning with the word “Advanced”, under the column heading labeled “Education”, following the words “Commissioner-approved training course” by striking out the words “& passing the Advanced exam”.

(d) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section three, article five, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (vital statistics, 64 CSR 32), is authorized.

(e) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the
Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (manufactured home communities, 64 CSR 40), is authorized with the following amendments:

On page four, by striking out all of subdivision 5.1.5. and inserting in lieu thereof a new subdivision 5.1.5., to read as follows:

“5.1.5. The Commissioner shall deny a permit if the information on the application form, plans or specifications is incomplete, inaccurate, false or misleading, or indicates that the application provisions of this rule cannot be met. A permit to construct shall be issued or denied within forty-five (45) days of receipt of the completed application. Reasons for denial shall be in writing.”;

And,

On page four, by striking out all of paragraph 5.1.5.a.

(f) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (AIDS-related medical testing and confidentiality, 64 CSR 64), is authorized with the following amendments:

On page four, by striking out all of paragraph 4.1.d.4. and inserting in lieu thereof a new paragraph 4.1.d.4., to read as follows:
4.1.d.4. It is recommended that health care providers test women as early as possible during each pregnancy. Women who decline the test early in prenatal care may be encouraged to be tested at subsequent visits.”;

On page five, by striking out all of subdivision 4.2.c. and inserting in lieu thereof a new subdivision 4.2.c. to read as follows:

“4.2.c. If the pregnant woman’s HIV status is unknown at the time she presents for delivery, an HIV test shall be offered and if she refuses the test, the infant may be tested and the mother shall be informed of the testing and the results.”;

On page six, by striking out all of paragraph 4.2.c.1.;

On page six, by striking out all of paragraph 4.2.c.2;

On page six, by striking out “4.2.c.3.” and inserting in lieu thereof “4.2.c.1.”;

On page six, by striking out “4.2.c.4.” and inserting in lieu thereof “4.2.c.2.”;

On page six, by striking out all of paragraph 4.3.b.1. and inserting in lieu thereof a new paragraph 4.3.b.1, to read as follows:

“4.3.b.1. A court shall order a defendant charged with an offense set forth in subdivision two, subsection f, section two, article three-c, chapter sixteen of the code, to undergo an oral test for HIV test not later than 48 hours after the date on which the information or indictment is presented”;

On page six, by striking out all of paragraph 4.3.b.3. and inserting in lieu thereof a new paragraph 4.3.b.3, to read as follows:
“4.3.b.3. Follow-up tests for HIV are authorized as may be medically appropriate, and the results of any follow-up tests shall be made available in accordance with paragraph 4.3.b.2, as soon as practicable.”;

And,

On page seven, by striking out all of subsection 5.3.

(g) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (public water systems design standards, 64 CSR 77), is authorized with the following amendments:

On page seven, after subdivision 3.3.d., by inserting a new subsection, designated subsection 3.4., to read as follows:

“3.4. Specifications – The applicant or the applicant’s engineer shall supply complete, detailed technical specifications for the proposed project, including: pipe, valves and other building materials; a program for keeping existing public water system facilities in operation during construction of additional facilities so as to minimize interruption of service; laboratory facilities and equipment; the number and design of chemical feeding equipment; and materials or proprietary equipment for sanitary or other facilities including any necessary backflow or backsiphonage protection.”;

On page eleven, by striking out “§65-77-5.” and inserting in lieu thereof “§64-77-5.”;

On page thirty-five, paragraph 6.3.h.2., after the words “at a minimum,” by inserting the word “of”;
On page forty, paragraph 6.4.g.1., by striking out the word “led” and inserting in lieu thereof the word “lead”;

On page forty-five, paragraph 6.4.i.2., by striking out the word “devise” and inserting in lieu thereof the word “device”;

On page sixty-seven, paragraph 7.5.d.2., by striking out the word “shallbe” and inserting in lieu thereof the words “shall be”;

And,

On page sixty-seven, paragraph 7.5.e.3., by striking out the word “serve” and inserting in lieu thereof the word “severe”.

§64-5-3. Division of Human Services.

(a) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2011, relating to the Division of Human Services (family child care facility licensing requirements, 78 CSR 18), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2011, relating to the Division of Human Services (family child care home registration requirements, 78 CSR 19), is authorized.
17 (c) The legislative rule filed in the State Register on July 18 29, 2011, authorized under the authority of section two, 19 article two-e, chapter forty-nine of this code, modified by the 20 Division of Human Services to meet the objections of the 21 Legislative Rule-Making Review Committee and refiled in 22 the State Register on November 23, 2011, relating to the 23 Division of Human Services (child care quality rating and 24 improvement system, 78 CSR 22), is authorized, with the 25 following amendment:

26 On page one, subsection 1.4, line six, by striking out the 27 words “July 1, 2012” and inserting in lieu thereof the words 28 “This rule is effective upon the date specified in an 29 emergency rule promulgated by the Department of Health 30 and Human Resources as being the date funding for 31 implementation of the Child Care Quality Rating and 32 Improvement System will become available pursuant to a 33 duly enacted appropriation bill authorizing the expenditure of 34 funds for that purpose.”;

35 And,

36 On page one, beginning on line thirteen, by striking out 37 subsection 2.3 in its entirety and inserting in lieu thereof a 38 new subsection 2.3, to read as follows:

39 “2.3 Pursuant to W.Va. Code §49-2E-4, no provision of 40 this rule may be construed to require implementation of a 41 quality rating and improvement system unless funds are 42 appropriated therefor. The ‘Quality Rating and Improvement 43 System Cost Implementation Study’ dated July 31, 2011, 44 prepared and published by the Marshall University Center for 45 Business and Economic Research for the Department of 46 Health and Human Resources and accessible on-line at 47 http://www.marshall.edu/cber/research/QualityRatingImpr 48 ovementSystemFINAL.pdf, is the financial plan submitted by
the Secretary of the Department of Health and Human
Resources pursuant to Chapter §49-2E-3, and is hereby
attached by reference and incorporated into this rule as if
fully set forth herein. The financial plan prioritizes the
components of the system for implementation and provides
for gradual implementation over a period of several years in
the event that funding is not sufficient to implement all
requirements in code.


(a) The legislative rule filed in the State Register on July
29, 2011, authorized under the authority of section nine,
article fourteen-a, chapter five of this code, relating to the
Commission for the Deaf and Hard of Hearing (fees for
qualified interpreters, 192 CSR 1), is authorized, with the
following amendment:

On page four, subsection 2.24, by striking out the words
“spoken translating” and inserting in lieu thereof the words
“translating spoken”.

(b) The legislative rule filed in the State Register on July
29, 2011, authorized under the authority of section five,
article fourteen-a, chapter five of this code, modified by the
Commission for the Deaf and Hard of Hearing to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on December 1,
2011, relating to the Commission for the Deaf and Hard of
Hearing (establishment of required qualifications and ethical
standards for interpreters and transliterators, 192 CSR 3), is
authorized.
AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police Career Progression System; authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police Modified Vehicle Inspection Manual; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training standards; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to motor vehicle search standards; and authorizing the Division of Corrections to promulgate a legislative rule relating to fees for electronic monitoring of offenders.

Be it enacted by the Legislature of West Virginia:
That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. State Police.

(a) The legislative rule filed in the State Register on July 25, 2011, authorized under the authority of section twenty-five, article two, chapter fifteen of this code, modified by the State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 6, 2012, relating to the State Police (West Virginia State Police Career Progression System, 81 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2011, authorized under the authority of section forty-eight, article fifteen, chapter seventeen-c of this code, modified by the State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 6, 2012, relating to the State Police (West Virginia State Police Modified Vehicle Inspection Manual, 81 CSR 4), is authorized, with the following amendment:

On page ten, paragraph 81-4-4.6.2., after the word “spacers” by adding the following, “on the end of the coil”.

§64-6-2. Governor’s Committee on Crime, Delinquency and Correction.

(a) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section three,
article twenty-nine, chapter thirty of this code, modified by
the Governor’s Committee on Crime, Delinquency and
Correction to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register
on January 3, 2012, relating to the Governor’s Committee on
Crime, Delinquency and Correction (law-enforcement
training standards, 149 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July
28, 2011, authorized under the authority of section eleven,
article one-a, chapter sixty-two of this code, modified by the
Governor’s Committee on Crime, Delinquency and
Correction to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register
on January 3, 2012, relating to the Governor’s Committee on
Crime, Delinquency and Correction (motor vehicle search
standards, 149 CSR 6), is authorized.

§64-6-3. Division of Corrections.

The legislative rule filed in the State Register on May 23,
2011, authorized under the authority of section fourteen,
article one, chapter twenty-five of this code, modified by the
Division of Corrections to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on July 20, 2011, relating to the Division
of Corrections (fees for electronic monitoring of offenders,
90 CSR 8), is authorized.
CHAPTER 104

(Com. Sub. for S. B. 287 -
By Senator Minard)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 3, 2012.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Tax Department to promulgate a legislative rule relating to the payment of taxes by electronic funds transfer; authorizing the State Tax Department to promulgate a legislative rule relating to the commercial patent incentives tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to an
exchange of information agreement between the State Tax Department and the Department of Commerce, the Department of Transportation and the Department of Environmental Protection; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the licensing and conduct of insurance producers and agencies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to insurance holding company systems; authorizing the Insurance Commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mini COBRA; authorizing the Insurance Commissioner to promulgate a legislative rule relating to workers’ compensation insurance for state agencies; authorizing the Division of Banking to promulgate a legislative rule relating to residential mortgage lenders, brokers and loan originators; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensed retailer operations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the licensing of retail outlets; authorizing the Racing Commission to promulgate a legislative rule relating to simulcast pari-mutuel wagering at an authorized gaming facility in a historic hotel; authorizing the Athletic Commission to promulgate a legislative rule relating to mixed martial arts; and authorizing the Board of Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a premium subsidy.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. State Tax Department.

(a) The legislative rule filed in the State Register on April 21, 2011, authorized under the authority of section five-z, article ten, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 5, 2011, relating to the State Tax Department (payment of taxes by electronic funds transfer, 110 CSR 10F), is authorized with the following amendments:

On page four, subsection 3.2., by striking out all of subsection 3.2. and inserting in lieu thereof a new subsection 3.2., to read as follows:

3.2. The threshold amount is $100,000.00 in tax liability per tax type per taxable year or reporting period beginning on or after January 1, 2004, subject to subdivisions 3.2.1., 3.2.2., 3.2.3. and 3.2.4. of this subsection.;

And,

On page four, after subsection 3.2., by inserting four new subdivisions, designated subdivisions 3.2.1., 3.2.2., 3.2.3. and 3.2.4., to read as follows:

“3.2.1. For tax years beginning on or after January 1, 2013, the threshold amount for determining whether a taxpayer shall pay electronically is $50,000 in tax liability paid for a single tax type in the immediately preceding tax year: Provided, That for tax years beginning on or after January 1, 2013, any taxpayer that pays more than $50,000 for any tax type in the immediately preceding tax year shall electronically pay the taxes for all tax returns filed;
3.2.2. For tax years beginning on or after January 1, 2014, the threshold amount for determining whether a taxpayer shall pay electronically is $25,000 in tax liability paid for a single tax type in the immediately preceding tax year: Provided, That for tax years beginning on or after January 1, 2014, any taxpayer that pays more than $25,000 for any tax type in the immediately preceding tax year shall electronically pay the taxes for all tax returns filed;

3.2.3. For tax years beginning on or after January 1, 2015, the threshold amount for determining whether a taxpayer shall pay electronically is $10,000 in tax liability paid for a single tax type in the immediately preceding tax year: Provided, That for tax years beginning on or after January 1, 2015, any taxpayer that pays more than $10,000 for any tax type in the immediately preceding tax year shall electronically pay the taxes for all tax returns filed;

3.2.4. Tax Commissioner may determine the tax types for which electronic payment of taxes is not required.”

(b) The legislative rule filed in the State Register on July 18, 2011, authorized under the authority of section ten, article thirteen-aa, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 22, 2011, relating to the State Tax Department (commercial patent incentives tax credit, 110 CSR 13Q), is authorized, with the following amendment:

On page three, subsection 2.18, line twenty-one, following the words “June 19” and the comma, by striking out the number “2970” and inserting in lieu thereof the number “1970”;

On page five, subsection 3.1.7, line six, following the words “allowed under”, by striking out the words “Subsection 3.1 or 3.2 of”;
And,

On page five, subsection 3.1.8, line ten, following the words “allowed under”, by striking out the words “Subsection 3.1 or 3.2 of”.

(c) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section five-s, article ten, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 22, 2011, relating to the State Tax Department (exchange of information agreement between the State Tax Department and the Department of Commerce, the Department of Transportation and the Department of Environmental Protection, 110 CSR 50G), is authorized.

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (licensing and conduct of insurance producers and agencies, 114 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (surplus lines insurance, 114 CSR 20), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2011, relating to the
Insurance Commissioner (insurance holding company systems, 114 CSR 35), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2011, relating to the Insurance Commissioner (continuing education for individual insurance producers, 114 CSR 42), is authorized with the following amendment:

On page three, subsection 4.2., by striking out all of subsection 4.2. and inserting in lieu thereof a new subsection 4.2. to read as follows:

“4.2. The commissioner shall, in consultation with the board, develop a program regarding continuing education requirements during the transition to the new biennium period established pursuant to the 2012 amendments to this rule; such program shall be posted on the agency website.”

(e) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (mini COBRA, 114 CSR 93), is authorized with the following amendments:

On page three, subsection 3.5., after the word “subsection” by striking out “3.5.” and inserting in lieu thereof “3.4.”;

On page three, subsection 3.6, by striking out the subsection in its entirety and inserting in lieu thereof, the following:
“3.6. Election of coverage by beneficiary. A covered employee or other qualified beneficiary who wants to elect continuation coverage must do so in writing to the carrier within 30 days after receiving a notice under subsection 3.5 of this section and must include payment of the initial premium set forth in such notice. The premium payment due shall be for the period beginning on the date coverage would have otherwise terminated due to the qualifying event. The premium charged for continuation of coverage may not exceed 100% percent of the applicable premium.”;

On page four, subdivision 3.6.a., by striking out the subdivision in its entirety and inserting in lieu thereof, the following:

“3.6.a. The carrier or its designee shall process all elections promptly and provide coverage retroactively to the date coverage would otherwise have terminated on the basis of the qualifying event. Employers are required to promptly provide to the carrier or its designee any information and paperwork necessary to facilitate the processing of a request for continuation of coverage. After an election and initial premium remittance, the carrier must bill the beneficiary for premiums no more often than monthly and with an allowance for a 30-day grace period for payment.”;

And,

On page four, subsection 3.7., by striking out all of subsection 3.7. and inserting in lieu thereof a new subsection 3.7., to read as follows:

“3.7. Remedies in the event of carrier noncompliance. If a carrier fails to comply with the requirements of this rule, including the notice requirements of subsection 3.5. of this section, and such noncompliance results in the failure of an eligible adult qualified beneficiary of a covered employee to
timely elect continuation coverage, every qualified beneficiary of the covered employee covered on the day of the qualifying event shall remain covered under the health benefit plan until the qualified beneficiaries are afforded the opportunity to elect such coverage.”

(f) The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (Workers’ Compensation Insurance for state agencies, 114 CSR 94), is authorized with the following amendments:

On page one, subsection 2.2., by striking out all of subsection 2.2. and inserting in lieu thereof a new subsection 2.2., to read as follows:

“2.2. ‘Discretionary participant’ means any discretionary participant as defined in W. Va. Code §33-2-21a(a)(1).’’;

On page two, subsection 2.8., by striking out the words “and those discretionary participants that have agreed to participate in SAWC under an agreement with the Commissioner” and inserting in lieu thereof the words “and for those discretionary participants that participate in SAWC”;

On page two, subsection 3.1., by striking out the words “and shall send to each a notice of such determination”;  

On page two, subdivision 3.1.a., by striking out the words “Such notice shall inform: (i) Executive state entities that they will be required to execute the Agreement and” and inserting in lieu thereof the words “The Commissioner shall inform: (i) Executive state entities that they will be required”;
On page two, subdivision 3.1.b., by striking out the words “Any recipient of a notice sent pursuant to subdivision a of this subsection that believes it should have been classified differently, or any entity that did not receive a notice” and inserting in lieu thereof the words “Any entity that believes it should have been classified differently, or any entity that did not receive a notice of eligibility”; 

On page two, subsection 3.2., by striking out all of subsection 3.2. and inserting in lieu thereof a new subsection 3.2., to read as follows:

“3.2. The Commissioner may make participation in SAWC by a discretionary participant contingent on the execution of the Agreement.”;

On page three, subdivision 3.3.a., after the word “Agreement” by inserting the words “or other noncompliance with program requirements”; 

On page three, subdivision 3.3.c., by striking out the words “the latter of one year from removal or the next open enrollment period” and inserting in lieu thereof the words “a period of not more than one year to be determined by the commissioner based on the seriousness of the non-compliance and the efforts of the participant to come into compliance”;

On page three, subdivision 3.3.d., by striking out the words “upon application and re-execution of the Agreement” and inserting in lieu thereof the words “upon written request and expiration of the exclusion period determined in accordance with subdivision 3.3.c. of this subsection”; 

On page three, subdivision 3.4.a., by striking out the words “any fee” and inserting in lieu thereof the words “any assessment”;
139 On page three, subdivision 3.4.a., by striking out the words “assessed fee” and inserting in lieu thereof the word “assessment”;

142 On page three, subdivision 3.4.a., by striking out the words “such fee” and inserting in lieu thereof the words “such assessment”;

145 And, 

146 On page three, subdivision 3.4.b., by striking out the word “fees” and inserting in lieu thereof the word “assessment”.

§64-7-3. Division of Banking.

The legislative rule filed in the State Register on July 21, 2011, authorized under the authority of section three, article seventeen, chapter thirty-one of this code, relating to the Division of Banking (residential mortgage lenders, brokers and loan originators, 106 CSR 5), is authorized.

§64-7-4. Alcohol Beverage Control Commission.

(a) The legislative rule filed in the State Register on July 13, 2011, authorized under the authority of section six, article three-a, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 21, 2011, relating to the Alcohol Beverage Commission (licensed retailer operations, 175 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 13, 2011, authorized under the authority of section six, article three-a, chapter sixty of this code, relating to the Alcohol Beverage Control Commission (licensing of retail outlets, 175 CSR 5), is authorized.
§64-7-5. Racing Commission.

The legislative rule filed in the State Register on September 13, 2011, authorized under the authority of section twelve-d, article twenty-three, chapter nineteen of this code, relating to the Racing Commission (simulcast pari-mutual wagering at an authorized gaming facility in a historic hotel, 178 CSR 7), is authorized.

§64-7-6. Athletic Commission.

The legislative rule filed in the State Register on July 28, 2011, authorized under the authority of section three-a, article five-a, chapter twenty-nine of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 6, 2012, relating to the Athletic Commission (mixed martial arts, 177 CSR 2), is authorized, with the following amendments:

On pages three and four, §177-2.5., by striking out all of §177-2.5. and inserting in lieu thereof a new §177-2.5., to read as follows:

“§177-2.5. Venues must have a minimum seating capacity of 2,500 and video replay capabilities in good working order. However, the Commission may waive the minimum seating capacity requirement. Venues with a seating capacity of 3,500 or more must have a minimum of four video monitors displaying a continuous live feed of the match for the spectators; venues with a maximum seating capacity of 3,499 or less must have at least two monitors displaying a continuous live feed of the match for the spectators. All such video monitors must be a minimum of six feet by six feet. No event shall take place until the venue has been approved by the commission.”;
On page twelve, subsection 29.5., by striking out all of subsection 29.5. and inserting in lieu thereof a new subsection 29.5., to read as follows:

“29.5. Prohibition of certain dressings. – No second shall be permitted to use grease or any other substances on the body of a contestant. The use of petroleum jelly in corners is not allowed except in the use of stopping blood and on cuts. Petroleum jelly, or other substances approved by the commission, may be used in between rounds in the use of stopping blood and on cuts and only in the presence of a representative of the commission. The use of drugs, alcohols or stimulants during a match by any contestant is adequate cause for revoking license.”;

On page twenty, subsection 41.1., by striking out all of subsection 41.1. and inserting in lieu thereof a new subsection 41.1., to read as follows:

“41.1. Matches may take place in a cage or ring that has been approved by the commission. The cage or ring shall meet the requirements set forth by the commission and is subject to inspection prior to each match by a commission representative such as a referee.”;

On page twenty-one, subsection 41.3., by striking out all of subsection 41.3. and inserting in lieu thereof a new subsection 41.3., to read as follows:

“41.3. The commission shall determine all seating arrangements at cage side necessary to effectuate the match. A promoter may submit a proposed seating arrangement to the commission one week before the event.”;

And,
On page twenty-one, after subsection 41.3., by inserting a new subsection, designated subsection 41.4., to read as follows:

41.4. Ring - The ring specifications shall meet the following requirements:

41.4.a. The ring shall be no smaller than twenty feet square and larger than thirty-two feet square within the ropes. One corner shall have a red designation and the corner directly opposite shall have a blue designation.

41.4.b. The floor must extend at least eighteen inches beyond the ropes. The ring floor must be padded in a manner as approved by the commission, with at least one inch layer of foam padding. No vinyl or other plastic rubberized cover shall be permitted. The fighting area canvas shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the participants.

41.4.c. Ring posts must be made of metal, not more than three inches in diameter, extending from the floor of the building to a minimum height of fifty-eight inches above the ring floor, and must be properly padded in a manner approved by the commission. Ring posts must be at least eighteen inches away from the ring ropes.

41.4.d. There must be five ring ropes, not less than one inch in diameter and wrapped in soft material. The lowest ring rope must be twelve inches above the ring floor.

41.4.e. There must not be any obstruction or object, including, without limitation, a triangular border, on any part of the ring floor.”.
§64-7-7. Directors of the West Virginia Health Insurance Plan.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section seven-b, article forty-eight, chapter thirty-three, of this code, relating to the Board of Directors of the West Virginia Health Insurance Plan (premium subsidy, 113 CSR 1), is authorized.

CHAPTER 105

(Com. Sub. for H. B. 4206 - By Delegates Brown, D. Poling, Fleischauer and Talbott)

[Passed February 29, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the
construction and reconstruction of state roads (157 CSR 3); authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways (157 CSR 7); and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to compulsory motor vehicle liability insurance (91 CSR 13).

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Commissioner of Highways.

(a) The legislative rule filed in the State Register on the twenty-first day of July, two thousand eleven, authorized under the authority of section eight, article two-a, chapter seventeen, of this code, modified by the Commissioner of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the tenth day of January, two thousand twelve, relating to the Commissioner of Highways (construction and reconstruction of state roads, 157 CSR 3), is authorized with the following amendments:

On page twenty-seven, subdivision 7.2.1., by striking out the word “al” and inserting in lieu thereof the word “all”;

On page thirty-five, subdivision 8.1.a., by striking out all of subdivision 8.1.a.;

And relettering the remaining subdivisions;
On page forty-three, subdivision 9.7.c., by striking out the word “subsection” and inserting in lieu thereof the word “subdivision”; 


And,

On page ninety-five, subdivision 13.2.e., by striking out “§5A-3-33a-f” and inserting in lieu thereof “§5A-3-33d”.

(b) The legislative rule filed in the State Register on the eighth day of July, two thousand eleven, authorized under the authority of section seven, article eighteen, chapter twenty-two, of this code, relating to the Commissioner of Highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized.

§64-8-2. Division of Motor Vehicles.

The legislative rule filed in the state register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section eight, article two-a, chapter seventeen-d, of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of October, two thousand eleven, relating to the Division of Motor Vehicles (compulsory motor vehicle liability insurance, 91 CSR 13), is authorized.
AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees established by the Board; authorizing the Board of Accountancy to promulgate a legislative rule relating to the Board and rules of professional conduct; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to a schedule of fees;
authorizing the Board of Medicine to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the Human Rights Commission to promulgate a legislative rule relating to housing discrimination against persons with disabilities who utilize assistance animals; authorizing the State Auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the labeling of imported honey, honey products or honey bee by-products and adulterated honey, honey products or honey bee by-products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to nutrient management certification; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to licensing schools of barbering and beauty culture; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to shampoo assistants; authorizing the Courthouse Facilities Improvement Authority to promulgate a legislative rule relating to the Courthouse Facilities Improvement Fund; authorizing the Secretary of State to promulgate a legislative rule relating to the Vote-by-Mail Pilot Project Phase 2: Voting by Mail; authorizing the Secretary of State to promulgate a legislative rule relating to the general management and preservation of state records; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to fees for services
rendered by the Board; authorizing the Board of Osteopathy to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Uniform Controlled Substances Act; authorizing the Board of Pharmacy to promulgate a legislative rule relating to continuing education for the licensure of pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure of wholesale drug distributors; and authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Dental Examiners.

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section eighteen, article four-a, chapter thirty, of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-first day of October, two thousand eleven, relating to the Board of Dental Examiners (fees established by the Board, 5 CSR 3), is authorized, with the following amendments:

On page one, subsection 2.1., by striking out all of subsection 2.1. and inserting in lieu thereof a new subsection 2.1. to read as follows:
14 2.1. Dental Licensure Application $185.00;

15 On page one, subsection 2.8., by striking out all of
16 subsection 2.8. and inserting in lieu thereof a new subsection
17 2.8. to read as follows:

18 2.8. Annual Information & Renewal
19 fee for a Dentist $185.00;

20 On page one, subsection 4.1., by striking out all of
21 subsection 4.1. and inserting in lieu thereof a new subsection
22 4.1. to read as follows:

23 4.1. Dental Hygiene Licensure Application $75.00;

24 On page two, subsection 4.7., by striking out all of
25 subsection 4.7. and inserting in lieu thereof a new subsection
26 4.7. to read as follows:

27 4.7. Annual Information & Renewal fee
28 for a Dental Hygienist $75.00;

29 On page two, subsections 4.8. through 4.15., by striking
30 out all of subsections 4.8. through 4.15. and inserting in lieu
31 thereof new subsections, designated subsections 4.8. through
32 subsection 4.16. to read as follows:

33 4.8 Annual Information & Renewal fee
34 for a Dental Hygienist employed
35 by a public health agency $65.00

36 4.9. Local Anesthesia Certificate Application fee $50.00

37 4.10. Nitrous Oxide Monitoring
38 Certificate Application fee $50.00
4.11. Bleaching Certificate Application fee $25.00
4.12. General Supervision Application fee $100.00
4.13. Public Health Practice Application fee $25.00
4.15. Annual Renewal fee of General Supervision Certificate $50.00
4.16. Annual Renewal fee of Public Health Practice Certificate $25.00;

On page two, subsection 7.2., by striking out all of subsection 7.2. and inserting in lieu thereof a new subsection 7.2. to read as follows:

7.2. Class Two Certification Renewal Fee $15.00;

And,

On page two, subsection 7.6., by striking out all of subsection 7.6. and inserting in lieu thereof a new subsection 7.6. to read as follows:

7.6. Qualified Monitor Annual Renewal Fee $25.00;

§64-9-2. Board of Accountancy.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section five, article nine, chapter thirty of this code, relating to the Board of Accountancy (the Board and rules of professional conduct, 1 CSR 1), is authorized.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section six, article thirty-seven, chapter thirty, of this code, relating to the Massage Therapy Licensure Board (general provisions, 194 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section six, article thirty-seven, chapter thirty, of this code, relating to the Massage Therapy Licensure Board (schedule of fees, 194 CSR 4), is authorized, with the following amendment:

On page 1, at the end of the rule, by adding thereto a new section, designated section 3, to read as follows:

“§194-4-3. Expiration of fee increases.

The fee increases enacted by emergency rule in 2011 and by legislative rule in 2012 will expire as of July 1, 2014”.

§64-9-4. Board of Medicine.

The legislative rule filed in the State Register on the twelfth day of July, two thousand eleven, authorized under the authority of section fifteen, article three, chapter thirty, of this code, relating to the Board of Medicine (formation and approval of professional limited liability companies, 11 CSR 7), is authorized.


The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized
under the authority of section eight, article eleven, chapter five of this code, relating to the Human Rights Commission (housing discrimination against persons with disabilities who utilize assistance animals, 77 CSR 9), is authorized.

§64-9-6. Auditor.

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section ten-c, article three, chapter twelve, of this code, relating to the State Auditor (transaction fee and rate structure, 155 CSR 4), is authorized, with the following amendment:

On page one, section three, by striking out all of subsection 3.1 and inserting in lieu thereof the following:


(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand eleven, authorized under the authority of section three, article two-b, chapter nineteen, of this code, relating to the Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.
§64-9-8. **Board of Barbers & Cosmetologists.**

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, relating to the Board of Barbers and Cosmetologists (procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians, 3 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative
Rule-Making Review Committee and refiled in the State Register on the twentieth day of September, two thousand eleven, relating to the Board of Barbers and Cosmetologists (licensing schools of barbering and beauty culture, 3 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section eleven-a, article twenty-seven, chapter thirty, of this code, relating to the Board of Barbers and Cosmetologists (shampoo assistants, 3 CSR 8), is authorized.


The legislative rule filed in the State Register on the first day of September, two thousand eleven, authorized under the authority of section three, article twenty-six, chapter twenty-nine, of this code, modified by the Courthouse Facilities Improvement Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eleventh day of January, two thousand twelve, relating to the Courthouse Facilities Improvement Authority (Courthouse Facilities Improvement Fund, 203 CSR 1), is authorized.

§64-9-10. Secretary of State.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section three, article three-a, chapter three, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-third day of December, two thousand eleven, relating to the Secretary of State (Vote-by-Mail Pilot Project Phase 2: Voting by Mail, 153 CSR 39), is authorized.
(b) The legislative rule filed in the State Register on the twentyninth day of July, two thousand eleven, authorized under the authority of three, article three-a, chapter three, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twelfth day of January, two thousand twelve, relating to the Secretary of State (general management and preservation of state records, 153 CSR 42), is authorized, with the following amendment:

On page one, subsection 1.5, line ten, following the words “record-keeping systems”, by inserting the words “for essential public records created or filed with the West Virginia Secretary of State”;

On page four, subsection 3.1, line twelve, following the words “Archives and History”, by striking out the word “division” and inserting in lieu thereof the word “section”;

On page four, subsection 3.2a, line fourteen, following the words “Culture and History”, by inserting a comma and the words “Archives and History section”;

And

On page four, subsection 3.2d, line twenty-five, following the words “Director of Archives”, by inserting the words “and History”.


The legislative rule filed in the State Register on the twelfth day of July, two thousand eleven, authorized under the authority of section six, article thirteen-a, chapter thirty, of this code, modified by the Board of Professional Surveyors to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the
twenty-first day of November, two thousand eleven, relating
to the Board of Professional Surveyors (examination and
licensing of professional surveyors in West Virginia, 23 CSR
1), is authorized.


The legislative rule filed in the State Register on the
twenty-eighth day of March, two thousand eleven, authorized
under the authority of section six, article twenty-five, chapter
thirty, of this code, modified by the Nursing Home
Administrators Licensing Board to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on the eighteenth day of October, two
thousand eleven, relating to the Nursing Home
Administrators Licensing Board (nursing home
administrators, 21 CSR 1), is authorized.


The legislative rule filed in the State Register on the
fourteenth day of July, two thousand eleven, authorized under
the authority of section seven, article twenty-eight, chapter
thirty, of this code, relating to the Board of Occupational
Therapy (fees for services rendered by the Board, 13 CSR 3),
is authorized.


The legislative rule filed in the State Register on the
twenty-eighth day of July, two thousand eleven, authorized
under the authority of section four, article one, chapter thirty,
of this code, relating to the Board of Osteopathy (licensing
procedures for osteopathic physicians, 24 CSR 1), is
authorized.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section three hundred one, article three, chapter sixty-a, of this code, relating to the Board of Pharmacy (Uniform Controlled Substances Act, 15 CSR 2), is authorized with the following amendment:

On page twenty three, subdivision 7.10.1., by striking out the word “full” and inserting in lieu thereof the word “fill”.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section three-a, article five, chapter thirty, of this code, relating to the Board of Pharmacy (continuing education for licensure of pharmacists, 15 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section nine, article eight, chapter sixty-a, of this code, relating to the Board of Pharmacy (licensure of wholesale drug distributors, 15 CSR 5), is authorized with the following amendment:

On page three, subsection 3.1, after the words “prescription drugs.” by adding the following: Notwithstanding the provisions of W. Va. Code §60A-8-7, the fee for a license for the wholesale distribution of drugs is $750.00.

(d) The legislative rule filed in the State Register on the ninth day of December, two thousand eleven, authorized under the authority of section thirty, article five, chapter thirty, of this code, relating to the Board of Pharmacy (immunizations administered by pharmacists, 15 CSR 12), is authorized.
AN ACT to amend and reenact article 10, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Development Office to promulgate a legislative rule relating to brownfield economic development districts; authorizing the Development Office to promulgate a legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to the certification of registered foresters; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to a schedule of
fees; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to a code of ethics; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - licensing; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - logger certification; authorizing the Division of Labor to promulgate a legislative rule relating to the Zipline and Canopy Tour Responsibility Act; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to the application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motor boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, trapping and fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Development Office.

(a) The legislative rule filed in the State Register on the fifth day of July, two thousand eleven, authorized under the authority of section six-a, article two, chapter five-b, of this code, modified by the Development Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-third day of December, two thousand eleven, relating to the Development Office (brownfield economic development districts, 145 CSR 11), is authorized.

(b) The legislative rule filed in the State Register on the fourteenth day of July, two thousand eleven, authorized under the authority of section twenty-a, article thirteen-a, chapter eleven, of this code, modified by the Development Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixteenth day of December, two thousand eleven, relating to the Development Office (use of coalbed methane severance tax proceeds, 145 CSR 13), is authorized, with the following amendment:

On page one, section three, by striking out “W.Va. Code §11-12-1” and inserting in lieu thereof “W.Va. Code §7-12-1”.

§64-10-2. Board of Registration for Foresters.

(a) The legislative rule filed in the State Register on the third day of August, two thousand eleven, authorized under the authority of section six, article nineteen, chapter thirty, of this code, modified by the Board of Registration for Foresters
to meet the objections of the Legislative Rule-Making
Review Committee and refiled in the State Register on the
fifth day of December, two thousand eleven, relating to the
Board of Registration for Foresters (certification of registered
foresters, 200 CSR 1), is authorized, with the following
amendment:

On page 1, subsection 1.1, after the words “rule
establishes” by striking out the remainder of the sentence and
inserting in lieu thereof the words “educational and
experience requirements, approved job titles and continuing
education requirements for foresters and forestry technicians,
and meeting requirements for the board.”;

On page 2, subsection 2.9, at the end of the subsection,
by striking out the words “this article” and inserting in lieu
thereof the words “W. Va. Code §30-19-1 et seq. and this
rule.”;

On page 2, in the first subsection 2.10, by striking out the
word “Permitee” and inserting in lieu thereof the word
“Permittee”, and at the end of the subsection, by striking out
the words “this article” and inserting in lieu thereof the words
“W. Va. Code §30-19-1 et seq. and this rule.”;

On page 2, subsection 2.11, at the end of the subsection,
by striking out the words “this article” and inserting in lieu
thereof the words “W. Va. Code §30-19-1 et seq. and this
rule.”;

On page 2, in the second subsection 2.10, at the end of
the subsection, by striking out the words “this article” and
inserting in lieu thereof the words “W. Va. Code §30-19-1 et
seq. and this rule.”;

On page 2, by redesignating the second subsection 2.10
as subsection 2.12;
36 On page 2, section 3, after the section heading, by
37 striking out section 3 in its entirety and inserting in lieu
38 thereof a new section 3 to read as follows:

§200-1-3. Applications.

3.1. An applicant for certification as a registered forester
shall submit evidence to the board of the following:

3.1.a. A bachelor’s degree in forestry from a four
year school, college or university accredited by the Society
of American Foresters and at least two years of full-time
equivalent work experience as a professional forester within
the ten years preceding the date of filing an application for
registration; or

3.1.b. An associate’s degree from a two year
technical forestry program recognized by the Society of
American Foresters plus a bachelor’s degree in another
natural science or business and at least four years of full-time
equivalent work experience in the field of forestry acceptable
to the board within the ten years preceding the date of filing
an application for registration.

3.2. An applicant for certification as a registered forestry
technician shall submit evidence to the board of an
associate’s degree from a two year technical forestry program
recognized by the Society of American Foresters and at least
four years of full-time equivalent work experience in the field
of forestry acceptable to the board within the ten years
preceding the date of filing an application for registration.

3.3. All applicants must complete the application form
provided by the Board and supply the following:

3.3.a. Personal information;
3.3.b. Educational information;

3.3.c. Qualifying work experience;

3.3.d. Verification of license, certification or other authority to practice from other state licensing boards, if applicable;

3.3.e. Written responses to questions regarding criminal offenses;

3.3.f. Written responses to questions regarding child support obligations; and

3.3.g. Applicable fee or fees as provided in 200 CSR 4.

On page 3, subsection 6.1, after the words “name and” by striking out the word “license” and inserting in lieu thereof the word “certification”;

On page 4, subsection 6.7, by striking out the words “will automatically” and inserting in lieu thereof the words “will be automatically classified as”;

On page 4, subsection 6.9, after the words “non-renewal of any” by striking out the word “license” and inserting in lieu thereof the word “certification” and after the words “return the certificate” by striking out the words “of registration”;

On page 4, subsection 7.1, after the words “issuing of a certificate” by striking out the words “of registration”;

On page 5, subsection 7.2, after the words “working toward eligibility for” by striking out the word “licensing” and inserting in lieu thereof the word “certification”, and
after the words “leading to the issuance of a” by striking out the words “license and” and after the word “certificate” by striking out the words “of registration”;

And,

On page 6, subsection 10.1, after the words “To renew a” by striking out the word “license” and inserting in lieu thereof the word “certificate” and after the words “renewal or initial” by striking out the word “registration” and inserting in lieu thereof the word “certification” and after the words “The board shall not renew a” by striking out the word “license” and inserting in lieu thereof the word “certificate”.

(b) The legislative rule filed in the State Register on the third day of August, two thousand eleven, authorized under the authority of section six, article nineteen, chapter thirty, of this code, modified by the Board of Registration for Foresters to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand eleven, relating to the Board of Registration for Foresters (schedule of fees, 200 CSR 4), is authorized, with the following amendments:

On page 1, in the first subsection 2.2, after the word “fee” by striking out the word “for”;

On page 1, in the second subsection 2.2, after the word “certification” by striking out the word “license”; and

On page 1, section 2, by numbering the subsections of said section 2 sequentially.

(c) The legislative rule filed in the State Register on the third day of August, two thousand eleven, authorized under the authority of section six, article nineteen, chapter thirty, of this code, modified by the Board of Registration for Foresters to meet
the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand eleven, relating to the Board of Registration for Foresters (code of ethics, 200 CSR 5), is authorized.

§64-10-3. **Division of Forestry.**

(a) The legislative rule filed in the State Register on the twentieth day of July, two thousand eleven, authorized under the authority of section four, article one-b, chapter nineteen, of this code, relating to the Division of Forestry (sediment control during commercial timber-harvesting operations - licensing, 22 CSR 2), is authorized, with the following amendment:

On page two, section two, subsection 2.22, after “§19-1B-3e” by striking out the remainder of the subsection and inserting in lieu thereof the following: “includes all aspects of logging, including but not limited to severing and delimbing of trees, cutting of the delimbed tree into logs either at the point of severing or at a landing, the preparation of any skid and haul roads and the skidding or otherwise moving of logs to landings.”.

(b) The legislative rule filed in the State Register on the twentieth day of July, two thousand eleven, authorized under the authority of section seven, article one-b, chapter nineteen, of this code, relating to the Division of Forestry (sediment control during commercial timber-harvesting operations - logger certification, 22 CSR 3), is authorized, with the following amendment:

On page two, section two, subsection 2.13, after the word “Operations”, by inserting the words “or the singular”.

§64-10-4. **Division of Labor.**

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized
under the authority of section six, article fifteen, chapter
twenty-one, of this code, modified by the Division of Labor
to meet the objections of the Legislative Rule-Making
Review Committee and refiled in the State Register on the
twenty-fifth day of October, two thousand eleven, relating to
the Division of Labor (Zipline and Canopy Tour
Responsibility Act, 42 CSR 10), is authorized with the
following amendments:

On page two, subsection 3.5., by striking out all of
subsection 3.5. and inserting in lieu thereof a new subsection,
designated subsection 3.5., to read as follows:

3.5. “Serious injury,” means an injury that is directly
related to any mechanical, electrical, operational or structural
malfunction of a zipline or canopy tour that results in death,
loss of consciousness, or requires medical treatment other
than first aid by a physician or other medical professional for
which a record is created.;

And,

On pages four through six, by striking out the remainder
of the rule and inserting in lieu thereof the following:

§42-10-10. Unscheduled Cessation of Operation.

10.1. Following any unscheduled cessation of operation,
the operator of a zipline or canopy tour shall immediately
have the participants safely removed or unloaded from the
zipline or canopy tour.

10.2. If the operator determines that the zipline or canopy
tour can safely resume operation, the qualified person shall
first operate the zipline or canopy tour without participants to
ensure that the cause of the unscheduled cessation of
operation has been corrected.
10.3. The operator shall document any unscheduled cessation of operation, including the identification of the zipline or canopy tour, the name of the employee operating the zipline or canopy tour during the unscheduled cessation, and a complete description of the incident, including the date, time, weather conditions, location, number of participants, etc.

§42-10-11. Imminent Danger.

11.1. If the Commissioner or a special inspector determines that a zipline or canopy tour presents an imminent danger, he or she shall immediately give written notification to the zipline or canopy tour owner or operator, advising him or her that the zipline or canopy tour shall be immediately removed from service.

11.2. If the owner or operator does not immediately remove the zipline or canopy tour from service, the inspector shall immediately report the imminent danger to the Commissioner.

11.3. If the owner or operator does not immediately remove the zipline or canopy tour from service, the Commissioner may seek a temporary or permanent restraining order or injunction to prohibit the continuing operation of the zipline or canopy tour.

§42-10-12. Serious Injury or Fatality.

12.1. If a participant or member of the general public is involved in an accident related to the operation of a zipline or canopy tour that results in a serious injury or a fatality, the owner or operator shall immediately shut down the operation of the zipline or canopy tour and secure the safety of other participants and the general public.

12.2. An owner or operator shall ensure that the scene of a serious injury or fatality is left intact from the time of the
accident and shall ensure that the zipline or canopy tour involved is not removed from the scene of the accident without written authorization from the Commissioner or a law enforcement officer.

12.3. The owner, operator, and any employees who witnessed the accident or who operated the zipline or canopy tour when the accident occurred shall be available to be interviewed by the Commissioner.

12.4. The owner of the zipline or canopy tour shall make a report of the injury or fatality to the Commissioner within 24 hours of its occurrence, using the Division’s emergency contact protocol.

12.4.a. After the owner of the zipline or canopy tour notifies the Commissioner of a serious injury or fatality, the Commissioner shall, with reasonable promptness, advise the owner whether the zipline or canopy tour shall remain shut down pending investigation and inspection or whether it can be placed back in service.

12.4.b. In deciding whether the zipline or canopy tour shall remain shut down or whether it can be placed back in service, the Commissioner’s sole consideration shall be the safety of participants and the general public.

12.5. The owner shall document the accident, to include the full name, address and telephone number of the injured person, a description of his or her injuries, identification of the zipline or canopy tour involved, the names and addresses of the owner and employees who witnessed the accident, and any other pertinent information describing the events leading up to the accident.

12.6. An owner or operator shall keep a record of every accident or fatality with the certificate of inspection, which shall be readily accessible to the general public. The record shall include the following information:

13.1. The owner of the zipline or canopy tour shall retain all reports, documents, photographs and records required by this rule for not less than 3 years from the date of the unscheduled cessation, imminent danger notification, or serious injury or fatality.

13.2. If an owner violates any provision of this section of the rule, the Commissioner may permanently revoke the permit to operate.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section three, article ten, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-fifth day of October, two thousand eleven, relating to the Division of Labor (Amusement Rides and Amusement Attractions Safety Act, 42 CSR 17), is authorized.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand eleven, authorized under the authority of section eleven, article three-c, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-fifth day of October, two thousand eleven, relating to the Division of Labor (supervision of elevator mechanics and apprentices, 42 CSR 21A), is authorized.
§64-10-5. Office of Miners’ Health, Safety & Training.

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand eleven, authorized under the authority of section thirteen, article thirteen-bb, chapter eleven, of this code, modified by the Office of Miners’ Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of November, two thousand eleven, relating to the Office of Miners’ Health, Safety and Training (application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act, 56 CSR 14), is authorized.

§64-10-6. Division of Natural Resources

(a) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (special boating, 58 CSR 26), is authorized.

(b) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand eleven, authorized under the authority of section twenty-three, article seven, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (special motorboating, 58 CSR 27), is authorized.

(c) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand eleven, authorized
under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (hunting, trapping and fishing, 58 CSR 45A), is authorized.

(d) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (defining the terms used in all hunting and trapping, 58 CSR 46), is authorized.

(e) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(f) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (general trapping, 58 CSR 53), is authorized, with the following amendment:
996 LIENS [Ch. 108

On page one, section three, subsection 3.2, in the first sentence, after the word “Areas” by adding “and State Forests”,

And,

On page one, section three, subsection 3.2, in the second sentence, after the word “Area” by adding “or State Forest”.

(g) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand eleven, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of September, two thousand eleven, relating to the Division of Natural Resources (special fishing, 58 CSR 61), is authorized.

CHAPTER 108

(Com. Sub. for S. B. 434 - By Senator Palumbo)

[Passed March 2, 2012; in effect from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §38-5-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-5A-3 of said code, all relating to proceedings in aid of execution on judgments; and providing that a suggestion and suggestee execution shall contain the date of birth and last four digits of the Social Security number of the judgment debtor.
Be it enacted by the Legislature of West Virginia:

That §38-5-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-5A-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.

§38-5-10. Suggestion on judgment; summons against person suggested.

(a) Upon a suggestion by the judgment creditor that a person is indebted or liable to the judgment debtor or has in the person’s possession or control personal property belonging to the judgment debtor, which debt or liability could be enforced when due, or which property could be recovered when it became returnable by the judgment debtor in a court of law and which debt or liability or property is subject to the judgment creditor’s writ of fieri facias, a summons against such person may be issued out of the office of the clerk of the circuit court or of the magistrate court of the county in which the judgment creditor obtained the writ of fieri facias, requiring such person to answer the suggestion in writing and under oath. Service of a summons issued under this section may be made as provided by subdivision (1), subsection (d) of rule four of the rules of civil procedure for trial courts of record. The return day for a summons issued under this section is governed by the provisions of rule sixty-nine of the rules of civil procedure for trial courts of record.

(b) The suggestion by the judgment creditor provided for in this section shall include, to the extent possible, the present address, the last four digits of the Social Security number and date of birth of the judgment debtor, which information shall be made available to the person suggested for purposes of
identifying the judgment debtor and facilitating a proper answer to the suggestion.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.

(a) A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of such execution to the judgment debtor as salary or wages arising out of any private employment. If satisfactory proof shall be made, by affidavit or otherwise, of such facts and the fact that the amount due or to become due as salary or wages after the deduction of all state and federal taxes exceeds in any week thirty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record the clerk thereof, shall issue a suggestee execution against the salary or wages of the judgment debtor and upon presentation of such execution by the officer to whom delivered for collection to the person or persons from which such salary or wages are due and owing or thereafter may become due and owing to the judgment debtor, the execution and the expenses thereof shall become a lien and continuing levy upon the salary or wages due or to become due to the judgment debtor within one year after the issuance of the same, unless sooner vacated or modified as hereinafter provided, to an amount equal to twenty percent thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to an amount per week that is less than thirty times the federal minimum hourly
27 wage then in effect. Only one such execution shall be
28 satisfied, at one time, except that in the event two or more
29 such executions have been served and satisfaction of the one
30 having priority is completed without exhausting the amount
31 of the salary or wages then due and payable that is subject to
32 suggestion under this article the balance of such amount shall
33 be paid in satisfaction, in the order of their priority, of junior
34 suggestee executions against such salary or wages theretofore
35 served.

36 (b) The suggestee execution by the judgment creditor
37 provided in this section shall include, to the extent possible,
38 the present address, the last four digits of the Social Security
39 number and date of birth of the judgment debtor, which
40 information shall be made available for the purpose of
41 properly identifying the judgment debtor whose salary or
42 wages are being levied upon.

CHAPTER 109

(S. B. 619 - By Senators Prezioso
and Minard)

[Passed March 10, 2012; in effect July 1, 2012.]
[Approved by the Governor on April 2, 2012.]
delinquent annual reports for nonprofit corporations; allowing the Secretary of State to deposit a portion of late fees collected in its general administrative fees account; authorizing the Secretary of State to charge a fee for online purchases of data or conducting transactions online; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §59-1-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

(a) Definitions. -- As used in this section:

(1) “Annual report fee” means the fee described in subsection (c) of this section that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies. After June 30, 2008, any reference in this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall mean the annual report fee described in this section.

(2) “Business activity” means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in subsection (b), section one thousand five hundred one, article fifteen, chapter thirty-one of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any of the activities of foreign limited liability companies enumerated in subsection (a), section one thousand three, article ten, chapter thirty-one-
b of this code except for the activity of conducting affairs in interstate commerce when activity occurs in this state.

(3) “Corporation” means a “domestic corporation”, a “foreign corporation” or a “nonprofit corporation”.

(4) “Deliver or delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(5) “Domestic corporation” means a corporation for profit which is not a foreign corporation incorporated under or subject to chapter thirty-one-d of this code.

(6) “Domestic limited liability company” means a limited liability company which is not a foreign limited liability company under or subject to chapter thirty-one-b of this code.

(7) “Foreign corporation” means a for-profit corporation incorporated under a law other than the laws of this state.

(8) “Foreign limited liability company” means a limited liability company organized under a law other than the laws of this state.

(9) “Limited partnership” means a partnership as defined by section one, article nine, chapter forty-seven of this code.

(10) “Nonprofit corporation” means a nonprofit corporation as defined by section one hundred fifty, article one, chapter thirty-one-e of this code.

(11) “Registration fee” means the fee for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision
(2), subsection (a), section two of this article. The term “initial registration” also means the date upon which the registration fee is paid.

(b) Required payment of annual report fee and filing of annual report. -- After June 30, 2008, no corporation, limited partnership, domestic limited liability company or foreign limited liability company may engage in any business activity in this state without paying the annual report fee and filing the annual report as required by this section.

(c) Annual report fee. -- After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall pay an annual report fee of $25 for the services of the Secretary of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company or foreign limited liability company, and for such other administrative services as may be imposed by law upon the Secretary of State. The fee is due and payable each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report described in subsection (d) of this section on or before the dates specified in subsection (e) of this section. The fee is due and payable each year with the annual report from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section. The annual report fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by section two of this article.

(d) Annual report. -- (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability
company and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report fee described in subsection (c) of this section on or before the dates specified in subsection (e) of this section. The report is due each year from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section.

(2) (A) The annual report shall be filed with the Secretary of State on forms provided by the Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i) The address of the corporation’s principal office; (ii) the names and mailing addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of the corporation’s parent corporation and of each subsidiary of the corporation licensed to do business in this state; (v) in the case of limited partnerships domestic limited liability companies and foreign limited liability companies, similar information with respect to their principal or controlling interests as determined by the Secretary of State or otherwise required by law to be reported to the Secretary of State; (vi) the county or county code in which the principal office address or mailing address of the company is located; (vii) business class code; and (viii) any other information the Secretary of State considers appropriate.

(B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall, upon request of any person, disclose, with respect to corporations: (i) The address of the corporation’s principal office; (ii) the names and addresses of its officers and directors; (iii) the name and
mailing address of the person on whom notice of process may
be served; (iv) the name and address of each subsidiary of the
corporation and the corporation’s parent corporation; (v) the
county or county code in which the principal office address
or mailing address of the company is located; and (vi) the
business class code. The Secretary of State shall provide
similar information with respect to information in its
possession relating to limited partnerships domestic limited
liability companies and foreign limited liability companies,
similar information with respect to their principal or
controlling interests.

(e) Annual reports and fees due July 1. -- Each domestic
and foreign corporation, limited partnership, limited liability
company and foreign limited liability company shall file with
the Secretary of State the annual report and pay the annual
report fee by July 1 of each year.

(f) Deposit of fees. -- The annual report fees received by
the Secretary of State pursuant to this section shall be
deposited by the Secretary of State in the general
administrative fees account established by section two, article
one, chapter fifty-nine of this code.

(g) Duty to pay. -- It shall be the duty of each corporation,
limited partnership, limited liability company and foreign
limited liability company required to pay the annual report
fees imposed under this article, to remit them with a properly
completed annual report to the Secretary of State, and if it
fails to do so it shall be subject to the late fees prescribed in
subsection (h) of this article.

(h) Late fees. -- (1) The following late fees shall be in
addition to any other penalties and remedies available
elsewhere in this code:
(A) *Administrative late fee.* -- The Secretary of State shall assess upon each corporation, limited partnership, limited liability company and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $50.

(B) *Administrative late fees for nonprofit corporations.* -- The Secretary of State shall assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $25.

(2) The Secretary of State shall deposit the first $25,000 of fees collected under this subsection into the general administrative fees account established in subsection (h), section two of this article, and shall deposit any additional fees collected under this section into the General Revenue Fund of the state.

(i) *Reports to Tax Commissioner; suspension, cancellation or withholding of business registration certificate.* -- (1) The Secretary of State shall, within twenty days after the close of each month, make a report to the Tax Commissioner for the preceding month, in which he or she shall set out the name of every business entity to which he or she issued a certificate to conduct business in the State of West Virginia during that month. The report shall set out the names and addresses all corporations, limited partnerships, limited liability companies and foreign limited liability companies to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal or merger. If the Secretary of State fails to make the report, it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ of mandamus shall lie for correction of such failure.
(2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice from the Secretary of State that a corporation, limited partnership, limited liability company and foreign limited liability company is more than thirty days delinquent in the payment of annual report fees or in the filing of an annual report required by this section, the Tax Commissioner may suspend, cancel or withhold a business registration certificate issued to or applied for by the delinquent corporation, limited partnership, limited liability company or foreign limited liability company until the same is paid and filed in the manner provided for the suspension, cancellation or withholding of business registration certificates for other reasons under article twelve, chapter eleven of this code.

(j) Purchase of data. -- The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State’s Business Organizations Database. For the electronic purchase of the entire Business Organizations Database, the cost is $12,000. For the purchase of the monthly updates of the Business Organizations Database, the cost is $1,000 per month. The fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by section two, article one, chapter fifty-nine of this code.

(k) The Secretary of State is authorized to collect the service fee per transaction, if any, charged for an online service from any customer who purchases data or conducts transactions through an online service.

(l) Rules. -- The Secretary of State may propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code to implement this article, and may, pending promulgation of those rules, promulgate emergency rules pursuant to those provisions for those purposes.