

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2003
Chapters 1 – 117
First Extraordinary Session, 2003
Constitutional Amendments, 2002
Third Extraordinary Session, 2002

Volume I

**COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
GREGORY M. GRAY**
Clerk of the House

* * * * *

CLERK'S PUBLICATION STAFF

BO HOOVER

T. R. BENNETT

ROBERT ALTMANN

NANCY REYNOLDS

YVETTE BALLANTYNE

*The Printing
Press, Ltd.*

The Printing Press, Ltd. - Charleston, WV

FOREWORD

These volumes contain the Acts of the First Regular Session and the First Extraordinary Session of the 76th Legislature, 2003; the Constitutional Amendments of the Second Extraordinary Session and the Third Extraordinary Session of the 75th Legislature, 2002.

First Regular Session, 2003

The First Regular Session of the 76th Legislature convened on January 8, 2003. The Constitutional sixty-day limit on the duration of the session was midnight, March 8, 2003. The Governor issued Proclamations on March 5 and March 15, extending the session for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned *sine die* on March 16, 2003.

Bills totaling 1,882 were introduced in the two houses during the session (1,219 House and 663 Senate). The Legislature passed 259 bills, 139 House and 120 Senate.

The Governor vetoed eight House bills (Com. Sub. for H. B. 2122, Relating to medical professional liability generally; Com. Sub. for H. B. 2414, Relating to horse and dog racing generally; H. B. 2670, Continuing the office of judges until July 1, 2009; H. B. 2840, Increasing the number of members on the Greater Huntington Park and making other changes in the act; H. B. 2953, Establishing a mechanism to eliminate any actuarially projected unfunded liability in the Prepaid Tuition Trust Fund; Com. Sub. for H. B. 3051, Altering the certain reportable threshold dollar amounts on legislative member financial disclosure statements and lobbyist reports; H. B. 3207, Supplemental appropriation to the department of military affairs and public safety - division of juvenile services; and H. B. 3217, Establishing a fund and making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated) and six Senate bills (Com. Sub. for S. B. 178, Relating to subject matter jurisdiction in family courts; Com. Sub. for S. B. 329, Authorizing miscellaneous agencies and boards to promul-

gate legislative rules; S. B. 352, Relating to jobs act; Com. Sub. for S. B. 437, Requiring submission of information on certain acquisitions, construction and long-term agreements to joint committee on government and finance for review; Com. Sub. for S. B. 522, Relating to public education generally; improving governance; faculty senate meetings; other provisions; and S. B. 646, Establishing centers for economic development and technology advancement at higher education institutions). The Legislature amended and again passed Com. Sub. for H. B. 2122, H. B. 2840, H. B. 2953, H. B. 3207, H. B. 3217, Com. Sub. for S. B. 178, S. B. 352, S. B. 522 and S. B. 646, leaving a net total of 254 bills, 136 House and 118 Senate, which became law. One bill, Com. Sub. for S. B. 170, Requiring informed consent for abortion and other provisions, became law without the signature of the Governor.

There were 160 Concurrent Resolutions introduced during the session, 99 House and 61 Senate, of which 32 House and 19 Senate were adopted. Seventeen House Joint Resolutions and 14 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which none were adopted. The House introduced 22 House Resolutions, and the Senate introduced 36 Senate Resolutions, of which 15 House and 35 Senate were adopted.

The Senate failed to pass 91 House bills passed by the House, and 61 Senate bills failed passage by the House.

* * * * *

First Extraordinary Session, 2003

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment *sine die* of the Regular Session, March 16, 2003, contained supplemental appropriation bills for consideration.

The Legislature passed 5 bills, all of which were House bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* 3:15 P.M. the same day.

* * * * *

Constitutional Amendments, Second Extraordinary Session, 2002

Two Joint Resolutions were introduced and adopted, proposing amendments to the State Constitution, which were ratified by the voters on November 5, 2002. The Joint Resolutions were: H. J. R. 201, County and Municipal Option Economic Development Amendment; and H. J. R. 202, Maximum Number of Years of Excess Levies Amendment.

* * * * *

Third Extraordinary Session, 2002

The Proclamation calling the Legislature into Extraordinary Session at 4:00 P.M., September 17, 2002, contained supplemental appropriation bills for consideration.

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

The Legislature adjourned the Extraordinary Session *sine die* 4:54 P.M. the same day.

* * * * *

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, 2003

GENERAL LAWS

Chapter	Bill No.		Page
ACTIONS AND SUITS			
1.	(*HB2406)	Immunity From Civil Liability for Members of a National Ski Patrol System	1
ADMINISTRATION			
2.	(SB636)	Exempting Competitive Bidding Requirement for Commodities and Services by Nonprofit Workshops	3
ADOPTION			
3.	(SB337)	Simplifying Process for Adoption of Children From Foreign Countries	6
ADVERTISING			
4.	(SB430)	Providing Additional Restrictions on Outdoor Advertising	9
AERONAUTICS COMMISSION			
5.	(*HB2357)	Authorizing the Aeronautics Commissioner to Expend Funds	11
AGRICULTURE			
6.	(SB493)	Eliminating Certain Administrative Duties of the Commissioner of Agriculture	13
7.	(HB2696)	Removing Certain Limitations on the Commissioner of Agriculture to Increase Fees of Certain Services	15
8.	(*HB2694)	Protecting the Beekeeping Industry	16
9.	(SB627)	Renaming Guthrie Center the Gus R. Douglass Agricultural Center at Guthrie	26

ALCOHOL

10. (*SB535) Relating to the Sale of Alcohol, Wine
and Beer to Minors and Mandatory
Carding 27
11. (SB112) Allowing Farm Wineries to Manufacture,
Serve and Sell Certain Wines 38
12. (*SB383) Allowing Alcohol Beverage Control
Commissioner, With Approval of
Governor and Board of Public
Works, to Sell Warehouse and
Purchase Replacement 44
13. (*HB2868) Allowing Alcohol Beverage Control
Commissioner to Enter Into Contracts
for Sale and Promotion of Certain
Proprietary Scanner Technology 46

AMBER ALERT SYSTEM

14. (*HB2910) Establishing an "Amber Alert" System
to be Utilized to Rapidly Disseminate
Information With Regard to Abducted
and Missing Children 49

AMUSEMENT RIDE SAFETY

15. (HB3203) Relating to Amusement Ride Safety 53

ANIMAL CRUELTY

16. (*HB2301) Providing Funding for Necessary
Care of Animals Seized Pursuant
to Allegations of Neglect 57
17. (SB205) Modifying Criminal Intent for Animal
Cruelty Crimes and Setting Fines 61
18. (*HB2753) Prohibiting Participation in Animal
Fighting Ventures and Making
Violations a Felony 66

ANIMALS

19. (*HB2965) Authorizing the Transfer of Ownership
of State Owned Dogs or Horses
by Governmental Agencies 68

APPROPRIATIONS

20.	(HB2050)	Budget Bill, Making Appropriations of Public Money Out of the Treasury in Accordance With Section Fifty-One, Article Six of the Constitution	70
21.	(HB3204)	Expiring Funds From the Insurance Commissioner - Insurance Commission Fund	246
22.	(HB3205)	Expiring Funds From the Public Service Commission	247
23.	(HB3206)	Supplemental Appropriation to the Department of Tax and Revenue - Tax Division	248
24.	(HB3207)	Supplemental Appropriation to the Department of Military Affairs and Public Safety - Division of Juvenile Services	251
25.	(HB3208)	Supplemental Appropriation to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units	253
26.	(HB3209)	Supplemental Appropriation to the Department of Military Affairs and Public Safety - West Virginia Parole Board	256
27.	(HB3210)	Supplemental Appropriation to the Department of Military Affairs and Public Safety - Division of Protective Services	258
28.	(HB3211)	Expiring Funds to the Unappropriated Surplus Balance in the State Fund, General Revenue	260
29.	(HB3212)	Expiring Funds to the Department of Military Affairs and Public Safety - West Virginia State Police - Surplus Real Property Process Fund	265

TABLE OF CONTENTS

30.	(HB3214)	Expiring Funds to the Secretary of State - State Election Fund	267
31.	(HB3215)	Expiring Funds to the Unappropriated Surplus Balance in the State Fund, General Revenue	268
32.	(HB3216)	Supplementing, Amending, Reducing and Increasing Items of the Existing Appropriations From the State Fund, General Revenue, to the Secretary of State	271
33.	(HB3217)	Establishing a Fund and Making a Supplementary Appropriation of Federal Funds Out of the Treasury From the Balance of Federal Moneys Remaining Unappropriated . . .	273
34.	(HB3218)	Expiring Funds to the Unappropriated Surplus Balance in the State Fund, General Revenue	274
35.	(SB215)	Supplemental Appropriation to the Department of Health and Human Resources, Health Care Authority	278
36.	(SB637)	Supplementing, Amending, Reducing and Increasing Items From State Road Fund to Department of Transportation, Division of Motor Vehicles	279
37.	(SB638)	Supplemental Appropriation to the Department of Military Affairs and Public Safety, Division of Corrections, Parolee Supervision Fees	281
38.	(SB639)	Supplemental Appropriation to the Department of Transportation, Division of Motor Vehicles, Driver's License Reinstatement Fund	283
39.	(SB640)	Supplemental Appropriation of Federal Funds to the Department of Military Affairs and Public Safety, Division of Veterans Affairs	284

TABLE OF CONTENTS

40. (SB641) Supplemental Appropriation of Federal Funds to the Department of Administration, Children's Health Insurance Agency 286

41. (SB642) Supplemental Appropriation to the Department of Health and Human Resources, Division of Human Services, Child Support Enforcement 287

42. (SB643) Supplemental Appropriation to the Bureau of Commerce, Division of Natural Resources 289

43. (SB644) Supplemental Appropriation of Federal Funds to the Department of Military Affairs and Public Safety, Division of Corrections 291

44. (SB645) Supplemental Appropriation of Federal Funds to the Public Service Commission, Motor Carrier Division 292

45. (SB658) Supplemental Appropriation to the Department of Health and Human Resources, Division of Human Services, James "Tiger" Morton Catastrophic Illness Fund 294

46. (SB659) Supplemental Appropriation to the State Board of Examiners for Licensed Practical Nurses 295

47. (SB660) Supplementing, Amending, Reducing and Increasing Items From the State Road Fund to the Department of Transportation, Division of Highways 297

48. (SB661) Supplemental Appropriation of Federal Funds to the Department of Health and Human Resources, Division of Health, Maternal and Child Health 299

49. (SB662) Expiring Funds to the Unappropriated Surplus Balance in General Revenue and Appropriating to Tax Division 300

AUTOMATED TAX ADMINISTRATION SYSTEM

50. (*SB450) Creating an Automated Tax Administration System 302

BANKS AND BANKING

51. (*HB2480) Increasing the Amount of Penalties the Commissioner of Banking May Obtain and Allowing the Commissioner to Expend Funds to Promote Consumer Awareness of Issues Related to Residential Mortgage Lending 308
52. (SB190) Relating to Bank Examination Schedule for Certain Banking Institutions 316
53. (*HB2443) Relating to the Assessment of Banking Institutions 319
54. (HB2514) Authorizing the Board of Banking and Financial Institutions to Prohibit Individuals Removed From One Financial Institution From Participating in the Affairs of Other Financial Institutions 324
55. (HB2441) Increasing the Minimum Subscribed Capital Stock and Capital Surplus for New Bank Charter Applications 329
56. (SB192) Relating to Notice From Certain Bank Holding Companies 331
57. (SB189) Relating to Approval of Out-Of-State Bank Applications to Establish Bank Branches 334
58. (*SB191) Relating to State-Chartered Credit Union Converting to Federal or Another State Charter 336
59. (HB2794) Increasing the Service Fee for Worthless Checks 339

CAPITAL COMPANY ACT

60. (SB657) Relating to Capital Company Act 344

CHILD SAFETY SEATS

61. (SB182) Meeting Federal Standards for Certain
Child Passenger Seats and Safety
Devices 352

CHILD WELFARE

62. (HB3084) Restructuring the Support Enforcement
Commission in the Areas of
Membership, Duties and Powers 354

63. (*SB364) Strengthening Multi-Disciplinary
Treatment Team Process for
Children Involved in Court System 361

64. (HB3018) Changing the Amount of Time That
the Department of Health and Human
Resources Must Retain Child
Protective Services Records 368

65. (SB635) Clarifying Foster Care Services in
Relation to Behavioral Health 370

CLAIMS

66. (HB3019) Finding and Declaring Certain
Claims Against the State and
Its Agencies to be Moral Obligations
of the State 373

67. (SB428) Directing the Auditor to Issue Warrants
for Payment of Certain Claims
Against State 384

COAL TRUCKS

68. (*SB583) Regulating the Commercial Transportation
of Coal 389

CODE REPEALED

69. (SB384) Repealing Section Relating to
Location of Offices of Alcohol
Beverage Control Administration 437

COMMERCIAL DRIVER'S LICENSE

70. (SB390) Removing the Requirement that
Social Security Number Appear on
Commercial Driver's License 438

COMMON INTEREST COMMUNITIES

71. (SB589) Relating to Common Interest
Communities and Condominiums and
Restrictive Covenants 439

CONSUMER PROTECTION

72. (*HB2948) Giving Consumers Greater
Opportunity to Successfully
Obtain Discontinuation of
Foreclosure Sales and Other
Efforts to Repossess Property 441

**CONTRACTORS NOTICE AND OPPORTUNITY
TO CURE ACT**

73. (*SB440) Establishing Contractors Notice
and Opportunity to Cure Act 444

CONTRACTS

74. (*HB3117) Requiring Contractors Bidding
on Public Works Construction
Projects to Submit Valid Bid
Bonds in Their Proposals and to
Direct How Public Bids Are Received 459

CONTROLLED SUBSTANCES

75. (*SB354) Relating to the Operating or
Attempting to Operate Clandestine
Drug Laboratory and Providing
Penalty Therefor 462

CORPORATIONS

76. (HB3108) Making All Business Entity
Filing Tax Requirements Consistent
With the Corporation Requirements
Under the New Corporation Laws 464

CORRECTIONS

77. (*SB424) Authorizing the Commissioner of Corrections
to Consent to the Transfer of Convicted
Offenders Under Federal Treaty and
Informed Consent 496

TABLE OF CONTENTS

XV

- 78. (*HB2705) Relating to the Supervision of Adult Offenders and Authorizing a Compact for the Supervision of Adult Offenders 497
- 79. (SB654) Extending Supervision for Certain Sex Offenders 524

COUNTIES

- 80. (*HB2001) Restricting Public Access to Military Discharge Forms Recorded in the County Clerks Office 528
- 81. (*HB2818) Authorizing the County Commissions of Growth Counties to Include the Transfer of Development Rights as Part of a Zoning Ordinance 530

COURTS AND THEIR OFFICERS

- 82. (*SB432) Deleting Provision Requiring Magistrates to Set Payment Plans in Certain Cases 534
- 83. (*SB213) Restricting Actions Brought by Non-Residents in State Courts 539

CRIMINAL SENTENCING

- 84. (*HB2092) Establishing a Research Component Within the Governor's Committee on Crime, Delinquency and Correction Relating to Criminal Sentencing 543

DOMESTIC RELATIONS

- 85. (*HB2500) Clarifying the Authority of the Courts to Continue Protective Orders During Certain Proceedings 544
- 86. (*SB178) Relating to Subject Matter Jurisdiction in Family Courts 546
- 87. (*SB453) Establishing the Domestic Violence Fatality Review Team 551

ECONOMIC DEVELOPMENT

- 88. (*SB558) Establishing County and Municipal Economic Opportunity Development Districts 557

89. (SB443) Establishing Economic and
Infrastructure Projects Under
Development Office Guidelines 620

EDUCATION

90. (HB2961) Limiting Idling of School Bus
Engines for More Than Five
Minutes and Providing Exceptions 624
91. (*SB522) Relating to Public Education
Generally 626
92. (*HB2083) Expanding Personnel Covered by
Job Sharing in the School System 684
93. (*SB206) Relating to Compulsory School
Attendance and the Supervision of
Certain Students 694
94. (*SB180) Relating Generally to School
Building Authority and Middle
Grade Vocational Technical Courses 706
95. (HB2555) Continuing West Virginia's
Membership in the Southern
Regional Education Compact 735
96. (HB2224) Relating to Higher Education
Reorganization 736
97. (SB646) Establishing Centers for Economic
Development and Technology
Advancement at Higher Education
Institutions 800
98. (*HB2051) Expanding the Eligibility of
Part-Time Students for Higher
Education Adult Part-Time
Student Grants 809

ELECTIONS

99. (HB3093) Requiring County Commissions to
Follow Geographic Physical Features
Recognized by the United States
Census Bureau When Determining
Precinct Boundaries 816
100. (SB648) Relating to Election Laws Generally 819

101. (*HB3070) Providing That a Mass Convention of
a Political Party, to Elect Delegates
to the State Convention, be Held
in the County Instead of the Various
Magisterial Districts 964

FIREARMS

102. (HB2110) Declaring That Lawful Design,
Marketing, Manufacture or Sale
of Firearms or Ammunition to the
Public Is Not an Unreasonably
Dangerous Activity 967

FIRE FIGHTING AND PREVENTION

103. (*HB2714) Relating to the Donation of
Firefighting and Fire Rescue
Equipment and Insurance Policies
Dealing With Immunity Coverage
Provisions 969

104. (*SB39) Making False Alarm a Felony in
Certain Cases 970

FIRE MARSHAL

105. (HB3011) Powers, Duties and Authority of the
State Fire Commission and State
Fire Marshal 972

106. (*HB2359) Allowing the State Fire Marshal
to Retain All of the Special Revenue
Fees Collected by His Office 975

FREEDOM OF INFORMATION

107. (*HB3155) Maintaining the Security and
Confidentiality of Business
Processes 981

108. (HB3009) Excluding Certain Records
From the Freedom of Information
Act That Are Collected in the
Interest of Homeland Security by
Governmental Bodies 983

FUEL

109. (HB2891) Repealing the Requirement That
the Tax Commissioner Annually
Report the Amount of Gasoline
and Special Fuel Tax Collected
in Each County 987

GREATER HUNTINGTON PARK AND RECREATION DISTRICT

110. (HB2840) Increasing the Number of
Members on the Greater
Huntington Park and Making
Other Changes in the Act 988

HAZARDOUS WASTE MANAGEMENT

111. (HB2669) Terminating the Hazardous Waste
Management Annual Certification
Fee and the Hazardous Waste Management
Fee Fund 995

HEALTH

112. (SB336) Relating to Uniform Application
Forms for Credentialing,
Re-Credentialing and Updating
Information for Health Care
Practitioners 998
113. (*SB405) Changing Personal Care Homes to
Assisted Living Residences and
Extending Board 999
114. (SB652) Renaming Marion Health Care
Hospital John Manchin, Sr.,
Health Care Center 1033

HOLOCAUST EDUCATION

115. (*SB510) Relating to the Commission on
Holocaust Education 1036

HUMAN SERVICES

116. (*SB338) Establishing Medicaid Buy-In
Program for Certain Individuals
With Disabilities 1039

TABLE OF CONTENTS

117. (SB608) Allowing Continuance of Summary Certificate of Need Reviews for Proposed Behavioral Health Services 1053

118. (HB3016) Allowing the Department of Health and Human Resources to Retain Adult Protective Service Records for Thirty Years 1056

INSURANCE

119. (*HB2675) Mandating Insurance Coverage for Certain Clinical Trials for Ordinary Costs of Covered Services 1057

120. (*HB2003) Authorizing Political Subdivisions to Establish and Maintain Self-Insurance Pools 1083

121. (HB2764) Defining the Content of Subpoenas That May be Issued by the Insurance Commissioner 1086

122. (SB400) Allowing the Insurance Commissioner to Disclose Confidential Information in Certain Cases 1090

123. (*HB2556) Requiring the Insurance Commissioner to Issue an Annual Communication to Increase Awareness of Certain Flood Insurance Issues 1131

124. (SB358) Relating to Re-Domestication of Domestic Insurance Companies 1133

125. (*HB2715) Modernizing the Regulation of Surplus Lines Insurers by Enactment of the NAIC Non-Admitted Insurance Model Act 1134

126. (SB357) Relating to Standard Non-Forfeiture Law for Individual Deferred Annuities 1177

127. (*SB56) Prohibiting Certain Insurers to Require Persons Under Contract to Use Mail-Order Pharmacy 1185

TABLE OF CONTENTS

128. (SB488)	Relating to Contingent Liability of Members of Farmers' Mutual Fire Insurance Companies and Risk Limit	1188
129. (SB356)	Relating to Insurance Company Holding Systems and Federal Gramm-Leach-Bliley Act	1190
130. (*HB2702)	Eliminating the Examination Assessment Fee on Risk Retention Groups	1204
131. (SB486)	Requiring Certified Public Accountants to Notify Insurer's Board or Audit Committee of Adverse Financial Conditions	1206
132. (SB485)	Authorizing Insurance Commissioner to Enter Into Certain Agreements and Compromises	1208

JOBS ACT

133. (SB352)	Relating to Jobs Act	1211
--------------	----------------------------	------

LABOR

134. (*HB2529)	Relating to the Licensure and Regulation of Psychophysiological Detection of Deception Examiners	1216
----------------	--	------

LAW ENFORCEMENT

135. (HB2847)	Making the Law-Enforcement Agency That Places a Person Under Arrest Responsible for That Person's Initial Transportation to a Regional or County Jail	1222
136. (*HB2799)	Relating to the West Virginia State Police and the Re-Employment of Recently Retired Troopers	1225

LEGISLATIVE RULES

137. (*HB2592)	Authorizing the Department of Administration to Promulgate Legislative Rules	1229
----------------	--	------

TABLE OF CONTENTS

138. (*HB2603) Authorizing the Bureau of Environment
to Promulgate Legislative Rules 1237

139. (*HB2599) Authorizing the Department of
Education and the Arts to
Promulgate Legislative Rules 1255

140. (*HB2625) Authorizing the Department of
Health and Human Resources to
Promulgate Legislative Rules 1257

141. (*HB2615) Authorizing the Department of
Military Affairs and Public
Safety to Promulgate Legislative
Rules 1263

142. (*SB287) Authorizing Various Agencies
Within the Department of Tax and
Revenue to Promulgate Legislative
Rules 1266

143. (*HB2648) Authorizing the Department of
Transportation to Promulgate
Legislative Rules 1275

144. (*SB316) Authorizing Various Agencies
Within the Bureau of Commerce to
Promulgate Legislative Rules 1281

LIENS

145. (*SB387) Increasing Time to Perfect Liens
for Certain Debts 1288

MAIN STREET FAIRNESS ACT

146. (*HB3014) Relating Generally to "Main Street
Fairness Act of 2003" 1292

MEDICAL MALPRACTICE

147. (*HB2122) Relating to Medical Professional
Liability Generally 1370

MENTAL HEALTH

148. (*HB2077) Removing the Requirement That
the Joint Committee on Government
and Finance be Given Reports on
the Colin Anderson Closure and
Relocation of Patients 1485

149.	(*SB204)	Relating to Involuntary Commitment Generally	1489
MINES AND MINING			
150.	(*HB2881)	Striking the Provision Requiring That Post-Mining Water Discharges be Better than or Equal to Pre-Mining Water Discharge	1500
151.	(HB2882)	Limiting the Requirements for Stays for Appeals Under the Surface Coal Mining and Reclamation Act for Unjust Hardship	1506
MOTOR CARRIERS FOR HIRE			
152.	(*HB3056)	Providing for the Regulation of Intrastate Driving Hours of For-Hire Carriers	1511
MOTOR VEHICLES			
153.	(*HB2190)	Permitting Certain Farm Vehicles to Use the Highways Between Sunset and Sunrise	1513
154.	(*HB2511)	Authorizing the Issuance of a Special Motor Vehicle License Plate for "Nemesis Shrine" Members	1519
155.	(SB388)	Modifying Requirements for Titling and Registration of Imported Vehicles	1550
156.	(HB2797)	Authorizing the DMV to Reimburse Members of the Motor Vehicle Dealers Advisory Board and the Motorcycle Safety Awareness Board for Necessary Expenses	1552
157.	(SB342)	Limiting Time Driver's License May be Issued to Certain Non-Citizens	1556
158.	(*SB162)	Expunging Certain Motor Vehicle License Information for Nineteen-Year-Olds	1558

159. (*HB2814) Increasing the Misdemeanor Penalties for Failure to Yield the Right-Of-Way 1560

160. (HB2763) Allowing Original Equipment Mounted Auxiliary Lighting Devices for Use Only When the Vehicle Is Used Off Road 1561

161. (SB95) Increasing Length and Width for Certain Vehicles 1563

162. (SB52) Eliminating Certain Bond on Out-Of-State Defendants in Automobile Accident Cases 1567

MUNICIPALITIES

163. (*SB505) Providing that Municipal Fire Chiefs Shall Retain Rank in Certain Cases 1572

164. (HB3037) Mandating That an Apprentice Firefighter be Terminated From Employment Following Three Unsuccessful Attempts at Passing an Apprentice Examination 1574

165. (HB2878) Allowing Certain Municipalities Providing Advanced Life Support Ambulance Services to Examine, Train and Employ Fire Medics 1575

166. (*HB2972) Improving the Actuarial Soundness of Municipal Police and Fire Pensions 1576

NATURAL RESOURCES

167. (SB634) Defining Crow as Game-Bird and Establishing a Hunting Season Therefor 1580

168. (*HB2512) Relating to Competitive Bidding and Notice Requirements for the Development of Natural Resources in Which the Public Land Corporation Has an Interest 1593

169. (SB447)	Allowing Reciprocal Agreements With Ohio Regarding Hunting and Fishing	1602
170. (*HB2240)	Allowing Persons Purchasing or Renewing Hunting or Fishing Licenses to Donate to the "Hunters Helping the Hungry Program"	1606
171. (HB2285)	Requiring Hunting and Fishing Licensees to Carry Proof of Identity and Other Applicable Documents	1612
172. (*HB2094)	Regulating the Release of Fish, Water Animals and Other Aquatic Organisms Into the Waters of This State	1614

PREPAID TUITION PLAN

173. (HB2953)	Establishing a Mechanism to Eliminate Any Actuarially Projected Unfunded Liability in the Prepaid Tuition Trust Fund	1615
---------------	---	------

PROFESSIONS AND OCCUPATIONS

174. (SB375)	Allowing Transfer of Contractor's License to New Business Entity in Certain Cases	1623
175. (HB2700)	Adding Health Maintenance Organization Review Committee to the Definition of "Review Organizations"	1625
176. (*SB611)	Defining Podiatric Medical Assistants	1627
177. (SB414)	Authorizing Real Estate Commission to Enter Into License Reciprocity Agreements With Other States	1636
178. (HB3089)	Modifying Various Requirements of Financial Institutions Notifying the Real Estate Commission in Certain Circumstances	1639

179. (SB381) Adding Professional Surveyors
to the List of Those Who
May Organize Professional
Limited Liability Companies 1644

PUBLIC SERVICE COMMISSION

180. (HB2870) Specifying the Jurisdiction of the
PSC Over, and the Application of
Public Utility Laws to, Certain
Described Electric Generating
Facilities 1646

181. (*SB422) Allowing the Public Service Commission
to Change Certain Rates for
Municipalities or Cooperative
Utilities 1656

182. (SB436) Directing the Public Service Commission
to Implement the 211 Information and
Referral System 1660

PUBLIC SERVICE DISTRICTS

183. (*SB412) Eliminating Certain Landlord
Liability for Tenant's Delinquent
Utility Accounts 1662

184. (*HB3068) Empowering Public Service Districts
to Enter Into Agreements for Engineering,
Design or Feasibility Studies,
Without the Prior Approval of the
Public Service Commission 1669

REAL PROPERTY

185. (HB2534) Eliminating the Property Value
Limit on the Application of the
Property Transfer Tax 1671

186. (HB2802) Providing for a Legal Description
in Deeds Creating an Easement
Right-Of-Way 1673

187. (HB3062) Authorizing Stockholders of Closely
Held Corporations to File Suit for
Partition of Real Estate Owned
by the Corporation When the Real
Estate is the Only Substantial
Asset of the Corporation 1675

REGULATION OF TRADE

188. (*HB2239) Requiring Foreign Collection
Agencies to Obtain a Certificate
of Authority From the Secretary
of State 1676

RETIREMENT

189. (*SB455) Authorizing Retirement Credit
for Public Employment in
Another State 1684
190. (HB2975) Providing a Window for Persons Who
Were Members of PERS and Who Left
State Employment Withdrawing Their
PERS Moneys to Buy Back Their
Time With Interest 1686
191. (HB2118) Adjusting the Retirement Benefits
for All Members of the West Virginia
State Police Retirement System 1688
192. (HB2984) Increasing the Amount of Service
Credit a Teacher Off Work Due
to a Compensable Injury May
Purchase 1691
193. (HB2983) Relating to the Teachers'
Retirement System 1693
194. (*HB3109) Bringing the Provisions of the
Teachers' Defined Contribution
Retirement System into Conformity
With Those of the Teachers'
Retirement System 1702

ROADS AND HIGHWAYS

195. (*SB404) Establishing Blue and Gray
Intermodal Highway Authority 1706
196. (HB3104) Providing for Commercial Work
Orders for Vehicle and Equipment
Repair, Establishing Criteria for
Commercial Vehicle and Equipment
Repair Vendors and Requiring a
Cost Effectiveness Analysis for
Issuing Commercial Work Orders 1709

SCIENCE AND TECHNOLOGY

197. (*SB651) Creating the Academy of Science and
Technology 1711

SUNSET

198. (HB3195) Changing Agency Termination Dates
Pursuant to West Virginia
Sunset Law 1722
199. (SB417) Continuing the Commission for Deaf
and Hard-Of-Hearing 1728
200. (HB2486) Continuing the Public Employees
Insurance Agency 1729
201. (SB165) Continuing the Commission for National
and Community Service 1730
202. (HB2879) Continuing the West Virginia
Commission on Holocaust Education 1731
203. (SB284) Continuing the Division of Purchasing
Within the Department of Administration 1732
204. (HB2831) Continuing the Records Management
and Preservation Board 1733
205. (SB164) Continuing the Office of Coalfield
Community Development 1734
206. (HB2751) Continuing the Department of
Health and Human Resources 1735
207. (SB418) Continuing the Investment Management
Board 1736
208. (HB2778) Continuing the West Virginia
State Police 1737
209. (HB2750) Continuing the Office of Health
Facility Licensure and
Certification 1738
210. (HB2752) Continuing the Bureau for
Senior Services 1739
211. (SB282) Continuing the Division of Motor
Vehicles 1740
212. (SB163) Continuing the Driver's Licensing
Advisory Board 1741

213. (HB2779)	Continuing the Personal Assistance Services Program	1742
214. (HB2554)	Continuing the Marketing and Development Division of the Department of Agriculture	1743
215. (HB2830)	Continuing the Division of Natural Resources	1745
216. (SB470)	Continuing the Board of Manufactured Housing Construction and Safety	1746
217. (SB469)	Continuing the Contractor Licensing Board	1747
218. (SB281)	Continuing the Department of Environmental Protection	1748
219. (HB2864)	Continuing the Office of Explosives and Blasting	1749
220. (SB415)	Continuing the Environmental Quality Board	1750
221. (SB166)	Continuing the Oil and Gas Inspectors' Examining Board	1751
222. (SB283)	Continuing the Public Service Commission	1752
223. (HB2829)	Continuing the Division of Culture and History	1753
224. (HB2916)	Continuing the State Geological and Economic Survey	1754
225. (SB471)	Continuing the Board of Pharmacy	1755
226. (HB2888)	Continuing the Board of Osteopathy	1756
227. (HB2889)	Continuing the Board of Examiners of Psychologists	1757
228. (HB2803)	Continuing the Board of Barbers and Cosmetologists	1758
229. (SB416)	Continuing the Massage Therapy Licensure Board	1759

TAXATION

230. (*HB2477) Permitting Residents of Nursing
Homes and Similar Facilities to
Retain the Homestead Exemption and
Class II Property Designation 1760

231. (SB655) Creating the Public Utilities Tax Loss
Restoration Fund 1767

232. (*SB496) Creating Motor Fuels Excise
Tax Act 1771

233. (*HB2733) Increasing Funds in the Special
Revenue Accounts for the Criminal
Investigation Division and the
Special Audits Division 1879

234. (HB3095) Authorizing the Tax Commissioner
to Disclose to the Treasurer
Certain Information That Would
Facilitate Locating the Owners
of Uncashed and Unclaimed Income
Tax Refund Checks 1882

235. (*HB2902) Relating to Confidentiality and
Disclosure of Information Set Forth
in Oil and Gas Combined Reporting
Form 1885

236. (HB3027) Authorizing the Tax Commissioner
to Waive Tax, Interest and Penalties
in Specified Circumstances Which
Are Otherwise Imposed on Uncompensated
Members of the Governing Board or Board
of Directors of Certain Tax Exempt
Organizations 1888

237. (HB3077) Authorizing the Tax Commissioner
to Enter Into Agreements With the
Internal Revenue Service for
Offsetting Tax Refunds Against
Tax Liabilities 1892

238. (SB531) Relating to Consumers Sales and Service
Tax and Exemptions Therefrom 1899

239. (SB107) Creating a Sales Tax Holiday for
Back-To-School Purchases 1931

TABLE OF CONTENTS

240. (SB462) Updating Certain Terms in Personal
Income Tax Act for Federal Income
Tax Purposes 1933
241. (SB461) Updating Section of Corporation Net
Income Tax Act for Federal Income
Tax Purposes 1935

THIRD-PARTY ADMINISTRATOR ACT

242. (*SB534) Creating the Third-Party Administrator
Act 1937

TOBACCO

243. (SB105) Increasing the Sales Tax on Cigarettes 1961
244. (HB3045) Implementing the Master Tobacco
Settlement Agreement 1964
245. (*HB3046) Facilitating Compliance With
and Enforcement of Provisions
of the Tobacco Master Settlement
Agreement 1968
246. (HB2748) Preventing Mail Order or Internet
Sales of Tobacco Products to Persons
Under Eighteen Years of Age 1987

UTILITIES

247. (HB3199) Relating to Reduced Telephone
Service Rates for Qualified
Low-Income Residential Consumers 1996
248. (*HB2865) Upgrading the Criminal Offense
of Damaging or Destroying Real
or Personal Property Owned by a
Railroad Company or Public
Utility 2002

VETERANS

249. (*HB2835) Creating a Special Revenue Fund for
Receipt of Gifts, Donations, Etc.
to Support the Operation of Veterans'
Facilities Created by Statute 2004

VETERANS' GRAVE MARKERS

250. (*SB494) Regulating Fees Between Cemeteries,
Certain Companies and Veterans
for Setting Grave Markers 2007

WASTE TIRE REMEDIATION

251. (SB649) Relating to Use of Waste Tire
Remediation Funds 2012

WOMEN'S RIGHT TO KNOW ACT

252. (*SB170) Requiring Informed Consent for
Abortion 2017

WV WORKS ACT

253. (SB626) Revising Works Act 2029

LOCAL LAWS

JEFFERSON COUNTY

254. (HB3050) Authorizing the County Commission
of Jefferson County to Convey a
Parcel of County-Owned Land to
the Jefferson County Fairgrounds 2045

ACTS

First Extraordinary Session, 2003

Chapter	Bill No.		Page
APPROPRIATIONS			
1.	(HB101)	Supplementing, Amending, Reducing and Increasing Items of the Existing Appropriations From the State Fund, General Revenue	2049
2.	(HB102)	Expiring Funds to the Unappropriated Surplus Balance in the State Fund, General Revenue, for the Fiscal Year Ending the Thirtieth Day of June, Two Thousand Three	2051
3.	(HB103)	Expiring Funds to the Unappropriated Surplus Balance in the State Fund, General Revenue, for the Fiscal Year Ending the Thirtieth Day of June, Two Thousand Three	2054
4.	(HB104)	Supplementing, Amending and Increasing Items of the Existing Appropriations From the Balance of Moneys Remaining as an Unappropriated Balance in Lottery Net Profits	2057
5.	(HB105)	Expiring Funds to the Unappropriated Balance in the State Excess Lottery Revenue Fund, for the Fiscal Year Ending the Thirtieth Day of June, Two Thousand Three	2062

CONSTITUTIONAL AMENDMENTS

Second Extraordinary Session, 2002

Resolution No.		Page
(HJR201)	County and Municipal Option Economic Development Amendment	2065
(HJR202)	Maximum Number of Years of Excess Levies Amendment	2068

ACTS

Third Extraordinary Session, 2002

Chapter	Bill No.	Page
APPROPRIATIONS		
1.	(SB3001)	Supplemental Appropriation to the Department of Agriculture, Agriculture Fees Fund 2071
2.	(SB3002)	Supplemental Appropriation to the Board of Examiners for Registered Professional Nurses 2073
3.	(SB3003)	Supplemental Appropriation of Federal Funds to the Department of Health and Human Resources, Health Care Authority 2074
4.	(SB3004)	Expiring Funds to the Unappropriated Surplus Balance of General Revenue from the Joint Expenses and Making Appropriation to the Department of Health and Human Resources, Medical Services 2076
5.	(SB3005)	Reducing Existing Appropriation of Joint Expenses and Appropriating to the Department of Health and Human Resources, Medical Services 2079
6.	(SB3006)	Supplemental Appropriation of Lottery Surplus Funds to the Senior Services Medicaid Transfer 2081

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2003

OFFICERS

Speaker — Robert S. Kiss, Beckley

Clerk — Gregory M. Gray, Charleston

Sergeant at Arms — Oce Smith, Fairmont

Doorkeeper — John A. Roberts, Hedgesville

District	Name	Address	Legislative Service
First	Joe DeLong (D)	Weirton	75th-76th
	Randy Swartzmiller (D)	New Cumberland	75th-76th
Second	Timothy R. Ennis (D)	Wellsburg	72nd-76th
	Jack Yost (D)	Wellsburg	76th
Third	Christopher Wakim (R)	Wheeling	76th
	L. Gil White (R)	Wheeling	70th-71st; 73rd-76th
Fourth	Kenneth D. Tucker (D)	Moundsville	73rd-76th
	Scott G. Varner (D)	Moundsville	71st-76th
Fifth	Dave Pethel (D)	Hundred	69th-71st; 74th-76th
Sixth	William Roger Romine (R)	West Union	75th-76th
Seventh	Otis A. Leggett (R)	St. Marys	68th-76th
Eighth	Everette W. Anderson, Jr.(R)	Williamstown	71st-76th
Ninth	Larry W. Border (R)	Davisville	70th-76th
Tenth	Tom Azinger (R)	Vienna	72nd-76th
	J. D. Beane (D)	Parkersburg	70th-76th
	John Ellem (R)	Parkersburg	75th-76th
Eleventh	Bob Ashley (R)	Spencer	67th-72nd; 75th-76th
Twelfth	Mitch Carmichael (R)	Ripley	75th-76th
Thirteenth	Dale Martin (D)	Poca	75th-76th
	Brady Paxton (D)	Liberty	71st; Appt. 4/22/99, 74th-76th
Fourteenth	Mike Hall (R)	Hurricane	72nd-76th
	Patti Eagloski Schoen (R)	Scott Depot	76th
Fifteenth	Kevin J. Craig (D)	Huntington	75th-76th
	Margarette R. Leach (D)	Huntington	71st-76th
	Jim Morgan (D)	Huntington	69th; Appt. 2/23/01, 75th-76th
Sixteenth	Greg Howard (R)	Huntington	76th
	Jody G. Smirl (R)	Huntington	58th-61st; 67th; 72nd-76th
	Kelli Sobonya (R)	Ona	76th
Seventeenth	Don C. Perdue (D)	Prichard	74th-76th
	Richard Thompson (D)	Huntington	65th, Resigned 6/81; 75th-76th
Eighteenth	Earnest H. Kuhn (D)	Van	72nd-76th
Nineteenth	Greg Butcher (D)	Chapmanville	73rd-76th
	Joe C. Ferrell (D)	Chapmanville	66th; 68th-70th; 74th-76th
	Lidella Wilson Hrutkay (D)	Logan	75th-76th
	Bill Wright (D)	Sod	76th
Twentieth	K. Steven Kominar (D)	Kermit	72nd-76th
Twenty-first	Harry Keith White (D)	Gilbert	Appt. 9/11/92,70th; 71st-76th
Twenty-second	Richard Browning (D)	Oceana	69th-72nd; 75th-76th
	Rick Staton (D)	Mullens	69th-76th
Twenty-third	Emily Yeager (D)	Welch	Appt. 3/10/93, 71st; 72nd-76th
Twenty-fourth	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd-76th
Twenty-fifth	Don Caruth (R)	Athens	76th
	Marshall Long (D)	Princeton	Appt. 9/9/02, 75th; 76th
	Gerald Crosier (D)	Union	76th
Twenty-sixth	Robert S. Kiss (D)	Beckley	69th-76th
	Virginia Mahan (D)	Green Sulphur Springs	73rd-76th
	Linda Sumner (R)	Beckley	76th
	Sally Matz Susman (D)	Beckley	74th-76th
Twenty-seventh	Ron Thompson (D)	Beckley	72nd-76th

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73rd-76th
	Ray Canterbury (R)	Ronceverte	75th-76th
Twenty-ninth	Tom Louisos (D)	Oak Hill	67th-68th; 70th-76th
	David G. Perry (D)	Oak Hill	75th-76th
	John Pino (D)	Oak Hill	67th-68th; 71st-76th
Thirtieth	Jon Amores (D)	Charleston	72nd-76th
	Bonnie Brown (D)	South Charleston	66th-68th; 70th; 75th-76th
	Ann Calvert (R)	South Charleston	70th-72nd; 74th; 76th
	Dan Foster (D)	South Charleston	76th
	Barbara Burruss Hatfield (D)	South Charleston	68th-70th; 74th-76th
	Corey Palumbo (D)	Charleston	76th
	Sharon Spencer (D)	Charleston	66th; 68th-71st; 73rd-76th
Thirty-first	Carrie Webster (D)	Charleston	75th-76th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73rd; 74th-76th
	Ron Walters (R)	Charleston	71st-72nd; 75th-76th
	Charles Rusty Webb (R)	Cross Lanes	73rd-76th
Thirty-third	William F. Stemple (D)	Arnoldsburg	73rd-76th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd-76th
Thirty-fifth	John W. Shelton (D)	Summersville	73rd-76th
Thirty-sixth	Joe Talbott (D)	Webster Springs	71st-72nd; 76th
Thirty-seventh	William G. Hartman (D)	Elkins	76th
	Bill Proudfoot (D)	Elkins	70th-76th
Thirty-eighth	Doug Stalnaker (D)	Weston	72nd-76th
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76th
Fortieth	Mary M. Poling (D)	Moatsville	75th-76th
Forty-first	Richard J. Iaquina (D)	Clarksburg	76th
	Samuel J. Cann (D)	Clarksburg	72nd-76th
	Ron Fragale (D)	Clarksburg	70th-73rd; 75th-76th
	Barbara A. Warner (D)	Bridgeport	69th-76th
Forty-second	Tom Coleman (D)	Grafton	73rd-76th
Forty-third	Michael Caputo (D)	Fairmont	73rd-76th
	A. James Manchin (D)	Farmington	50th; 74th-76th
	Donna Renner (D)	Fairmont	76th
Forty-fourth	Robert D. Beach (D)	Morgantown	Appt. 5/98 served 7 months, 73rd; 75th-76th
	Barbara Evans Fleischauer (D)	Morgantown	72nd-76th
	Cindy Frich (R)	Morgantown	76th
	Nancy Houston (D)	Morgantown	74th; 76th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93, 71st; 72nd-76th
Forty-sixth	Stanley E. Shaver (D)	Tunnelton	75th-76th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th-76th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-76th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th-71st; 74th-76th
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-76th
Fifty-first	Charles S. Trump, IV (R)	Berkeley Springs	71st-76th
Fifty-second	Craig P. Blair (R)	Martinsburg	76th
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-76th
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76th
Fifty-fifth	John Overington (R)	Martinsburg	67th-76th
Fifty-sixth	Robert C. Tabb (D)	Kearneyville	76th
Fifty-seventh	John Doyle (D)	Shepherdstown	66th; 71st-76th
Fifty-eighth	Dale Manuel (D)	Charles Town	69th-76th

(D) Democrats 69
(R) Republicans 31

TOTAL 100

MEMBERS OF THE SENATE

REGULAR SESSION, 2003

OFFICERS

President — Earl Ray Tomblin, Chapmanville

Clerk — Darrell E. Holmes, Charleston

Sergeant at Arms — Tony DeRaimo, St. Albans

Doorkeeper — Andrew J. Trail, Charleston

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd-76th
	Andy McKenzie (R)	Wheeling	73rd-76th
Second	Larry J. Edgell (D)	New Martinsburg	74th-76th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97,73rd; 74th-76th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-76th
	J. Frank Deem (R)	Vienna	(House 52nd-56th); 57th-62nd; 64th-65th; (House 69 th); 72nd-76th
Fourth	Karen L. Facemyer (R)	Ripley	(House 71st-74th); 75th-76th
	Lisa D. Smith (R)	Scott Depot	(House 74th-75 th); 76th
Fifth	Robert H. Plymale (D)	Ceredo	71st-76th
	Evan H. Jenkins (D)	Huntington	(House 72nd-74th); 76th
Sixth	H. Truman Chafin (D)	Williamson	66th-76th
	John Pat Fanning (D)	Jaeger	58th-64th; 67th-68th; 73rd-76th
Seventh	Tracy Dempsey (D)	Harts	(House 70th-75th); 76th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-76th
Eighth	Steve Harrison (R)	Cross Lanes	(House 71st-75th); 76th
	Vic Sprouse (R)	Charleston	(House 72nd); 73rd-76th
Ninth	Billy Wayne Bailey, Jr. (D)	Pineville	Appt. 1/9/91,70th; 71st-76th
	Russ Weeks (R)	Beckley	76th
Tenth	Anita Skeens Caldwell (D)	Princeton	75th-76th
	Jesse O. Guills (R)	Lewisburg	76th
Eleventh	Shirley Love (D)	Oak Hill	72nd-76th
	C. Randy White (D)	Webster Springs	(House 73rd-75th); 76th
Twelfth	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/10/83, 66th; 67th-69th); 70th-71st; 75th-76th
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-76th
Thirteenth	Michael A. Oliverio, II (D)	Westover	(House 71st); 72nd-76th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69th-72nd); 73rd-76th
Fourteenth	Jon Blair Hunter (D)	Clarksburg	73rd-76th
	Sarah M. Minear (R)	Davis	72nd-76th
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr.,69th); Appt. 9/13/89, 69th;70th-76th
	Mike Ross (D)	Coalton	71st-76th
Sixteenth	Herbert S. Snyder (D)	Shenandoah Junction	73rd-76th
	John R. Unger, II (D)	Martinsburg	74th-76th
Seventeenth	Brooks F. McCabe, Jr. (D)	Charleston	74th-76th
	Larry L. Rowe (D)	Malden	(House 73rd-74th); 75th-76th
(D) Democrats			24
(R) Republicans			10
TOTAL			34

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2003

STANDING

AGRICULTURE AND NATURAL RESOURCES

Stemple (*Chair of Agriculture*), Boggs (*Vice Chair of Agriculture*), Yeager (*Chair of Natural Resources*), Beach (*Vice Chair of Natural Resources*), Crosier, DeLong, Long, Louisos, Manuel, Paxton, Pethtel, Poling, Shaver, Swartzmiller, Tabb, R. Thompson, Williams, Anderson, Border, Duke, Evans, Leggett, Overington, Romine and Schoen.

BANKING AND INSURANCE

R. M. Thompson (*Chair of Banking*), Perry (*Vice Chair of Banking*), H. White (*Chair of Insurance*), Hrutkay (*Vice Chair of Insurance*), Beach, Butcher, Cann, Craig, Foster, Hartman, Hatfield, Iaquina, Morgan, Perdue, Pino, Spencer, Webster, Azinger, Canterbury, Carmichael, Faircloth, Frich, Hamilton, Walters and G. White.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Webster (*Vice Chair*), Caputo, Crosier, Fragale, Houston, Kominar, Long, Louisos, Manuel, Pino, Renner, Spencer, Staton, Talbott, Varner, H. White, Armstead, Blair, Calvert, Hamilton, Overington, Schoen, Sobonya and Webb.

EDUCATION

Mezzatesta (*Chair*), Williams (*Vice Chair*), Beach, Crosier, Fragale, Hartman, Long, Louisos, Paxton, Perry, Poling, Renner, Shaver, Shelton, Stemple, Swartzmiller, Tabb, Canterbury, Duke, Hamilton, Howard, Romine, Sobonya, Sumner and Wakim.

FINANCE

Michael (*Chair*), Doyle (*Vice Chair*), Boggs, Browning, Campbell, Cann, Foster, Frederick, Houston, Leach, Mezzatesta, Proudfoot, Susman, R. M. Thompson, Varner, Warner, H. White, Stalnaker, Anderson, Ashley, Azinger, Border, Carmichael, Evans, Hall and G. White.

GOVERNMENT ORGANIZATION

Beane (*Chair*), Kuhn (*Vice Chair*), Butcher, Ennis, Ferrell, Hatfield, Iaquinta, Manchin, Manuel, Martin, Perdue, Spencer, Talbott, Tucker, Wright, Yeager, Yost, Blair, Caruth, Frich, Leggett, Romine, Schoen and Walters.

HEALTH AND HUMAN RESOURCES

Perdue (*Chair*), Hatfield (*Vice Chair*), Brown, DeLong, Fleischauer, Foster, Frederick, Hrutkay, Iaquinta, Leach, Mahan, Paxton, Spencer, Susman, Warner, Webster, Yost, Ashley, Carmichael, Hall, Howard, Schadler, Sobonya, Sumner and Wakim.

**INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT
AND SMALL BUSINESS**

Pethtel (*Chair of Industry & Labor*), Tucker (*Vice Chair of Industry & Labor*), Cann (*Chair of Economic Development & Small Business*), Frederick (*Vice Chair of Economic Development & Small Business*), Browning, Caputo, Coleman, Fragale, Hartman, Kuhn, Martin, Palumbo, Perry, Poling, Talbott, Williams, Wright, Canterbury, Caruth, Ellem, Frich, Howard, Sobonya, Walters and G. White.

JUDICIARY

Amores (*Chair*), Kominar (*Vice Chair*), Caputo, Craig, Brown, DeLong, Fleischauer, Coleman, Hrutkay, Mahan, Morgan, Palumbo, Pethtel, Pino, Stemple, R. Thompson, Webster, Armstead, Calvert, Ellem, Faircloth, Overington, Schadler, Smirl and Webb.

POLITICAL SUBDIVISIONS

Proudfoot (*Chair*), Susman (*Vice Chair*), Brown, Caputo, Campbell, Doyle, Ferrell, Houston, Martin, Morgan, Palumbo, Perry, Shaver, Swartzmiller, Tabb, Varner, Yost, Anderson, Armstead, Calvert, Duke, Schadler, Smirl, Stalnaker and Sumner.

ROADS AND TRANSPORTATION

Warner (*Chair*), Shelton (*Vice Chair*), Beach, Boggs, Butcher, Coleman, Craig, Ennis, Hartman, Kominar, Manchin, Renner, Susman, R. Thompson, R. M. Thompson, Wright, Yeager, Blair, Border, Caruth, Evans, Leggett, Romine, Schadler and Stalnaker.

RULES

Kiss (*Chair*), Amores, Beane, Kominar, Mahan, Mezzatesta, Michael, Pino, Staton, Varner, Warner, Trump, Anderson, Faircloth, Hall and Smirl.

VETERANS AFFAIRS AND HOMELAND SECURITY

Ennis (*Chair of Veterans Affairs*), Manchin (*Vice Chair of Veterans Affairs*), Browning (*Chair of Homeland Security*), Swartzmiller (*Vice Chair of Homeland Security*), Coleman, Butcher, Hrutkay, Kuhn, Paxton, Poling, Proudfoot, Shelton, Stemple, R. M. Thompson, Tucker, H. White, Yeager, Ashley, Azinger, Ellem, Howard, Schoen, Smirl, Wakim and Webb.

JOINT

ENROLLED BILLS

Spencer (*Chair*), Butcher (*Vice Chair*), Varner and Overington.

LEGISLATIVE RULE-MAKING REVIEW

Mahan (*Chair*), R. Thompson (*Vice Chair*), Cann, Kominar, Armstead and Faircloth.

PENSIONS AND RETIREMENT

Campbell (*Chair*), Craig (*Vice Chair*), Browning, Frederick, Williams, Duke and Hall.

RULES

Kiss (*Chair*), Staton and Trump.

COMMITTEES OF THE SENATE

Regular Session, 2003

STANDING

AGRICULTURE

Edgell (*Chair*), Love (*Vice Chair*), Bailey, Dempsey, Hunter, Ross, Unger, Weeks, Facemyer and Guills.

BANKING AND INSURANCE

Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Helmick, Kessler, Prezioso, Sharpe, Snyder, Deem, Facemyer, Harrison and Minear.

CONFIRMATIONS

Love (*Chair*), Chafin (*Vice Chair*), Bailey, Bowman, Minard, Plymale, Harrison, McKenzie and Smith.

ECONOMIC DEVELOPMENT

McCabe (*Chair*), Oliverio (*Vice Chair*), Bowman, Chafin, Fanning, Helmick, Kessler, Minard, Plymale, Prezioso, Unger, Facemyer, Guills, McKenzie and Minear.

EDUCATION

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

ENERGY, INDUSTRY AND MINING

Sharpe (*Chair*), Dempsey (*Vice Chair*), Chafin, Fanning, Helmick, Hunter, Jenkins, Kessler, Oliverio, Ross, Deem, Guills, McKenzie and Weeks.

FINANCE

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

GOVERNMENT ORGANIZATION

Bowman (*Chair*), Bailey (*Vice Chair*), Caldwell, Chafin, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley, Minear, Smith and Weeks.

HEALTH AND HUMAN RESOURCES

Prezioso (*Chair*), Unger (*Vice Chair*), Edgell, Hunter, Jenkins, McCabe, Ross, Rowe, Sharpe, Snyder, Boley, Guills, Smith and Weeks.

INTERSTATE COOPERATION

Caldwell (*Chair*), Dempsey (*Vice Chair*), Minard, Rowe, Unger, Minear and Smith.

JUDICIARY

Kessler (*Chair*), Snyder (*Vice Chair*), Caldwell, Fanning, Hunter, Jenkins, Minard, Oliverio, Ross, Rowe, White, Deem, Harrison, McKenzie, Smith and Weeks.

LABOR

Snyder (*Chair*), Rowe (*Vice Chair*), Dempsey, Edgell, Hunter, Love, Prezioso, Boley, Deem and Harrison.

MILITARY

Hunter (*Chair*), Caldwell (*Vice Chair*), Bailey, Dempsey, Minard, Oliverio, Boley, Deem and Weeks.

NATURAL RESOURCES

Fanning (*Chair*), White (*Vice Chair*), Bowman, Helmick, Love, McCabe, Plymale, Prezioso, Ross, Snyder, Deem, Facemyer, Minear and Smith.

PENSIONS

Jenkins (*Chair*), Fanning (*Vice Chair*), Edgell, McCabe, Plymale, Boley and Harrison.

RULES

Tomblin (*Chair*), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, McKenzie, Minear and Sprouse.

TRANSPORTATION

Ross (*Chair*), Caldwell (*Vice Chair*), Love, Oliverio, Rowe, White, Deem, Facemyer and McKenzie.

JOINT

ENROLLED BILLS

Rowe (*Chair*), Bailey, Caldwell, White and Facemyer.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Ross (*Chair*), Minard (*Vice Chair*), Snyder, Unger, Boley and Minear.

PENSIONS AND RETIREMENT

Jenkins (*Chair*), Fanning (*Vice Chair*), Edgell, McCabe, Plymale, Boley and Harrison.

RULES

Tomblin (*Chair*), Chafin and Sprouse.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2003

CHAPTER 1

(Com. Sub. for H. B. 2406 — By Delegates Doyle, Amores and Manuel)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to immunity from civil liability for members of a national ski patrol system under certain circumstances; and defining terms.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.**§55-7-16. Immunity from liability for ski patrol rendering emergency care.**

1 (a) A member in good standing of a national ski patrol
2 system who, without compensation, provides emergency aid or
3 assistance to an injured or ill person at the scene of a ski resort
4 rescue operation, outdoor emergency rescue operation or while
5 otherwise performing ski patrol or while transporting an injured
6 or ill person to a place for transfer to an available emergency
7 medical center or hospital as the result of being on ski patrol,
8 may not be held liable for civil damages for any alleged act or
9 omission which is claimed to have occurred during the render-
10 ing of the emergency aid or assistance. The limitation of
11 liability established by the provisions of this section apply to
12 acts or omissions rendered in good faith.

13 (b) For the purposes of this section, a national ski patrol
14 system is a national organization whose members are volunteers
15 and do not receive compensation and are required to obtain
16 training in safety and emergency medical treatment.

17 (c) For purposes of this section, the term “compensation”
18 does not include access to a recreational facility, complimentary
19 lift tickets, food, lodging or other gifts or discounts that may be
20 offered or accessible to a person.

CHAPTER 2

**(S. B. 636 — By Senators Kessler, Snyder, Rowe, Ross, Deem,
Oliverio, Mckenzie, Smith, White, Harrison, Minard, Weeks,
Hunter and Jenkins)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article three-a of said chapter, all relating to exemption of commodities and services offered or produced by nonprofit workshops from competitive bidding requirement.

Be it enacted by the Legislature of West Virginia:

That section ten, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section six, article three-a of said chapter be amended and reenacted, all to read as follows:

Article

3. Purchasing Division.

3A. Central Nonprofit Coordinating Agency and Committee for the Purchase of Commodities and Services from the Handicapped.

ARTICLE 3. PURCHASING DIVISION.

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

1 A purchase of and contract for commodities, printing and
2 services shall be based, whenever possible, on competitive bids.

3 The director shall solicit sealed bids for the purchase of
4 commodities and printing which is estimated to exceed ten
5 thousand dollars. No spending unit shall issue a series of
6 requisitions which would circumvent this ten thousand dollar
7 maximum. The director may permit bids by facsimile transmis-
8 sion machine to be accepted in lieu of sealed bids: *Provided*,
9 That an original bid is received within two working days
10 following the date specified for bid opening. Bids shall be
11 obtained by public notice. The notice may be published by any
12 advertising medium the director deems advisable. The director
13 may also solicit sealed bids by sending requests by mail to
14 prospective suppliers and by posting notice on a bulletin board
15 in his office: *Provided, however*, That the director shall, without
16 competitive bidding, purchase commodities and services
17 produced and offered for sale by nonprofit workshops, as
18 defined in section one, article one of this chapter, which are
19 located in this state: *Provided further*, That such commodities
20 and services shall be of a fair market price and of like quality
21 comparable to other commodities and services otherwise
22 available as determined by the director with the advice of the
23 committee on the purchase of commodities and services from
24 the handicapped.

25 Toward the end of effecting the making of contracts for
26 commodities and services of nonprofit workshops, the director
27 shall employ a person whose responsibilities in addition to
28 other duties shall be to identify all commodities and services
29 available for purchase from such nonprofit workshops, to
30 evaluate the need of the state for such commodities and services
31 to coordinate the various nonprofit workshops in their produc-
32 tion efforts and to make available to such workshops informa-
33 tion about available opportunities within state government for
34 purchase of commodities or services which might be produced

35 and sold by such workshops. Funds to employ such a person
36 shall be included annually in the budget.

**ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY AND
COMMITTEE FOR THE PURCHASE OF COMMODITIES
AND SERVICES FROM THE HANDICAPPED.**

§5A-3A-6. Exceptions.

1 The purchasing unit is exempt from the operation of the
2 mandatory provisions of section ten, article three of this chapter
3 when:

4 (1) The director of purchasing determines that the commod-
5 ity or service so produced or provided does not meet the
6 reasonable requirements of the purchasing unit;

7 (2) The committee or central nonprofit agency determines
8 that a nonprofit workshop cannot reasonably provide the
9 commodity or service;

10 (3) The purchasing director determines, after considering
11 any recommendation of the committee or bids which may have
12 been offered, that the commodity or service is not of a fair
13 market price; or

14 (4) The purchasing director determines, after consulting
15 with the committee, that the commodity or service is not of like
16 quality to other commodities or services available.

17 No purchasing unit may evade the intent of this section
18 when required goods or services are reasonably available from
19 nonprofit workshops: *Provided*, That if a purchasing unit is
20 required or may be required by federal statute or regulations to
21 purchase commodities or services with competitive bidding, or
22 may otherwise be disqualified from federal funding or assis-
23 tance if it fails to purchase commodities or services with
24 competitive bidding, the purchasing unit shall not be required

25 to purchase commodities or services from nonprofit workshops.
26 Such purchasing units not required to purchase commodities or
27 services from nonprofit workshops include military installations
28 of the national guard.

CHAPTER 3

(S. B. 337 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections nine hundred one, nine hundred two and nine hundred three, all relating to recognizing the adoption of a child from a foreign country; requirements for filing a petition for recognition of foreign adoption decree in circuit court; and setting forth the procedures taken by the court in recognizing the adoption.

Be it enacted by the Legislature of West Virginia:

That article twenty-two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new sections, designated sections nine hundred one, nine hundred two and nine hundred three, all to read as follows:

ARTICLE 22. ADOPTION.

§48-22-901. Recognition of foreign adoption decree.

§48-22-902. Filing of petition for recognition of foreign adoption decree.

§48-22-903. Proceedings for recognition of foreign adoption decree.

PART 9. INTERNATIONAL ADOPTIONS.

§48-22-901. Recognition of foreign adoption decree.

1 When an adoption occurs in a foreign country and the
2 adopted child has immigrated to the United States with the
3 permission of the United States, this state shall recognize the
4 adoption. The rights and obligations of the parties as to matters
5 within the jurisdiction of this state shall be determined as
6 though the adoption decree was issued by a court of this state.

§48-22-902. Filing of petition for recognition of foreign adoption decree.

1 (a) At any time after the child has immigrated to the United
2 States, the adoptive parent or parents may commence proceed-
3 ings with the circuit court in their county of residence to have
4 the foreign adoption decree recognized by filing a petition for
5 recognition of foreign adoption decree. The verified petition
6 shall set forth the following:

7 (1) The name and address of the petitioner or petitioners;

8 (2) The name of the child adopted in a foreign country;

9 (3) The name by which the child shall be known hence-
10 forth;

11 (4) The child's country of origin and date of birth, if
12 known;

13 (5) That the child has been issued a visa or other document
14 authorizing entry into the United States and the date of entry. A
15 copy of such a document shall be attached to the petition;

16 (6) That a home study of the petitioner or petitioners was
17 prepared. A copy of the same shall be attached to the petition;

18 (7) The date on which the adoption was decreed in the
19 foreign country. A copy of the foreign adoption decree or such
20 other document or documents which evidence finalization of
21 the adoption in the foreign country shall be attached to the
22 petition, along with an English translation thereof.

23 (b) The verified petition may set forth requests for specific
24 relief or findings to meet the best interests of the child which
25 may be granted, in the court's discretion, specifically including,
26 but not limited to, a revised birth date if a physician has
27 recommended a revision of the child's birth date.

**§48-22-903. Proceedings for recognition of foreign adoption
decree.**

1 The court shall review the petition and accompanying
2 documentation and, if the court finds the petition and documen-
3 tation to be satisfactory, it shall enter an order of adoption
4 stating that the documentation required has been submitted and
5 is satisfactory and that the adoption must be recognized in West
6 Virginia and shall have the same force and effect as if the
7 decree of adoption was granted in accordance with the provi-
8 sions of the West Virginia adoption act. The order shall further
9 set forth the name by which the child shall be known henceforth
10 and such other pertinent findings of the court. The court shall
11 enter the order without the necessity of a hearing unless it
12 deems a hearing necessary or a hearing is requested. The
13 provisions of subsections (a), (d) and (e), section seven hundred
14 two of this article shall apply to all orders issued hereunder and
15 a new birth certificate shall be issued forthwith.



CHAPTER 4

(S. B. 430 — By Senators Ross, Sharpe and Oliverio)



[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section four, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing certain restrictions on outdoor advertising in addition to existing restrictions.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-4. General restrictions as to outdoor advertising.

1 The following restrictions shall apply to all advertising
2 signs, displays and devices erected and maintained adjacent to
3 any roads within the state road system, including federal-aid
4 interstate and primary roads.

5 (1) No advertising sign shall be erected or maintained
6 which involves rapid motion or rotation of the structure or any
7 part thereof: *Provided*, That an advertising sign that does
8 involve motion or rotation which is not rapid to effect change-
9 able messages shall be permitted in accordance with legislative

10 rules to be proposed by the division of highways of the depart-
11 ment of transportation in accordance with the provisions of
12 article three, chapter twenty-nine-a of this code;

13 (2) No advertising display or device shall use the word
14 “stop” or “danger” or present or imply the need or requirement
15 of stopping or the existence of danger;

16 (3) No advertising sign, display or device shall be a copy or
17 imitate a traffic sign or other official sign;

18 (4) No advertising display or device shall attempt or purport
19 to direct traffic;

20 (5) No advertising sign shall contain lighting which is not
21 shielded and any lighting shall be of such low intensity as not
22 to cause glare or impair the vision of the operator of any motor
23 vehicle;

24 (6) No advertising display or device shall be illuminated by
25 any rapid flashing, intermittent light or lights;

26 (7) No advertising display or device shall be painted,
27 affixed or attached to any natural feature;

28 (8) No advertising sign, display or device shall hinder the
29 clear, unobstructed view of approaching or merging traffic or
30 obscure from view any traffic sign or other official sign;

31 (9) No advertising sign, display or device shall be so
32 located as to obscure the view of any connecting road or
33 intersection;

34 (10) No advertising sign, display or device shall be erected,
35 outside of any municipality, within five hundred feet of any
36 church, school, cemetery, public park, public reservation, public

37 playground or state or national forest except markers for
38 underground utility facilities;

39 (11) No advertising sign, the permit for which has been
40 applied for subsequent to the thirty-first day of December, two
41 thousand three, that is composed of stacked sign faces, one on
42 top of the other, on the same structure, facing the same direc-
43 tion, each having more than three hundred square feet is
44 permitted;

45 (12) No advertising device which is composed of separate
46 sign faces in a side-by-side formation, on the same structure,
47 facing the same direction, each having an area of more than
48 three hundred square feet is permitted;

49 (13) No advertising device, the permit for which has been
50 applied for subsequent to the thirty-first day of December, two
51 thousand three, which contains a sign facing a single direction
52 may have an area greater than six hundred seventy-two square
53 feet: *Provided*, That cutouts and extensions which expand the
54 area may be allowed to the extent the area is expanded by no
55 more than thirty percent of its original permitted configuration;

56 (14) No more than one sign structure is permitted at a
57 location.



CHAPTER 5

(Com. Sub. for H. B. 2357 — By Mr. Speaker, Mr. Kiss)



[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section three-a, article two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the aeronautics commissioner to expend funds.

Be it enacted by the Legislature of West Virginia:

That section three-a, article two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-3a. Expenses of civil air patrol; commission may expend funds pursuant to rules.

1 (a) The commission, in addition to all other powers and
2 functions authorized by law, may expend state funds: (1) For
3 educational purposes of the civil air patrol, including, but not
4 limited to, the purchase of civil air patrol aviation education
5 training aid books, materials and equipment; (2) to defray
6 maintenance, repair and replacement costs of civil air patrol
7 aircraft; (3) to purchase and obtain supplies and equipment for
8 the civil air patrol; and (4) to maintain the communications
9 network for the civil air patrol.

10 (b) No expenditure of state funds for these purposes may be
11 made unless the purchase order is first approved by the com-
12 mission in accordance with the commission's rules relating to
13 the expenditure. Only funds specifically appropriated by the
14 Legislature for these purposes may be expended by the com-
15 mission and funds appropriated shall be expended for no other
16 purposes.

CHAPTER 6

(S. B. 493 — By Senator Edgell)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duties of the commissioner of agriculture; and eliminating administrative duties on state rural development council.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

1 The commissioner of agriculture shall perform the follow-
2 ing duties:

3 (a) Devise means of advancing the agricultural interests of
4 the state and, in the performance of such duty, he or she shall
5 have authority to call upon any state department, or officer of
6 the state or county, to cooperate in promoting the agricultural
7 interests of the state. It shall be the duty of any such depart-
8 ment, or officer, upon request of the commissioner to render the
9 assistance desired;

10 (b) Promote and encourage the organization of such
11 societies and associations as have for their object the improve-
12 ment and development of the state's agricultural, horticultural
13 and kindred interests, especially in production, processing for
14 market and distribution;

15 (c) Conduct cooperative work with the United States
16 department of agriculture in inspecting and determining the
17 grade and condition of farm produce at collecting centers,
18 receiving centers and shipping points;

19 (d) Induce the investment of capital in, and immigration
20 into, this state by the dissemination of information relative to
21 the soil, climate, health, natural resources, market opportunities
22 and advantages of the state;

23 (e) Investigate and report upon the kinds, conditions and
24 extent of the mineral products of the state and their value;

25 (f) Take charge of the museum of the department of
26 agriculture, collect, preserve and exhibit therein specimens of
27 agricultural, horticultural and kindred products, products of the
28 forests, minerals, flora and fauna of the state;

29 (g) Publish and distribute, from time to time, such reports
30 and bulletins concerning agriculture, horticulture and kindred
31 subjects as may be of value to the farmers of the state and, as
32 conditions may demand, publish a handbook giving the
33 resources of the several counties of the state, the varieties of
34 soil and products, both mineral and vegetable, and the adapt-
35 ability of the different sections of the state to the different
36 branches of agriculture, horticulture and kindred interests;

37 (h) Submit a biennial report to the governor and Legislature
38 containing such information as to the operations of the depart-
39 ment as may be helpful to the agricultural interests of the state,
40 together with an itemized statement of all receipts and disburse-

41 ments during the biennial period covered thereby and giving the
42 name of every person employed during such period, the time
43 employed and the amount paid each employee;

44 (i) Perform such other duties and exercise such other
45 powers as are provided in this chapter and by general law; and

46 (j) Propose rules, including regulatory standards, for
47 legislative approval in accordance with the provisions of article
48 three, chapter twenty-nine-a of this code for the purpose of
49 carrying out the requirements of this chapter.



CHAPTER 7

**(H. B. 2696 — By Delegates Stemple, Michael, Varner,
Stalnaker, Mezzatesta, Shaver and Williams)**

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the commissioner of agriculture to increase certain fees to cover the costs of certain services and removing certain limitations.

Be it enacted by the Legislature of West Virginia:

That section four-b, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4b. Authority of commissioner to increase certain fees by rules or regulations.

1 The commissioner is hereby authorized to promulgate and
2 adopt rules in accordance with the provisions of chapter twenty-
3 nine-a of this code, fixing dues for permits, licenses, certifi-
4 cates, registrations and laboratory tests when, in the opinion of
5 the commissioner, it becomes necessary to increase these fees
6 in order to cover the costs of providing the services involved or
7 issuing the permits, licenses, certificates or registrations
8 applicable.

CHAPTER 8

**(Com. Sub. for H. B. 2694 — By Delegates Stemple, Boggs, Crosier,
Williams, Anderson, Evans and Schoen)**

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections eight and ten, article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, six, seven and eleven of said article, all relating to regulation of bees; removing pesticide poisoning and certain violations; adding, deleting and amending definitions; authorizing commissioner of agriculture to seize infected bees and bee equipment; establishing expiration date for certificates of registration; strengthening commissioner's inspection and quarantine powers; clarifying manner of dealing with abandoned apiaries and interstate movement of bees; making technical corrections and modifying penalties.

Be it enacted by the Legislature of West Virginia:

That sections eight and ten, article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, five, six, seven, and eleven of said article be amended and reenacted, all to read as follows:

ARTICLE 13. INSPECTION AND PROTECTION OF APICULTURE.

§19-13-1. Short title.

§19-13-2. Definitions.

§19-13-3. Commissioner's powers and duties; rule-making authority; apiary education; cooperation with governmental agencies; seizure of infected bees and bee equipment.

§19-13-4. Registration of bees; identification of apiaries.

§19-13-5. Right of entry; apiary inspections; quarantines.

§19-13-6. Abandoned apiaries and equipment; notice.

§19-13-7. Bees brought into state to carry inspection certificate; commissioner to be notified; interstate movement of bees.

§19-13-11. Penalties for violations of article; rules.

§19-13-1. Short title.

- 1 This article may be cited as "The West Virginia Apiary
- 2 Act".

§19-13-2. Definitions.

- 1 For the purpose of this article, the term:

- 2 (1) "Abandoned apiary" means any apiary in which twenty-
- 3 five percent or more of the colonies are dead or diseased, or the
- 4 death or disarray of the colonies exposes them to robbing, or
- 5 diseased or potentially diseased abandoned bee equipment
- 6 which may jeopardize the welfare of neighboring colonies.

- 7 (2) "Apiary" means any place where one or more colonies
- 8 or nuclei of bees are kept or where bee equipment is stored.

9 (3) "Appliances" means any apparatus, tool, machine or
10 other device, used in the handling and manipulating of bees,
11 honey, wax and hives. It also means any container of honey and
12 wax that may be used in any apiary or in transporting bees and
13 their products and apiary supplies.

14 (4) "Bees" means any stage of the common hive or honey
15 bee (*Apis mellifera*), or other species of the genus *Apis*.

16 (5) "Bee equipment" means hives, supers, frames, veils,
17 gloves or any other appliances.

18 (6) "Bee products" means honey, bees wax, pollen, propolis
19 and royal jelly.

20 (7) "Colony" means the hive and includes bees, comb,
21 honey and bee equipment.

22 (8) "Commissioner" means the commissioner of the
23 department of agriculture of the state of West Virginia or a duly
24 authorized employee.

25 (9) "Control agents or control mechanisms" means any
26 method of chemical or mechanical control to suppress or
27 eradicate an apiary disease, pest, or parasitic infestation in an
28 apiary or the colonies contained therein.

29 (10) "Department" means the department of agriculture of
30 the state of West Virginia.

31 (11) "Hive" means a frame hive, box hive, box, barrel, log,
32 gum, skep or any other receptacle or container, natural or
33 artificial, or any part thereof, which may be used or employed
34 as a domicile for bees.

35 (12) "Honey bee pest" means American foulbrood (*Bacillus*
36 larvae), European foulbrood (*Melissococcus pluton*), *Varroa*

37 mite (*Varroa destructor*), honey bee tracheal mite (*Acarapis*
38 *woodi*), or any other virus or infectious or parasitic organism
39 determined by the commissioner to be transmissible to other
40 bee colonies and that represents a threat to beekeeping in West
41 Virginia.

42 (13) "Nuclei" means the removal of a split portion or
43 division of any colony of honey bees for the express purpose of
44 creating a numerical increase in colonies for honey production,
45 pollination service or monetary gain through sale of honey bees.

46 (14) "Packaged bees" means bees shipped in combless
47 packages accompanied by a valid certificate of health from an
48 authorized state or federal agency verifying the absence or
49 presence of any infectious or communicable diseases or
50 parasitic infestations, and further providing that no honey has
51 been used for food while in transit or that any honey used as
52 food in transit was properly sterilized.

53 (15) "Person" means corporations, partnerships, associa-
54 tions, societies, individuals or group of individuals or any
55 employee, servant or agent acting for or employed by any
56 person.

57 (16) "Premises" means any parcel of real estate and
58 structures in which bee equipment, bees, bee products and bee
59 appliances are or may be utilized for storage purposes.

60 (17) "Quarantine" means a declaration by the commissioner
61 which specifies a period of enforced isolation to contain and
62 prevent the spread of honey bee pests.

63 (18) "Sterilized or sterilization" means to treat and neutral-
64 ize honey bee pests by means of steam autoclave, pit incinera-
65 tion, or by any other acceptable method which the commis-
66 sioner determines effective for control of honey bee pests.

§19-13-3. Commissioner's powers and duties; rule-making authority; apiary education; cooperation with governmental agencies; seizure of infected bees and bee equipment.

1 (a) The commissioner may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code: (1) To effectively eradicate,
4 suppress or control honey bee pests as far as may be practical;
5 (2) to regulate the keeping and maintaining of bees, bee
6 equipment, queen breeding equipment, apiaries and appliances;
7 (3) to regulate treatments, retreatments, and fees for the
8 services; and (4) any other rules necessary to effectuate the
9 enforcement of this article.

10 (b) The commissioner is authorized to conduct apiary
11 education in a manner which advances and promotes bee
12 culture in West Virginia.

13 (c) The commissioner is authorized to cooperate with the
14 federal government and its agencies, departments and instru-
15 mentalities; other West Virginia agencies, departments,
16 divisions, or political subdivisions; and any other state or
17 commonwealth and its agencies, departments or political
18 subdivisions, in order to carry out the effective administration
19 of this article.

20 (d) The commissioner is authorized to stop the delivery of,
21 to seize, to destroy, to treat or to order returned to point of
22 origin, at the owner's expense, all appliances, bees, bee
23 equipment, bee products or hives transported into or within this
24 state, found to be infected with honey bee pests regardless of
25 whether a valid certificate of inspection is attached.

§19-13-4. Registration of bees; identification of apiaries.

1 (a) All persons keeping bees in this state shall apply for a
2 certificate of registration for bee keeping from the commis-
3 sioner, within ten days of the date that bees are acquired, by
4 notifying the commissioner, in writing, of the number and
5 location of colonies they own or rent, or which they keep for
6 someone else, whether the bees are located on their own
7 property or someone else's property. All apiary certificates of
8 registration expire on the thirty-first day of December of each
9 year and must be renewed annually.

10 (b) All persons owning or operating an apiary which is not
11 located on their own property must post the name and address
12 of the owner or operator in a conspicuous place in the apiary.

§19-13-5. Right of entry; apiary inspections; quarantines.

1 (a) During reasonable working hours, the commissioner
2 may enter upon any premises to access any apiary for the
3 purpose of inspecting or sampling. No person shall obstruct or
4 hinder the commissioner in the discharge of his or her duties.

5 (b) The commissioner shall inspect, as practicable, all
6 colonies of honey bees domiciled within the state of West
7 Virginia. If any honey bee pest is found in the apiary, the
8 commissioner shall immediately notify, in writing, the owner
9 or operator stating the type of honey bee pest and whether it
10 may be successfully treated or not.

11 In cases where the honey bee pest is subject to treatment,
12 the commissioner shall specify and direct the necessary
13 treatment, which will be administered by the owner or operator,
14 within fourteen days of the date of notice. If not treated, the
15 colonies contained in the apiary in which the honey bee pests
16 are found shall be depopulated without remuneration to the
17 owner. All bee hives and related bee equipment found in any
18 diseased apiary shall be destroyed, sterilized or treated in a

19 manner approved by and under the direction of the commis-
20 sioner.

21 (c) All apiaries producing queens, packaged bees or nuclei
22 colonies for distribution shall be inspected each year. If honey
23 bee pests are found in the apiary, the commissioner shall
24 immediately notify, in writing, the owner or operator, and
25 thereafter it shall be unlawful for the owner or operator to ship,
26 sell or give away any queen bees, appliances, packaged bees,
27 full colonies or nuclei colonies from the apiary until the honey
28 bee pests have been controlled to the satisfaction of the com-
29 missioner.

30 (d) The commissioner shall quarantine all apiaries, bees,
31 bee equipment, bee products, appliances and premises infected
32 by honey bee pests. The notice of quarantine shall specify the
33 name of the honey bee pest, the premises or apiary quarantined,
34 bee equipment, bee products and appliances regulated and all
35 conditions governing movement. The commissioner may adopt
36 other orders to prevent the introduction of or to contain the
37 spread of honey bee pests that are capable of being transported
38 by bees, appliances or bee equipment. The order shall set forth
39 the conditions governing the movement of the regulated items.

40 The commissioner shall rescind, in writing, quarantines and
41 other orders when he or she determines the need no longer
42 exists.

§19-13-6. Abandoned apiaries and equipment; notice.

1 It shall be unlawful for a person to knowingly maintain an
2 abandoned apiary or bee equipment. When the commissioner
3 determines that an apiary or bee equipment has been aban-
4 doned, he or she shall notify, in writing, the owner or operator
5 that the apiary or bee equipment has been declared abandoned.
6 The owner or operator has thirty days from the date of notice to

7 enclose, dispose of or destroy the abandoned apiary or bee
8 equipment in a manner approved by the commissioner. If the
9 owner or operator of the abandoned apiary or bee equipment
10 cannot be located after reasonable inquiry, notice shall be
11 provided to the owner of the real property on which the apiary
12 or bee equipment is located. If the apiary or bee equipment
13 continues to be abandoned for a period of thirty days thereafter,
14 the commissioner may seize the apiary or bee equipment and
15 take such action as is necessary to dispose of or to destroy the
16 apiary or bee equipment as conditions warrant.

**§19-13-7. Bees brought into state to carry inspection certificate;
commissioner to be notified; interstate movement
of bees.**

1 (a) It shall be unlawful for any person to transport bees,
2 used bee equipment or used appliances into West Virginia,
3 unless accompanied by a certificate of inspection signed by an
4 authorized state or federal inspection official verifying the
5 actual inspection of the bees, used bee equipment or used
6 appliances within thirty days preceding the date of shipment
7 and certifying the absence of honey bee pests.

8 (b) Prior to the movement of any bees, used bee equipment
9 or used appliances into West Virginia, and as a prerequisite to
10 the issuance of a permit of entry, the commissioner shall be
11 furnished by the owner, transporter, or operator the following:

12 (1) The exact location or destination of the bees, used bee
13 equipment or used appliances.

14 (2) Name and address of the owner of the property where
15 the bees, used bee equipment or used appliances will be located.

16 (3) The exact number of colonies or amount of used bee
17 equipment or used appliances in the shipment.

18 (4) A copy of the inspection certificate issued by the state
19 or federal inspector.

20 The commissioner shall issue a temporary or permanent
21 permit of entry. A temporary permit may not exceed sixty days.

22 If the commissioner denies the request for an entry permit,
23 he or she shall notify the owner, operator or transporter of the
24 denial and the reasons therefor.

§19-13-11. Penalties for violations of article; rules.

1 (a)(1) Criminal penalties.— Any person violating any
2 provision of this article is guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not less than one hundred
4 dollars nor more than five hundred dollars for the first offense,
5 and for each subsequent offense, shall be fined not less than
6 five hundred dollars nor more than one thousand dollars, or
7 imprisoned in the county or regional jail not more than six
8 months, or both. Magistrates have concurrent jurisdiction with
9 circuit courts to enforce the provisions of this article.

10 (2) It shall be the duty of the prosecuting attorney of the
11 county in which the violation occurred to represent the depart-
12 ment of agriculture, to institute proceedings, and to prosecute
13 the person charged with such violation.

14 (b) Civil penalties.—

15 (1) Any person violating the provisions of this article or
16 rule promulgated pursuant to this article may be assessed a civil
17 penalty by the commissioner. In determining the amount of any
18 civil penalty, the commissioner shall give due consideration to
19 the history of previous violation of any persons, the seriousness
20 of the violation, including any hazards to agriculture in West
21 Virginia and the demonstrated good faith of any person charged

22 in attempting to achieve compliance with this article after
23 written notification of the violation.

24 (2) The commissioner may assess a penalty of not more
25 than one hundred dollars for the first offense or less serious
26 violation, as determined by the commissioner in accordance
27 with the rules approved in accordance with the provisions of
28 chapter twenty-nine-a of this code, and not more than one
29 thousand dollars for a serious, repeat or intentional violation, as
30 determined by the commissioner in accordance with the
31 approved rules.

32 (3) The commissioner may negotiate and enter into a
33 settlement agreement for the payment of civil penalties.

34 (4) The civil penalty is payable to the state of West Virginia
35 and is collectable in any manner authorized by law for the
36 collection of debts. Any person liable to pay a civil penalty and
37 neglecting or refusing to pay it within thirty days of written
38 notice of demand for payment, shall be assessed interest at the
39 rate of ten percent per year from the date the penalty was
40 assessed to the date of payment. The penalty and interest
41 constitute a lien in favor of the state of West Virginia and shall
42 attach on the person's property when a lien is properly recorded
43 in the county wherein the property is situated. There shall be no
44 cost as a condition precedent to recording.

45 (5) The commissioner shall propose rules for legislative
46 approval in accordance with the provisions of article three,
47 chapter twenty-nine-a of this code to establish procedures for
48 the assessment and collection of civil penalties as provided in
49 this section.

50 (6) No state court may allow the recovery of damages for
51 administrative action taken if the court finds that there was
52 probable cause for such action.

CHAPTER 9

**(S. B. 627 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating to renaming the Guthrie center.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-one, to read as follows:

ARTICLE 31. GUS R. DOUGLASS AGRICULTURAL CENTER AT GUTHRIE.

§19-31-1. Establishing the name.

- 1 The Guthrie center, currently owned by the department of
- 2 health and human resources, shall hereinafter be known as the
- 3 Gus R. Douglass agricultural center at Guthrie.

CHAPTER 10

**(Com. Sub. for S. B. 535 — By Senators Kessler, Hunter, Rowe,
Fanning, Minard, Edgell, White, Weeks and Prezioso)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three-a, chapter sixty of said code by adding thereto a new section, designated section twenty-five-a; and to amend and reenact section twenty, article eight of said chapter, all relating to the sale of alcohol, wine and beer to minors; mandatory carding of purchasers of alcohol, wine and beer; and defining terms.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article three-a, chapter sixty of said code be amended by adding thereto a new section, designated section twenty-five-a; and that section twenty, article eight of said chapter be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

1 (a) It shall be unlawful:

2 (1) For any licensee, his, her, its or their servants, agents or
3 employees to sell, give or dispense, or any individual to drink
4 or consume, in or on any licensed premises or in any rooms
5 directly connected therewith, nonintoxicating beer or cooler on
6 weekdays between the hours of two o'clock a.m. and seven
7 o'clock a.m., or between the hours of two o'clock a.m. and one
8 o'clock p.m., on any Sunday, except in private clubs licensed
9 under the provisions of article seven, chapter sixty of this code,
10 where the hours shall conform with the hours of sale of
11 alcoholic liquors;

12 (2) For any licensee, his, her, its or their servants, agents or
13 employees to sell, furnish or give any nonintoxicating beer as
14 defined in this article to any person visibly or noticeably
15 intoxicated or to any person known to be insane or known to be
16 a habitual drunkard;

17 (3) For any licensee, his, her, its or their servants, agents or
18 employees to sell, furnish or give any nonintoxicating beer as
19 defined in this article to any person who is less than twenty-one
20 years of age;

21 (4) For any distributor to sell or offer to sell, or any retailer
22 to purchase or receive, any nonintoxicating beer as defined in
23 this article, except for cash and no right of action shall exist to
24 collect any claims for credit extended contrary to the provisions
25 of this subdivision. Nothing herein contained shall prohibit a
26 licensee from crediting to a purchaser the actual price charged
27 for packages or containers returned by the original purchaser as
28 a credit on any sale, or from refunding to any purchaser the
29 amount paid or deposited for the containers when title is
30 retained by the vendor: *Provided*, That a distributor may accept

31 an electronic transfer of funds if the transfer of funds is initiated
32 by an irrevocable payment order on the invoiced amount for the
33 nonintoxicating beer. The cost of the electronic fund transfer
34 shall be borne by the retailer and the distributor must initiate the
35 transfer no later than noon of one business day after the
36 delivery;

37 (5) For any brewer or distributor or brewpub or his, her, its
38 or their agents to transport or deliver nonintoxicating beer as
39 defined in this article to any retail licensee on Sunday;

40 (6) For any brewer or distributor to give, furnish, rent or
41 sell any equipment, fixtures, signs or supplies directly or
42 indirectly or through a subsidiary or affiliate to any licensee
43 engaged in selling products of the brewing industry at retail or
44 to offer any prize, premium, gift or other similar inducement,
45 except advertising matter of nominal value, to either trade or
46 consumer buyers: *Provided*, That a distributor may offer, for
47 sale or rent, tanks of carbonic gas. Nothing herein contained
48 shall prohibit a brewer from sponsoring any professional or
49 amateur athletic event or from providing prizes or awards for
50 participants and winners in any events: *Provided, however*, That
51 no event shall be sponsored which permits actual participation
52 by athletes or other persons who are minors, unless specifically
53 authorized by the commissioner;

54 (7) For any licensee to permit in his or her premises any
55 lewd, immoral or improper entertainment, conduct or practice;

56 (8) For any licensee except the holder of a license to
57 operate a private club issued under the provisions of article
58 seven, chapter sixty of this code or a holder of a license or a
59 private wine restaurant issued under the provisions of article
60 eight of said chapter to possess a federal license, tax receipt or
61 other permit entitling, authorizing or allowing the licensee to
62 sell liquor or alcoholic drinks other than nonintoxicating beer;

63 (9) For any licensee to obstruct the view of the interior of
64 his or her premises by enclosure, lattice, drapes or any means
65 which would prevent plain view of the patrons occupying the
66 premises. The interior of all licensed premises shall be ade-
67 quately lighted at all times: *Provided*, That provisions of this
68 subdivision do not apply to the premises of a Class B retailer,
69 the premises of a private club licensed under the provisions of
70 article seven, chapter sixty of this code or the premises of a
71 private wine restaurant licensed under the provisions of article
72 eight of said chapter;

73 (10) For any licensee to manufacture, import, sell, trade,
74 barter, possess or acquiesce in the sale, possession or consump-
75 tion of any alcoholic liquors on the premises covered by a
76 license or on premises directly or indirectly used in connection
77 therewith: *Provided*, That the prohibition contained in this
78 subdivision with respect to the selling or possessing or to the
79 acquiescence in the sale, possession or consumption of alco-
80 holic liquors is not applicable with respect to the holder of a
81 license to operate a private club issued under the provisions of
82 article seven, chapter sixty of this code nor shall the prohibition
83 be applicable to a private wine restaurant licensed under the
84 provisions of article eight of said chapter insofar as the private
85 wine restaurant is authorized to serve wine;

86 (11) For any retail licensee to sell or dispense nonintoxicat-
87 ing beer, as defined in this article, purchased or acquired from
88 any source other than a distributor, brewer or manufacturer
89 licensed under the laws of this state;

90 (12) For any licensee to permit loud, boisterous or disor-
91 derly conduct of any kind upon his or her premises or to permit
92 the use of loud musical instruments if either or any of the same
93 may disturb the peace and quietude of the community wherein
94 the business is located: *Provided*, That no licensee may have in
95 connection with his or her place of business any loudspeaker

96 located on the outside of the licensed premises that broadcasts
97 or carries music of any kind;

98 (13) For any person whose license has been revoked, as
99 provided in this article, to obtain employment with any retailer
100 within the period of one year from the date of the revocation, or
101 for any retailer to knowingly employ that person within the
102 specified time;

103 (14) For any distributor to sell, possess for sale, transport or
104 distribute nonintoxicating beer except in the original container;

105 (15) For any licensee to knowingly permit any act to be
106 done upon the licensed premises, the commission of which
107 constitutes a crime under the laws of this state;

108 (16) For any Class B retailer to permit the consumption of
109 nonintoxicating beer upon his or her licensed premises;

110 (17) For any Class A licensee, his, her, its or their servants,
111 agents or employees, or for any licensee by or through any
112 servants, agents or employees, to allow, suffer or permit any
113 person less than eighteen years of age to loiter in or upon any
114 licensed premises; except, however, that the provisions of this
115 subdivision do not apply where a person under the age of
116 eighteen years is in or upon the premises in the immediate
117 company of his or her parent or parents, or where and while a
118 person under the age of eighteen years is in or upon the
119 premises for the purpose of and actually making a lawful
120 purchase of any items or commodities therein sold, or for the
121 purchase of and actually receiving any lawful service therein
122 rendered, including the consumption of any item of food, drink
123 or soft drink therein lawfully prepared and served or sold for
124 consumption on the premises;

125 (18) For any distributor to sell, offer for sale, distribute or
126 deliver any nonintoxicating beer outside the territory assigned

127 to any distributor by the brewer or manufacturer of nonintoxi-
128 cating beer or to sell, offer for sale, distribute or deliver
129 nonintoxicating beer to any retailer whose principal place of
130 business or licensed premises is within the assigned territory of
131 another distributor of such nonintoxicating beer: *Provided*, That
132 nothing herein is considered to prohibit sales of convenience
133 between distributors licensed in this state wherein one distribu-
134 tor sells, transfers or delivers to another distributor a particular
135 brand or brands for sale at wholesale; and

136 (19) For any licensee or any agent, servant or employee of
137 any licensee to knowingly violate any rule lawfully promul-
138 gated by the commissioner in accordance with the provisions of
139 chapter twenty-nine-a of this code.

140 (b) Any person who violates any provision of this article
141 including, but not limited to, any provision of this section, or
142 any rule, or order lawfully promulgated by the commissioner,
143 or who makes any false statement concerning any material fact
144 in submitting application for license or for a renewal of a
145 license or in any hearing concerning the revocation thereof, or
146 who commits any of the acts herein declared to be unlawful is
147 guilty of a misdemeanor and, upon conviction thereof, shall be
148 punished for each offense by a fine of not less than twenty-five
149 nor more than five hundred dollars, or confined in the county or
150 regional jail for not less than thirty days nor more than six
151 months, or by both fine and confinement. Magistrates shall
152 have concurrent jurisdiction with the circuit court and any other
153 courts having criminal jurisdiction in their county for the trial
154 of all misdemeanors arising under this article.

155 (c) (1) A Class B licensee that:

156 (A) Has installed a transaction scan device on its licensed
157 premises; and

158 (B) Can demonstrate that it requires each employee, servant
159 or agent to verify the age of any individual to whom nonintoxi-
160 cating beer is sold, furnished or given away by the use of the
161 transaction device may not be subject to: (i) Any criminal
162 penalties whatsoever, including those set forth in subsection (b)
163 of this section; (ii) any administrative penalties from the
164 commissioner; or (iii) any civil liability whatsoever for the
165 improper sale, furnishing or giving away of nonintoxicating
166 beer to an individual who is less than twenty-one years of age
167 by one of his or her employees, servants or agents. Any agent,
168 servant or employee who has improperly sold, furnished or
169 given away nonintoxicating beer to an individual less than
170 twenty-one years of age is subject to the criminal penalties of
171 subsection (b) of this section. Any agent, servant or employee
172 who has improperly sold, furnished or given away nonintoxicat-
173 ing beer to an individual less than twenty-one years of age is
174 subject to termination from employment, and the employer
175 shall have no civil liability for the termination.

176 (2) For purposes of this section, a Class B licensee can
177 demonstrate that it requires each employee, servant or agent to
178 verify the age of any individual to whom nonintoxicating beer
179 is sold by providing evidence: (A) That it has developed a
180 written policy which requires each employee, servant or agent
181 to verify the age of each individual to whom nonintoxicating
182 beer will be sold, furnished or given away; (B) that it has
183 communicated this policy to each employee, servant or agent;
184 and (C) that it monitors the actions of its employees, servants
185 or agents regarding the sale, furnishing or giving away of
186 nonintoxicating beer and that it has taken corrective action for
187 any discovered noncompliance with this policy.

188 (3) "Transaction scan" means the process by which a
189 person checks, by means of a transaction scan device, the age
190 and identity of the cardholder, and "transaction scan device"
191 means any commercial device or combination of devices used

192 at a point of sale that is capable of deciphering in an electroni-
193 cally readable format the information enclosed on the magnetic
194 strip or bar code of a driver's license or other governmental
195 identity card.

196 (d) Nothing in this article nor any rule or regulation of the
197 commissioner shall prevent or be considered to prohibit any
198 licensee from employing any person who is at least eighteen
199 years of age to serve in the licensee's lawful employ, including
200 the sale or delivery of nonintoxicating beer as defined in this
201 article. With the prior approval of the commissioner, a licensee
202 whose principal business is the sale of food or consumer goods
203 or the providing of recreational activities, including, but not
204 limited to, nationally franchised fast food outlets, fam-
205 ily-oriented restaurants, bowling alleys, drug stores, discount
206 stores, grocery stores and convenience stores, may employ
207 persons who are less than eighteen years of age but at least
208 sixteen years of age: *Provided*, That the person's duties may not
209 include the sale or delivery of nonintoxicating beer or alcoholic
210 liquors: *Provided, however*, That the authorization to employ
211 persons under the age of eighteen years shall be clearly indi-
212 cated on the licensee's license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article

- 3A. Sales by Retail Liquor Licensees.
- 8. Sale of Wines.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-25a. Mandatory verification of age of persons purchas- ing alcohol.

- 1 (a) A licensee who:

2 (1) Has installed a transaction scan device in its licensed
3 premises; and

4 (2) Can demonstrate that it requires each employee, servant,
5 or agent to verify the age of any individual to whom liquor is
6 sold, furnished, or given away by the use of the transaction
7 device may not be subject to: (A) Any criminal penalties
8 whatsoever; (B) any administrative penalties from the commis-
9 sioner; or (C) any civil liability whatsoever for the improper
10 sale, furnishing or giving away of liquor to an individual who
11 is less than twenty-one years of age by one of his or her
12 employees, servants or agents. Any agent, servant or employee
13 who has improperly sold, furnished or given away liquor to an
14 individual who is less than twenty-one years of age is subject to
15 the criminal penalties of subsection (b) of this section. Any
16 agent, servant, or employee, who has improperly sold, furnished
17 or given away liquor to an individual less than twenty-one years
18 of age, is subject to termination from employment, and the
19 employer shall have no civil liability for the termination.

20 (b) For purposes of this subsection, a licensee can demon-
21 strate that it requires each employee, servant or agent to verify
22 the age of any individual to whom liquor is sold by providing
23 evidence:

24 (1) That it has developed a written policy which requires
25 each employee, servant or agent to verify the age of each
26 individual to whom liquor will be sold, furnished or given
27 away;

28 (2) That it has communicated this policy to each employee,
29 servant or agent; and

30 (3) That it monitors the actions of its employees, servants
31 or agents regarding the sale, furnishing or giving away of liquor
32 and that it has taken corrective action for any discovered
33 noncompliance with this policy.

34 (c) "Transaction scan" means the process by which a person
35 checks, by means of a transaction scan device, the age and
36 identity of the cardholder, and "transaction scan device" means
37 any commercial device or combination of devices used at a
38 point of sale that is capable of deciphering in an electronically
39 readable format the information enclosed on the magnetic strip
40 or bar code of a driver's license or other governmental identity
41 card.

ARTICLE 8. SALE OF WINES.

§60-8-20. Unlawful acts generally.

1 It shall be unlawful:

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

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

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

19 (d) For a licensee to permit a person who is less than
20 eighteen years of age to sell, furnish or give wine to any person;

21 (e) For a distributor to sell or deliver any brand of wine
22 purchased or acquired from any source other than the primary
23 source of supply of the wine which granted the distributor the
24 right to sell the brand at wholesale. For the purposes of this
25 article, "primary source of supply" means the vintner of the
26 wine, the importer of a foreign wine who imports the wine into
27 the United States, the owner of a wine at the time it becomes a
28 marketable product, the bottler of a wine or an agent specifi-
29 cally authorized by any of the above-enumerated persons to
30 make a sale of the wine to a West Virginia distributor: *Pro-*
31 *vided*, That no retailer shall sell or deliver wine purchased or
32 acquired from any source other than a distributor licensed in
33 this state: *Provided, however*, That nothing herein is considered
34 to prohibit sales of convenience between distributors licensed
35 in this state wherein one distributor sells, transfers or delivers
36 to another distributor a particular brand or brands for sale at
37 wholesale, of which brand or brands the other distributor may
38 be temporarily out of stock. The commissioner shall promulgate
39 rules necessary to carry out the provision of this subsection;

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

42 (g) Nothing in this article, nor any rule or regulation of the
43 commissioner, shall prevent or be considered to prohibit any
44 licensee from employing any person who is at least eighteen
45 years of age to serve in any licensee's lawful employment,
46 including the sale or delivery of wine under the provisions of
47 this article. With the prior approval of the commissioner, a
48 licensee whose principal business is the sale of food or con-
49 sumer goods or the providing of recreational activities, includ-
50 ing, but not limited to, nationally franchised fast food outlets,
51 family-oriented restaurants, bowling alleys, drug stores,
52 discount stores, grocery stores, and convenience stores, may
53 employ persons who are less than eighteen years of age but at
54 least sixteen years of age: *Provided*, That the person's duties

55 may not include the sale or delivery of nonintoxicating beer or
56 alcoholic liquors: *Provided, however,* That the authorization to
57 employ persons under the age of eighteen years shall be clearly
58 indicated on the licensee's license.

CHAPTER 11

**(S. B. 112 — By Senators Sharpe, Edgell, Prezioso,
Ross, Minard and White)**

[Passed March 6, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six of said chapter; and to amend and reenact section two, article eight of said chapter, all relating generally to beverages containing alcohol; allowing farm wineries to produce wine from other agricultural products containing sugar; allowing farm wineries to manufacture, serve and sell dessert, port, sherry and Madeira wines; and excluding dessert wine produced by farm wineries from the definition of fortified wine.

Be it enacted by the Legislature of West Virginia:

That section five-a, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article six of said chapter be amended and reenacted; and that section two, article eight of said chapter be amended and reenacted, all to read as follows:

Article

1. **General Provisions.**
6. **Miscellaneous Provisions.**
8. **Sale of Wines.**

ARTICLE 1. GENERAL PROVISIONS.**§60-1-5a. Farm wineries defined.**

1 (a) For the purpose of this chapter: “Farm winery” means
2 an establishment where in any year fifty thousand gallons or
3 less of wine is manufactured exclusively by natural fermenta-
4 tion from grapes, other fruits or honey or other agricultural
5 products containing sugar, with twenty-five percent of such raw
6 products being produced by the owner of such farm winery on
7 the premises of that establishment, and no more than
8 twenty-five percent of such produce originating from any
9 source outside this state.

10 (b) Notwithstanding the provisions of subsection (a) of this
11 section, a farm winery may include one off-farm location. The
12 owner of a farm winery may provide to the commissioner
13 evidence, accompanied by written findings by the West
14 Virginia agriculture commissioner in support thereof, that the
15 owner has planted on the premises of the farm winery young
16 nonbearing fruit plants. The commissioner may grant permis-
17 sion for one off-farm location in an amount equal to that
18 reasonably expected to be produced when the nonbearing fruit
19 plants planted on the farm winery come into full production.
20 The length of time of the permission to use an off-farm location
21 shall be determined by the commissioner after consultation with
22 the agriculture commissioner.

23 (c) For purposes of this definition and when used in this
24 chapter to refer to the product of a farm winery or the product
25 of the holder of a farm winery license, “wine” includes dessert
26 wines manufactured exclusively by natural fermentation and

27 port, sherry and Madeira wines having an alcoholic content of
28 not more than twenty-two percent alcohol by volume and which
29 have been matured in wooden barrels or casks.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

1 The provisions of this chapter shall not prevent:

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

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

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

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

15 (5) The holder of a farm winery license from selling wine
16 produced by it directly to consumers at the winery and at one
17 off-farm winery location or to any other person who is licensed
18 under this chapter to sell wine either at wholesale or at retail:
19 *Provided*, That the winery may ship wines from the farm
20 winery without the bonding requirements of a transporter:
21 *Provided, however*, That notwithstanding any other provisions
22 of law to the contrary, an individual or licensee in a state which
23 affords the wineries of this state equal reciprocal shipping
24 privileges may ship for personal use and not for resale not more

25 than two cases of wine per month to any adult resident in this
26 state. For purposes of this subdivision, "wine" includes dessert
27 wines manufactured exclusively by natural fermentation and
28 port, sherry and Madeira wines having an alcoholic content of
29 not more than twenty-two percent alcohol by volume and which
30 have been matured in wooden barrels or casks.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

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

3 "Commissioner" or "commission" means the West Virginia
4 alcohol beverage control commissioner.

5 "Distributor" means any person whose principal place of
6 business is within the state of West Virginia and who is
7 engaged in selling or distributing wine to retailers or private
8 wine restaurants and selling or distributing port, sherry and
9 Madeira wines to wine specialty shops under authority of this
10 article and actually maintains a warehouse in this state for the
11 distribution of wine.

12 "Fortified wine" shall mean any wine to which brandy or
13 other alcohol has been added and shall include dessert wines
14 which are not fortified: *Provided*, That a dessert wine manufac-
15 tured exclusively by natural fermentation and having an
16 alcoholic content of not more than twenty-two percent alcohol
17 by volume and which has been matured in wooden barrels or
18 casks and manufactured, served or sold by a farm winery is not
19 a fortified wine.

20 "Grocery store" means any retail establishment, commonly
21 known as a grocery store, supermarket, delicatessen, caterer or
22 party supply store, where food, food products and supplies for

23 the table are sold for consumption off the premises with average
24 monthly sales (exclusive of sales of wine) of not less than five
25 hundred dollars and an average monthly inventory (exclusive of
26 inventory of wine) of not less than three thousand dollars. The
27 term “grocery store” shall also include and mean a separate and
28 segregated portion of any other retail store which is dedicated
29 solely to the sale of food, food products and supplies for the
30 table for consumption off the premises with average monthly
31 sales with respect to such separate or segregated portion
32 (exclusive of sales of wine) of not less than three thousand
33 dollars and an average monthly inventory (exclusive of inven-
34 tory of wine) of not less than three thousand dollars.

35 “Licensee” means the holder of a license granted under the
36 provisions of this article.

37 “Private wine restaurant” means a restaurant which: (1) Is
38 a partnership, limited partnership, corporation, unincorporated
39 association or other business entity which has as its principal
40 purpose the business of serving meals on its premises to its
41 members and their guests; (2) is licensed under the provisions
42 of this article as to all of its premises or as to a separate
43 segregated portion of its premises to serve wine to its members
44 and their guests when such sale accompanies the serving of
45 food or meals; and (3) admits only duly elected and approved
46 dues paying members and their guests while in the company of
47 a member, and does not admit the general public.

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

52 “Supplier” means any manufacturer, producer, processor,
53 distributor or supplier of wine who sells or offers to sell or

54 solicits or negotiates the sale of wine to any licensed West
55 Virginia distributor.

56 “Tax” includes within its meaning interest, additions to tax
57 and penalties.

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

61 “Varietal wine” means any wine labeled according to the
62 grape variety from which such wine is made.

63 “Vintage wine” or “vintage-dated wine” means wines from
64 which the grapes used to produce such wine are harvested
65 during a particular year or wines produced from the grapes of
66 a particular harvest in a particular region of production.

67 “Wine” means any alcoholic beverage obtained by the
68 natural fermentation of the natural content of grapes, other
69 fruits or honey or other agricultural products containing sugar
70 and to which no alcohol has been added and shall include table
71 wine, and shall exclude fortified wine and shall also exclude
72 any product defined as or embraced within the definition of
73 nonintoxicating beer under the provisions of article sixteen,
74 chapter eleven of this code: *Provided*, That “wine” shall include
75 dessert wines manufactured exclusively by natural fermenta-
76 tion, and port, sherry and Madeira wines having an alcoholic
77 content of not more than twenty-two percent alcohol by volume
78 and which have been matured in wooden barrels or casks if
79 produced by a farm winery as defined in section five-a, article
80 one of this chapter.

81 “Wine specialty shop” means a retailer who shall deal
82 principally in the sale of table wine, certain fortified wines,
83 wine accessories and food or foodstuffs normally associated
84 with wine and: (1) Who shall maintain a representative number

85 of such wines for sale in his or her inventory which are desig-
86 nated by label as varietal wine, vintage, generic and/or accord-
87 ing to region of production and the inventory shall contain not
88 less than fifteen percent vintage or vintage-dated wine by actual
89 bottle count; and (2) who, any other provisions of this code to
90 the contrary notwithstanding, may maintain an inventory of
91 port, sherry and Madeira wines having an alcoholic content of
92 not more than twenty-two percent alcohol by volume and which
93 have been matured in wooden barrels or casks.

CHAPTER 12

(Com. Sub. for S. B. 383 — By Senators Bailey and Bowman)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the powers and duties of the alcohol beverage control commissioner; and allowing the commissioner, upon approval of the governor and the board of public works, to sell a warehouse located in Nitro, Putnam County, and purchase a replacement warehouse.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-11. Powers and duties.

1 The alcohol beverage control commissioner shall have the
2 following powers and duties and any and all other powers and
3 duties reasonably necessary and convenient for the purpose of
4 this chapter:

5 (1) Exercise general supervision of, and make rules and
6 regulations for, the management of his or her department;

7 (2) Sign and execute in the name of the commissioner any
8 contract or agreement authorized by this chapter;

9 (3) Supervise the fiscal affairs and responsibilities of the
10 department;

11 (4) With the approval of the governor, acquire title to and
12 purchase real estate containing 12.168 acres situate on River
13 Road in the Hub Industrial Park, Nitro, Putnam County, which
14 real estate is improved by block and steel building containing
15 approximately one hundred fifty thousand (150,000) square
16 feet, formerly known as the Heck's warehouse, for a sale price
17 not to exceed two million, two hundred fifty thousand dollars
18 (\$2,250,000.00);

19 (5) With the approval of the governor and the board of
20 public works, sell, in part or in whole, the real estate containing
21 12.168 acres and a warehouse situate on River Road in the Hub
22 Industrial Park, Nitro, Putnam County, for a sale price of at
23 least the appraised fair market value and upon terms the
24 commissioner determines to be in the best interest of the state
25 of West Virginia: *Provided*, That the commissioner may only
26 sell the property if it is determined that the soil beneath the
27 warehouse is contaminated with toxic chemicals;

28 (6) With the approval of the governor and the board of
29 public works, and upon the sale of real estate containing 12.168
30 acres and a warehouse situate on River Road in the Hub
31 Industrial Park, Nitro, in Putnam County, acquire title to and
32 purchase, upon terms the commissioner determines to be in the

33 best interest of the state of West Virginia, real estate containing
34 a replacement warehouse of a size and in a location that the
35 commissioner determines meets the storage needs of the
36 commission;

37 (7) Keep a complete and accurate record of all proceedings,
38 record and file all bonds and contracts taken or entered into and
39 assume responsibility for the custody and preservation of all
40 papers and documents pertaining to the commissioner;

41 (8) Purchase or lease as provided by law all equipment
42 necessary for the conduct of the department;

43 (9) Report to the governor each year all information relative
44 to the operation and functions of the department. The commis-
45 sioner shall make such other reports and recommendations as
46 may be required by the governor;

47 (10) Exercise any other power that may be necessary or
48 proper for the orderly conduct of the business and the effective
49 discharge of the duties of the commissioner; and

50 (11) Invoke any legal or equitable remedies for the enforce-
51 ment of the orders of the commissioner or the provisions of this
52 chapter.

CHAPTER 13

**(Com. Sub. for H. B. 2868 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)
[By Request of the Executive]**

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating generally to powers of alcohol beverage control commissioner; authorizing scanner technology for verification of purchasers ages; providing limitations on uses of collected information; allowing commissioner to enter into contracts for sale and promotion of certain proprietary scanner technology; defining the term "scanner technology"; creating a new special revenue account; and providing for expenditure of funds.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two, to read as follows:

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-22. Authority to utilize scanner technology in sales; authority to execute contracts relating thereto.

1 (a) The commissioner may, pursuant to section eleven of
2 this article, authorize and establish standards for the use of
3 scanner technology for the verification of age of purchasers of
4 alcoholic beverages and wine as provided in article eight of this
5 chapter, and nonintoxicating beer as provided for in article
6 sixteen, chapter eleven of this code. Any scanner technology
7 may not be used for the collection of personal identifiable
8 information of any purchaser, which includes, but is limited to,
9 drivers license number, social security number or other descrip-
10 tive information contained on the license, other than the age of
11 the purchaser.

12 (b) In addition to the commissioner's powers set forth in
13 section eleven of this article, the commissioner may sign and

14 execute in the name of the office of alcohol beverage control
15 commissioner one or more contracts or agreements pertaining
16 to the sale or licensing and promotion of proprietary scanner
17 technology by the commissioner, or his or her designated
18 contractual partner, to any interested person, upon terms the
19 commissioner believes to be in the best interests of this state,
20 and to amend, extend or terminate any contract or agreement:
21 *Provided*, That all contracts are subject to the review process
22 contained in section thirteen, article three, chapter five-a of this
23 chapter.

24 (c) "Scanner technology" includes any device that uses
25 technology intended to control the access of minors to alcohol
26 and tobacco products and which is capable of:

27 (1) Capturing the information from a bar code or magnetic
28 strip on a driver's license or identification card issued by the
29 division of motor vehicles;

30 (2) Producing a declaration of age in print form and storing
31 a record of the event in memory;

32 (3) Producing an audible, visual and printed result;

33 (4) Reporting a history of the events, including the ability
34 to transfer the data for archiving and database development
35 purposes; and

36 (5) Storing at least one thousand events at any time before
37 data is transferred.

38 (d) Moneys derived from the sale, licensing and promotion
39 of the proprietary scanner technology shall be deposited in a
40 special account in the state treasury to be known as the
41 "Scanner Technology Fund." Expenditures from the fund shall
42 be for the maintenance and development of the proprietary
43 scanner technology described in this section and are not

44 authorized from collections but are to be made only in accor-
45 dance with appropriation by the Legislature and in accordance
46 with the provisions of article three, chapter twelve of this code
47 and upon the fulfillment of the provisions set forth in article
48 two, chapter five-a of this code: *Provided*, That for the fiscal
49 year ending the thirtieth day of June, two thousand four,
50 expenditures are authorized from collections rather than
51 pursuant to an appropriation by the Legislature.

CHAPTER 14

(Com. Sub. for H. B. 2910 — By Delegates Mahan, Stalnaker,
Long, Craig and Trump)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to the establishment of an “Amber Alert” system to be utilized to rapidly disseminate information with regard to abducted children.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

ARTICLE 3A. AMBER ALERT PLAN.

- §15-3A-1. Short title.
- §15-3A-2. Findings and determinations relative to “Amber’s Plan”.
- §15-3A-3. Establishment of “Amber’s Plan”.
- §15-3A-4. Activation of Amber Alert.

§15-3A-5. Notice to participating media; broadcast of alert.

§15-3A-6. Guidelines; procedural rules.

§15-3A-1. Short title.

1 This article shall be known and may be cited as “Amber’s
2 Plan”.

**§15-3A-2. Findings and determinations relative to “Amber’s
Plan”.**

1 (a) The Legislature finds and determines that:

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

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

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

14 (4) Alerted to an abduction, the citizenry become an
15 extensive network of eyes and ears serving to assist law
16 enforcement in quickly locating and safely recovering the child;
17 and

18 (5) The most effective method of immediately notifying the
19 public of a child abduction is through the broadcast media.

20 (b) The Legislature declares that given the successes other
21 states and regions have experienced in using broadcast media
22 alerts to quickly locate and safely recover abducted children, it

23 is altogether fitting and proper, and within the public interest,
24 to establish such a program for West Virginia.

§15-3A-3. Establishment of “Amber’s Plan”.

1 (a) The secretary of the department of military affairs and
2 public safety shall establish “Amber’s Plan”, a program
3 authorizing the broadcast media, upon notice from the state
4 police, to transmit an emergency alert to inform the public of a
5 child abduction. The program shall be a voluntary, cooperative
6 effort between state and local law-enforcement agencies and the
7 broadcast media.

8 (b) The secretary shall notify the broadcast media serving
9 the state of West Virginia of the establishment of “Amber’s
10 Plan” and invite their voluntary participation.

§15-3A-4. Activation of Amber Alert.

1 The following criteria shall be met before the state police
2 activate the Amber Alert:

3 (1) The child is believed to be abducted;

4 (2) The child is seventeen years of age or younger;

5 (3) The child may be in danger of death or serious bodily
6 injury; and

7 (4) There is sufficient information available to indicate that
8 an Amber Alert would assist in locating the child.

§15-3A-5. Notice to participating media; broadcast of alert.

1 (a) The participating media shall voluntarily agree, upon
2 notice from the state police, to transmit emergency alerts to
3 inform the public of a child abduction that has occurred within
4 their broadcast service regions.

5 (b) The alerts shall be read after a distinctive sound tone
6 and a statement notifying that the broadcast is an abducted child
7 alert. The alerts shall be broadcast as often as possible, pursuant
8 to guidelines established by the West Virginia Broadcasters'
9 Association, for the first three hours. After the initial three
10 hours, the alert shall be rebroadcast at such intervals as the
11 investigating authority, the state police and the participating
12 media deem appropriate.

13 (c) The alerts shall include a description of the child, such
14 details of the abduction and abductor as may be known, and
15 such other information as the state police may deem pertinent
16 and appropriate. The state police shall in a timely manner
17 update the broadcast media with new information when
18 appropriate concerning the abduction.

19 (d) The alerts also shall provide information concerning
20 how those members of the public who have information relating
21 to the abduction may contact the state police or other appropri-
22 ate law-enforcement agency.

23 (e) Concurrent with the notice provided to the broadcast
24 media, the state police shall also notify the department of
25 transportation, the division of highways and the West Virginia
26 turnpike commission of the "Amber Alert" so that the depart-
27 ment and the affected authorities may, if possible, through the
28 use of their variable message signs, inform the motoring public
29 that an "Amber Alert" is in progress and may provide informa-
30 tion relating to the abduction and how motorists may report any
31 information they have to the state police or other appropriate
32 law-enforcement agency.

33 (f) The alerts shall terminate upon notice from the state
34 police.

35 (g) The secretary, with the assistance of the participating
36 broadcast media, shall develop and undertake a campaign to

- 37 inform law-enforcement agencies about “Amber’s Plan” and
38 the emergency alert program established under this article.

§15-3A-6. Guidelines; procedural rules.

- 1 The secretary may adopt guidelines and procedural rules to
2 effectuate the purposes of this article.

CHAPTER 15

(H. B. 3203 — By Delegates Hrutkay, Mahan, Smirl, Morgan,
Caputo, Calvert and Brown)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, twelve-a, fourteen and seventeen, article ten, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to amusement ride safety; defining terms; allowing certain children to operate kiddie rides; limiting civil penalties; allowing owners and operators to refuse admission to certain patrons; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, twelve-a, fourteen and seventeen, article ten, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nineteen, all to read as follows:

**ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS
SAFETY ACT.**

§21-10-2. Definitions.

§21-10-12a. Minimum age for operating amusement ride.

§21-10-14. Criminal penalty for violation.

§21-10-17. Civil penalties for violations.

§21-10-19. Patron responsibility.

§21-10-2. Definitions.

1 As used in this article:

2 (a) "Amusement ride" means a mechanical device which
3 carries or conveys passengers along, around or over a fixed or
4 restricted route or course for the purpose of giving its passen-
5 gers amusement, pleasure, thrills or excitement. The term
6 includes carnival rides and fair rides of a temporary or portable
7 nature which are assembled and reassembled or rides which are
8 relocated from place to place. "Amusement ride" may not be
9 construed to mean any mechanical device which is coin
10 operated and does not include the operation of a ski lift, the
11 operation of tramways at state parks, the operation of vehicles
12 of husbandry incidental to any agricultural operations or the
13 operation of amusement devices of a permanent nature which
14 are subject to building regulations issued by cities or counties
15 and existing applicable safety orders;

16 (b) "Amusement attraction" means any building or structure
17 around, over or through which people may move or walk
18 without the aid of any moving device integral to the building or
19 structure that provides amusement, pleasure, thrills or excite-
20 ment, including those of a temporary or portable nature which
21 are assembled and reassembled or which are relocated from
22 place to place. The term does not include any enterprise
23 principally devoted to the exhibition of products of agriculture,
24 industry, education, science, religion or the arts and shall not be

25 construed to include any concession stand or booth for the
26 selling of food or drink or souvenirs;

27 (c) "Kiddie ride" means an amusement ride or amusement
28 attraction that is expressly designed for or offered to: (1)
29 Children age twelve or less; (2) persons who are forty-two
30 inches in height or less; or (3) persons who are ninety pounds
31 in weight or less;

32 (d) "Intoxicated" means influenced or affected by the
33 ingestion of alcohol, a controlled substance, any intoxicant or
34 any combination of alcohol, controlled substances and intoxi-
35 cants;

36 (e) "Mobile amusement ride or mobile amusement attrac-
37 tion" means an amusement ride or amusement attraction which
38 is erected in a single physical location for a period of less than
39 twelve consecutive months;

40 (f) "Operator" means the person having direct control of the
41 starting, stopping and speed of an amusement ride or attraction;

42 (g) "Owner" means any person, corporation, partnership, or
43 association who owns an amusement ride or attraction or, in the
44 event that the amusement ride or attraction is leased, the lessee;

45 (h) "Stationary amusement ride or stationary amusement
46 attraction" means an amusement ride or amusement attraction
47 that is erected in a single physical location for a period of more
48 than twelve consecutive months.

§21-10-12a. Minimum age for operating amusement ride.

1 No individual under the age of sixteen may be the operator
2 of a kiddie ride or if under the age of eighteen be an operator of
3 any other amusement ride or attraction: *Provided*, That the

4 individual is not otherwise prohibited from being an operator
5 pursuant to other state or federal law.

§21-10-14. Criminal penalty for violation.

1 Any operator or owner who knowingly permits the opera-
2 tion of an amusement ride or amusement attraction in violation
3 of the provisions of sections six, seven, eight, nine, eleven,
4 twelve or twelve-a of this article is guilty of a misdemeanor
5 and, upon conviction thereof, shall be fined not less than two
6 hundred fifty dollars nor more than one thousand dollars,
7 confined in the county or regional jail not more than twelve
8 months, or both fined and confined. Each day that a violation
9 continues shall be considered a separate violation.

§21-10-17. Civil penalties for violations.

1 (a) If an individual is convicted of, or enters a guilty plea or
2 a plea of nolo contendere to, a violation of subsection (a),
3 section fifteen of this article, and the individual was not the
4 owner of the ride being operated or assembled, the commis-
5 sioner may impose a civil penalty not to exceed five thousand
6 dollars on the owner of the ride being operated or assembled:
7 *Provided*, That the owner knew or should have known that the
8 individual was acting in violation of subsection (a), section
9 fifteen of this article.

10 (b) All civil penalties collected by the commissioner shall
11 be deposited into the amusement rides and amusement attrac-
12 tions safety fund created in section four of this article.

§21-10-19. Patron responsibility.

1 The owner or operator of an amusement ride or attraction
2 may refuse any member of the public admission to a ride if his
3 or her bearing or conduct could endanger himself or herself or
4 others. These reasons include, but are not limited to: (1)

5 Intoxication; (2) refusal to obey posted rules; (3) unacceptable
6 or unsafe behavior as determined by the operator of the ride;
7 and (4) violation of any age, height or weight restrictions as
8 posted.

CHAPTER 16

(Com. Sub. for H. B. 2301 — By Delegates Amores, Palumbo,
Hatfield, Armstead and Foster)

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to animals seized pursuant to allegations of neglect or cruel treatment; providing funding for necessary care of animals seized pursuant to allegations of neglect or cruel treatment.

Be it enacted by the Legislature of West Virginia:

That section four, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. HUMANE OFFICERS.

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

1 (a) Subject to the provisions of subsection (h) of this
2 section, a humane officer shall take possession of any animal,

3 including birds or wildlife in captivity, known or believed to be
4 abandoned, neglected, deprived of necessary sustenance,
5 shelter, medical care or reasonable protection from fatal
6 freezing or heat exhaustion, or cruelly treated or used, as
7 defined in sections nineteen and nineteen-a, article eight,
8 chapter sixty-one of this code.

9 (b) The owner or persons in possession, if his or her
10 identity and residence is known, of any animal seized pursuant
11 to subsection (a) of this section shall be provided written notice
12 of the seizure, his or her liability for the cost and care of the
13 animal seized as provided in this section and the right to request
14 a hearing before a magistrate in the county where the animal
15 was seized. The magistrate court shall schedule any hearing
16 requested within ten working days of the receipt of the request.
17 The failure of an owner or person in possession to request a
18 hearing within five working days of the seizure is prima facie
19 evidence of the abandonment of the animal. At the hearing, if
20 requested, the magistrate shall determine if probable cause
21 exists to believe that the animal was abandoned, neglected or
22 deprived of necessary sustenance, shelter, medical care or
23 reasonable protection from fatal freezing or heat exhaustion, or
24 otherwise treated or used cruelly as set forth in this section.

25 (c)(1) Upon finding of probable cause, or if no hearing is
26 requested and the magistrate finds probable cause based upon
27 the affidavit of the humane officer, the magistrate shall enter an
28 order awarding custody of the animal to any humane officer for
29 further disposition in accordance with reasonable practices for
30 the humane treatment of animals. The owner of the animal shall
31 post a bond with the court in an amount sufficient to provide for
32 the reasonable costs of care, medical treatment and provisions
33 for the animal for at least thirty days. The bond shall be filed
34 with the court within five days following the court's finding of
35 probable cause. At the end of the time for which expenses are
36 covered by the original bond if the animal remains in the care

37 of the humane officer and the owner desires to prevent disposi-
38 tion of the animal by the humane officer, the owner shall post
39 an additional bond with the court within five days of the
40 expiration of the original bond. During this period the humane
41 officer is authorized to place the animal in a safe private home
42 or other safe private setting in lieu of retaining the animal in an
43 animal shelter. The person whose animal is seized is liable for
44 all costs of the care of the seized animal.

45 (2) If a bond has been posted in accordance with subdivi-
46 sion (1) of this subsection, the custodial animal care agency
47 may draw from the bond the actual reasonable costs incurred by
48 the agency in providing care, medical treatment and provisions
49 to the impounded animal from the date of the initial impound-
50 ment to the date of the final disposition of the animal.

51 (d) Any person whose animal is seized and against whom
52 a finding of probable cause is rendered pursuant to this section
53 is liable during any period it remains in the possession of the
54 humane officer for the reasonable costs of care, medical
55 treatment and provisions for the animal not covered by the
56 posting of the bond as provided in subdivision (1), subsection
57 (c) of this section. The magistrate shall require the person liable
58 for these costs to post bond to provide for the maintenance of
59 the seized animal. This expense, if any, becomes a lien on the
60 animal and must be discharged before the animal is released to
61 the owner following the acquittal of the owner or withdrawal of
62 the complaint. Upon acquittal, or withdrawal of the complaint,
63 any unused portion of posted bonds shall be returned to the
64 owner. Upon a criminal conviction, all interest in the im-
65 pounded animal shall transfer to the humane officer for the
66 further disposition in accordance with reasonable practices for
67 the humane treatment of animals. Any additional expense above
68 the value of the animal may be recovered by the humane officer
69 or custodial agency.

70 (e) If, after the humane officer takes possession of the
71 animal pursuant to the finding of probable cause a licensed
72 veterinarian determines that the animal should be humanely
73 destroyed to end its suffering, the veterinarian may order the
74 animal to be humanely destroyed and neither the humane
75 officer, animal euthanasia technician, nor the veterinarian is
76 subject to any civil or criminal liability as a result of such
77 action.

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

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

84 (2) Any other humane euthanasia procedure approved by
85 the American veterinary medical association, the humane
86 society of the United States or the American humane associa-
87 tion.

88 (g) In case of an emergency in which an animal cannot be
89 humanely destroyed in an expeditious manner, an animal may
90 be destroyed by shooting if:

91 (1) The shooting is performed by someone trained in the
92 use of firearms with a weapon and ammunition of suitable
93 caliber and other characteristics designed to produce instanta-
94 neous death by a single shot; and

95 (2) Maximum precaution is taken to minimize the animal’s
96 suffering and to protect other persons and animals.

97 (h) The provisions of this section do not apply to farm
98 livestock, as defined in subsection (d), section two, article ten-
99 b, chapter nineteen of this code, poultry, gaming fowl or

100 wildlife kept in private or licensed game farms if kept and
101 maintained according to usual and accepted standards of
102 livestock, poultry, gaming fowl, wildlife or game farm produc-
103 tion and management, nor to the humane use of animals or
104 activities regulated under and in conformity with the provisions
105 of 7 U.S.C. §2131 et seq. and the regulations promulgated
106 thereunder.

CHAPTER 17

**(S. B. 205 — By Senators Kessler, McKenzie, Edgell, Bowman, Rowe,
Prezioso, Hunter, Unger, Plymale, Sprouse, Minear and White)**

[Passed February 27, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nineteen, article eight, chapter sixty-one of said code, all relating to modifying the criminal intent requirement for animal cruelty crimes; increasing the fine applicable to convicted persons; eliminating the civil recovery limitation of the assessed value of a dog; creating a felony offense for intentionally torturing or maliciously killing animals; and mandating that persons convicted of animal cruelty be prohibited from possessing, owning or residing with animals for varying periods depending on whether the person is convicted of a misdemeanor or felony.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; and that section nineteen, article eight, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

19. Agriculture.

61. Crimes and Their Punishment.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of companion animals.

1 (a) Any dog which is registered, kept and controlled as
 2 provided in this article or any dog, cat or other animal or any
 3 reptile which is owned, kept and maintained as a companion
 4 animal by any person, irrespective of age, is protected by law;
 5 and, except as otherwise authorized by law, any person who
 6 shall intentionally, knowingly or recklessly kill, injure, poison
 7 or in any other manner, cause the death or injury of any dog,
 8 cat, other animal or any reptile is guilty of a misdemeanor and,
 9 upon conviction thereof, shall be ordered to provide public
 10 service for not less than thirty nor more than ninety days or
 11 fined not less than three hundred dollars nor more than five
 12 hundred dollars, or both. However, this section does not apply
 13 to a dog who is killed while attacking a person, a companion
 14 animal or livestock. Any person whose dog, cat, other animal
 15 or reptile as specified herein is killed or injured wrongfully or
 16 unlawfully by any other person shall have a right of action
 17 against the person who shall so kill or injure any dog, cat,
 18 animal or reptile.

19 (b) Any person who shall intentionally and unlawfully steal
 20 a dog, cat, other animal or reptile as specified in subsection (a)

21 of this section is guilty of a misdemeanor and, upon conviction
22 thereof, shall be ordered to provide public service for not less
23 than thirty nor more than ninety days or fined not less than three
24 hundred nor more than five hundred dollars, or both. Any
25 person violating the provisions of this subsection shall, for
26 second or subsequent offense, be guilty of a misdemeanor and,
27 upon conviction thereof, shall be confined in the county or
28 regional jail for a period of not less than ninety days nor more
29 than six months, or shall be ordered to provide public service
30 for not more than one year, and fined not less than one thousand
31 dollars. In no case can any action or prosecution relating to a
32 dog under the provisions of this section be maintained if the
33 dog concerned shall not have been duly registered pursuant to
34 the provisions of this article or owned and kept pursuant to the
35 provisions of this section or owned and kept pursuant to the
36 provisions of this section at the time the cause of action shall
37 have arisen.

38 (c) The commissioner of agriculture is hereby authorized to
39 designate a reasonable number of his present employees as may
40 be necessary to investigate alleged incidents of the unlawful
41 stealing of dogs, other domestic animals or reptiles, alleged
42 incidents of cruelty to animals or reptiles and the alleged
43 incidents of the unlawful stealing of animals or reptiles for the
44 purpose of sale to medical or other research companies. The
45 deputies shall make the results of their investigations known to
46 any law-enforcement officers who have authority to enforce the
47 provisions of this article.

48 (d) It shall be the duty of all members of the West Virginia
49 state police, sheriffs and police officers to aid in the enforce-
50 ment of the provisions of this article and, for services rendered
51 in the enforcement thereof, such persons shall be entitled to fees
52 in the amounts set forth in section eight of this article. The fees
53 shall be paid by the county commission from the dog and
54 kennel fund.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.****§61-8-19. Cruelty to animals; penalties; exclusions.**

1 (a) If any person cruelly mistreats, abandons or withholds
2 proper sustenance, including food, water, shelter or medical
3 treatment, necessary to sustain normal health and fitness or to
4 end suffering or abandons any animal to die, or uses, trains or
5 possesses any domesticated animal for the purpose of seizing,
6 detaining or maltreating any other domesticated animal, he or
7 she is guilty of a misdemeanor and, upon conviction thereof,
8 shall be fined not less than three hundred nor more than one
9 thousand dollars or confined in the county or regional jail not
10 more than six months, or both so fined and confined.

11 (b) If any person intentionally tortures or maliciously kills
12 an animal, or causes, procures or authorizes any other person to
13 torture or maliciously kill an animal, he or she is guilty of a
14 felony and, upon conviction thereof, shall be confined in a
15 correctional facility not less than one nor more than three years
16 and be fined not less than one thousand dollars nor more than
17 five thousand dollars. For the purposes of this subsection,
18 "torture" means an action taken for the primary purpose of
19 inflicting pain.

20 (c) Any person, other than a licensed veterinarian or a
21 person acting under the direction or with the approval of a
22 licensed veterinarian, who knowingly and willfully administers
23 or causes to be administered to any animal participating in any
24 contest any controlled substance or any other drug for the
25 purpose of altering or otherwise affecting said animal's
26 performance is guilty of a misdemeanor and, upon conviction
27 thereof, shall be fined not less than one hundred nor more than
28 one thousand dollars.

29 (d) Any person convicted of a violation of this section shall
30 forfeit his or her interest in any animal and all interest in the
31 animal shall vest in the humane society or county pound of the
32 county in which said conviction was rendered and the person
33 shall, in addition to any fine imposed, be liable for any costs
34 incurred or to be incurred by the humane society or county
35 pound as a result.

36 (e) For the purpose of this section, the term “controlled
37 substance” shall have the same meaning ascribed to it by
38 subsection (d), section one hundred one, article one, chapter
39 sixty-a of this code.

40 (f) The provisions of this section do not apply to lawful acts
41 of hunting, fishing, trapping or animal training or farm live-
42 stock, poultry, gaming fowl or wildlife kept in private or
43 licensed game farms if kept and maintained according to usual
44 and accepted standards of livestock, poultry, gaming fowl or
45 wildlife or game farm production and management, nor to
46 humane use of animals or activities regulated under and in
47 conformity with the provisions of 7 U. S. C. §2131 et seq. and
48 the regulations promulgated thereunder, as both statutes and
49 regulations are in effect on the effective date of this section.

50 (g) Notwithstanding the provisions of subsection (a) of this
51 section, any person convicted of a second or subsequent
52 violation of said subsection is guilty of a misdemeanor and
53 shall be confined in the county or regional jail for a period of
54 not less than ninety days nor more than one year, fined not less
55 than five hundred dollars nor more than two thousand dollars,
56 or both. The incarceration set forth in this subsection shall be
57 mandatory unless the provisions of subsection (h) are complied
58 with.

59 (h) Notwithstanding any provision of this code to the
60 contrary, no person who has been convicted of a violation of the
61 provisions of subsection (a) or (b) of this section may be

62 granted probation until the defendant has undergone a complete
63 psychiatric or psychological evaluation and the court has
64 reviewed the evaluation. Unless the defendant is determined by
65 the court to be indigent, he or she shall be responsible for the
66 cost of said evaluation.

67 (i) In addition to any other penalty which can be imposed
68 for a violation of this section, a court shall prohibit any person
69 so convicted from possessing, owning or residing with any
70 animal or type of animal for a period of five years following
71 entry of a misdemeanor conviction and fifteen years following
72 entry of a felony conviction. A violation under this subsection
73 is a misdemeanor punishable by a fine not exceeding two
74 thousand dollars and forfeiture of the animal.

CHAPTER 18

(Com. Sub. for H. B. 2753 — By Delegates Overington, Amores,
Brown, Foster, Schadler, Craig and Calvert)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen-a, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nineteen-b, all relating to animal fighting; making it a felony to be involved in specifically defined animal fighting ventures; providing a penalty for violations; making it a misdemeanor to attend an animal fight and providing a penalty therefor.

Be it enacted by the Legislature of West Virginia:

That section nineteen-a, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nineteen-b, all to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19a. Animal fighting ventures prohibited.

§61-8-19b. Attendance at animal fighting ventures prohibited; penalty.

§61-8-19a. Animal fighting ventures prohibited.

1 (a) It is unlawful for any person to engage in, be employed
2 at, or sell an admission to any animal fighting venture.

3 (b) Any person who violates the provisions of this section
4 is guilty of a misdemeanor and, upon conviction thereof, shall
5 be fined not less than one hundred dollars and not more than
6 one thousand dollars, or confined in the county jail not exceed-
7 ing one year, or both so fined and confined, and may be
8 divested of ownership and control of such animals, and be
9 liable for all costs for their care and maintenance: *Provided,*
10 That if the animal is a wild animal, game animal or fur-bearing
11 animal, as defined in section two, article one, chapter twenty of
12 this code, or wildlife not indigenous to West Virginia, or of a
13 canine, feline, porcine, bovine, or equine species whether wild
14 or domesticated, the person who violates the provisions of this
15 section is guilty of a felony and, upon conviction thereof, shall
16 be fined not less than one thousand dollars and not more than
17 five thousand dollars, and imprisoned in a state correctional
18 facility for not less than one nor more than five years, or both
19 fined and imprisoned.

**§61-8-19b. Attendance at animal fighting ventures prohibited;
penalty.**

1 (a) It is unlawful for any person to knowingly attend an
2 animal fighting venture involving animals as provided in
3 subsections (a) and (b), section nineteen-a, article eight of this
4 chapter.

5 (b) Any person who violates the provisions of this section
6 is guilty of a misdemeanor and, upon conviction thereof, shall
7 be fined not less than one hundred dollars and not more than
8 one thousand dollars, or confined in the county or regional jail
9 not more than one year, or both fined and imprisoned.

CHAPTER 19

(Com. Sub. for H. B. 2965 — By Delegates Stemple,
Mezzatesta, Craig, Amores and Pethtel)

[Passed March 5, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to authorizing the transfer of ownership of state owned dogs or horses by governmental agencies.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-five, to read as follows:

ARTICLE 20. DOGS AND CATS.

§19-20-25. Retirement, transfer or disposal of state owned dogs and horses.

1 (a) Whenever any dog or horse, which is the property of the
2 state, is unable to perform its duties as a service animal, the
3 responsible governmental agency may:

4 (1) Transfer ownership of the dog or horse to another
5 governmental agency within West Virginia;

6 (2) Transfer ownership of the dog or horse to the animal's
7 handler;

8 (3) Transfer ownership of the dog or horse to a person who
9 wishes to maintain the animal; or

10 (4) Transfer the dog or horse to the care and custody of any
11 animal shelter, humane society or society for the prevention of
12 cruelty to animals, organized and operating under the laws of
13 this state, so that the dog or horse may be adopted. If the animal
14 shelter, humane society or society for the prevention of cruelty
15 to animals determines that the dog or horse is not suitable for
16 adoption, then the animal may be humanely euthanized by a
17 person licensed under the provisions of article ten or ten-a,
18 chapter thirty of this code.

19 (b) In the event ownership of a dog or horse is transferred
20 pursuant to subdivision (2), (3) or (4), subsection (a) of this
21 section, the transfer documents must include provisions, signed
22 by the person accepting ownership of the dog or horse, which
23 hold the state harmless from any liability after the date of
24 transfer.

CHAPTER 20

**(Com. Sub. for H. B. 2050 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)
[By Request of the Executive]**

[Passed March 16, 2003; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE I—GENERAL PROVISIONS.

TITLE I — GENERAL PROVISIONS.

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

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

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

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

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

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

9 The “fiscal year two thousand four” shall mean the period
10 from the first day of July, two thousand three, through the
11 thirtieth day of June, two thousand four.

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

16 “Special revenue funds” shall mean specific revenue
17 sources which by legislative enactments are not required to be
18 accounted for as general revenue, including federal funds.

19 “From collections” shall mean that part of the total appro-
20 priation which must be collected by the spending unit to be
21 available for expenditure. If the authorized amount of collec-
22 tions is not collected, the total appropriation for the spending
23 unit shall be reduced automatically by the amount of the
24 deficiency in the collections. If the amount collected exceeds
25 the amount designated “from collections,” the excess shall be
26 set aside in a special surplus fund and may be expended for the
27 purpose of the spending unit as provided by article two, chapter
28 five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An appropria-
2 tion for:

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

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

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

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

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

31 “BRIM Premiums” shall mean the amount charged as
32 consideration for insurance protection and includes the present
33 value of projected losses and administrative expenses. Premi-
34 ums are assessed for coverages, as defined in the applicable

35 policies, for claims arising from, inter alia, general liability,
36 wrongful acts, property, professional liability and automobile
37 exposures.

38 Should the appropriation for "BRIM Premiums" be
39 insufficient to cover such cost, the remainder of such costs shall
40 be transferred by each spending unit from its "personal
41 services" line item, its "employee benefit" line item, its
42 "unclassified" line item or any other appropriate line item to
43 "BRIM Premiums" for payment to the Board of Risk and
44 Insurance Management. Each spending unit is hereby autho-
45 rized and required to make such payments.

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

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

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

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

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

63 "Buildings" shall include new construction and major
64 alteration of existing structures and the improvement of lands

65 and shall include shelter, support, storage, protection or the
66 improvement of a natural condition.

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

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

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

77 Appropriations classified in any of the above categories
78 shall be expended only for the purposes as defined above and
79 only for the spending units herein designated: *Provided*, That
80 the secretary of each department and the commissioner of the
81 bureau of commerce shall have the authority to transfer within
82 the department or bureau those general revenue funds appropri-
83 ated to the various agencies of the department or bureau:
84 *Provided, however*, That no more than five percent of the
85 general revenue funds appropriated to any one agency or board
86 may be transferred to other agencies or boards within the
87 department or bureau: *Provided further*, That the secretary of
88 each department and the director, commissioner, executive
89 secretary, superintendent, chairman or any other agency head
90 not governed by a departmental secretary as established by
91 chapter five-f of the code shall have the authority to transfer
92 funds appropriated to “personal services” and “employee
93 benefits” to other lines within the same account and no funds
94 from other lines shall be transferred to the “personal services”
95 line: *And provided further*, That the secretary of each depart-
96 ment and the director, commissioner, executive secretary,

97 superintendent, chairman or any other agency head not gov-
98 erned by a departmental secretary as established by chapter
99 five-f of the code shall have the authority to transfer general
100 revenue funds appropriated to “annual increment” to other
101 general revenue accounts within the same department, bureau
102 or commission for the purpose of providing an annual incre-
103 ment in accordance with article five, chapter five of the code:
104 *And provided further,* That if the Legislature by subsequent
105 enactment consolidates agencies, boards or functions, the
106 secretary may transfer the funds formerly appropriated to such
107 agency, board or function in order to implement such consolida-
108 tion. No funds may be transferred from a special revenue
109 account, dedicated account, capital expenditure account or any
110 other account or fund specifically exempted by the Legislature
111 from transfer, except that the use of the appropriations from the
112 state road fund for the office of the secretary of the department
113 of transportation is not a use other than the purpose for which
114 such funds were dedicated and is permitted.

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

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

1 **Sec. 5. Maximum expenditures.**—No authority or
2 requirement of law shall be interpreted as requiring or permit-
3 ting an expenditure in excess of the appropriations set out in
4 this bill.

TITLE II—APPROPRIATIONS.

§1. Appropriations from general revenue.

ADMINISTRATION, DEPARTMENT OF

Administration, Department of—Office of the Secretary—Fund No. 0186	108
Children’s Health Insurance Agency--Fund No. 0588	114
Committee for the Purchase of Commodities and Services from the Handicapped—Fund No. 0233	113
Consolidated Public Retirement Board--Fund No. 0195	108
Education and State Employees Grievance Board—Fund No. 0220	111
Ethics Commission—Fund No. 0223	112
Finance, Division of—Fund No. 0203	109
General Services, Division of—Fund No. 0230	109
Prosecuting Attorneys’ Institute, West Virginia-- Fund No. 0557	113
Public Defender Services—Fund No. 0226	112
Public Employees Insurance Agency—Fund No. 0200	113
Purchasing, Division of—Fund No. 0210	110
Risk and Insurance Management, Board of— Fund No. 0217	111
Uniform State Laws, Commission on—Fund No. 0214	111

COMMERCE, BUREAU OF

Coal Mine Health and Safety, Board of— Fund No.0280	146
Coal Mine Safety and Technical Review Committee—Fund No.0285	146
Development Office, West Virginia —Fund No. 0256	142
Forestry, Division of—Fund No. 0250	140
Geological and Economic Survey—Fund No. 0253	141

Labor, Division of—Fund No. 0260	144
Miners' Health, Safety and Training, Division	145
of—Fund No. 02771	145
Natural Resources, Division of—Fund	
No. 0265	144

EDUCATION, DEPARTMENT OF

State Board of Education--Division of Educational	
Performance Audits--Fund No. 0573	118
State Board of Education—Vocational	
Division—Fund No. 0390	118
State Department of Education--Aid	
for Exceptional Children--Fund No. 0314	116
State Department of Education—Fund No. 0313	115
State Department of Education—School Lunch	
Program—Fund No. 0303	114
State Department of Education—State Aid to	
Schools—Fund No. 0317	117
State FFA-FHA Camp and Conference Center—	
Fund No. 0306	115
West Virginia Schools for the Deaf and	
the Blind—Fund No. 0320	119

EDUCATION AND THE ARTS, DEPARTMENT OF

Culture and History, Division of —Fund	
No. 0293	120
Educational Broadcasting Authority—Fund	
No. 0300	121
Education and the Arts, Department of —Office	
of the Secretary—Fund No. 0294	119
Library Commission—Fund No. 0296	121
State Board of Rehabilitation—Division of	
Rehabilitation Services—Fund No. 0310	121

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Air Quality Board--Fund No. 0550	148
Environmental Protection, Division of —Fund	
No. 0273	147

Environmental Quality Board--Fund No. 0270	146
Interstate Commission on Potomac River	
Basin—Fund No. 0263	147
Ohio River Valley Water Sanitation	
Commission—Fund No. 0264	147

EXECUTIVE

Agriculture, Department of—Fund No. 0131	103
Agriculture, Department of—Agricultural	
Awards—Fund No. 0136	106
Agriculture, Department of—Meat Inspection—	
Fund No. 0135	105
Agriculture, Department of—State Soil Conservation	
Committee—Fund No. 0132	104
Attorney General—Fund No. 0150	106
Auditor's Office—General Administration—	
Fund No. 0116	102
Governor's Office—Fund No. 0101	99
Governor's Office—Civil Contingent Fund—	
Fund No. 0105	101
Governor's Office—Custodial Fund—Fund	
No. 0102	100
Governor's Office—Governor's Cabinet on	
Children and Families—Fund No. 0104	100
Secretary of State—Fund No. 0155	107
State Election Commission—Fund No. 0160	108
Treasurer's Office—Fund No. 0126	102

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF

Consolidated Medical Service Fund—Fund	
No. 0525	124
Health and Human Resources, Department of—	
Office of the Secretary—Fund No. 0400	122
Health, Division of—Central Office—Fund	
No. 0407	122
Health, Division of--West Virginia Drinking Water	
Treatment--Fund No. 0561	126
Human Services, Division of—Fund No. 0403	127

Ch. 20]	APPROPRIATIONS	79
	Human Rights Commission—Fund No. 0416	126
HIGHER EDUCATION POLICY COMMISSION		
	Higher Education Policy Commission--	
	Administration--Fund No. 0589	149
	Higher Education Policy Commission--	
	Administration--Legislative Funding	
	Priorities--Fund No. 0591	154
	Higher Education Policy Commission--	
	Health Sciences Fund--Fund No. 0590	153
	Higher Education Policy Commission--	
	System Control Account--Fund No. 0586	150
JUDICIAL		
	Supreme Court—General Judicial—Fund	
	No. 0180	98
LEGISLATIVE		
	House of Delegates—Fund No. 0170	95
	Joint Expenses—Fund No. 0175	97
	Senate—Fund No. 0165	93
MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF		
	Adjutant General—State Militia—Fund	
	No. 0433	129
	Corrections, Division of—Central Office—	
	Fund No. 0446	131
	Corrections, Division of—Correctional Units—	
	Fund No. 0450	131
	Criminal Justice Services, Division of—	
	Fund No. 0546	135
	Fire Commission—Fund No. 0436	135
	Juvenile Services, Division of--Fund No. 0570	136
	Military Affairs and Public Safety, Department of--	
	Office of the Secretary—Fund No. 0430	129
	Office of Emergency Services—Fund No. 0443	130
	Parole Board, West Virginia --Fund No. 0440	130
	Protective Services, Division of--Fund No. 0585	137

State Police, West Virginia --Fund No. 0453	133
Veterans Affairs, Division of—Fund No. 0456	134
Veterans Affairs, Division of—Veterans 134 Home—Fund No. 0460148	134

SENIOR SERVICES, BUREAU OF

Senior Services, Bureau of --Fund No. 0420	148
--	-----

TAX AND REVENUE, DEPARTMENT OF

Professional and Occupational Licenses, Division of —State Athletic Commission — Fund No. 0523	138
Tax Appeals, West Virginia Office of – Fund 0593	138
Tax Division—Fund No. 0470	137

TRANSPORTATION, DEPARTMENT OF

Aeronautics Commission--Fund No. 0582	140
Public Port Authority--Fund No. 0581	139
Public Transit, Division of—Fund No. 0510	139
State Rail Authority—Fund No. 0506	139

§2. Appropriations from state road fund.

TRANSPORTATION, DEPARTMENT OF

Highways, Division of—Fund No. 9017	155
Motor Vehicles, Division of—Fund No. 9007	155

§3. Appropriations from other funds.

ADMINISTRATION, DEPARTMENT OF

Finance, Division of--Public Employees Insurance Reserve Fund--Fund No. 2207	164
Information Services and Communications, Division of—Fund No. 2220	164
Office of the Secretary--Tobacco Settlement Fund-- Fund No. 2041	163
Personnel, Division of—Fund No. 2440	165
Prosecuting Attorneys' Institute, West Virginia--Fund No. 2521	165

COMMERCE, BUREAU OF

Development Office, West Virginia—Energy Assistance-- Fund No. 3144	191
Development Office, West Virginia--Office of Coal Field Community Development--Fund No. 3162	191
Forestry, Division of—Fund No. 3081	190
Forestry, Division of—Severance Tax Operations—Fund No. 3084	190
Forestry, Division of—Timberland Enforcement Operations—Fund No. 3082	190
Geological and Economic Survey—Fund No. 3100	191
Labor, Division of--Amusement Rides/Amusement Attraction Safety Fund--Fund No. 3192	193
Labor, Division of—Contractor Licensing Board Fund—Fund No. 3187	192
Labor, Division of--Crane Operator Certification Fund--Fund No. 3191	193
Labor, Division of—Elevator Safety Act—192 Fund No. 3188196	192
Miners' Health, Safety 193and Training Fund – 196 Fund No. 3351	196
Natural Resources, Division of—Fund No. 3200	193
Natural Resources, Division of—Game, Fish and Aquatic Life Fund—Fund No. 3202	194
Natural Resources, Division of—Nongame Fund— Fund No. 3203	194
Natural Resources, Division of—Planning and195 Development Division—Fund No. 3205	194
Natural Resources, Division of—Recycling Assistance Fund—Fund No. 3254	195
Natural Resources, Division of—Whitewater Advertising and Promotion Fund—Fund No. 3256	195
Natural Resources, Division of—Whitewater Study and Improvement Fund—Fund No. 3253	195

EDUCATION, DEPARTMENT OF

State Board of Education--Strategic Staff Development--Fund No. 3937	166
---	-----

State Department of Education—FFA-FHA	
Conference Center—Fund No. 3960	167
State Department of Education—School Building	
Authority—Fund No. 3959	166
EDUCATION AND THE ARTS, DEPARTMENT OF	
Culture and History, Division of--Public	
Records and Preservation--Fund No. 3542	168
Office of the Secretary--Lottery Education Fund	
Interest Earnings Control Account--Fund No. 3508	167
State Board of Rehabilitation—Division of	
Rehabilitation Services—West Virginia	
Rehabilitation Center—Special Account—	
Fund No. 8664	168
EMPLOYMENT PROGRAMS, BUREAU OF	
Employment Programs, Bureau of —Workers'	
Compensation Fund—Fund No. 3440	196
ENVIRONMENTAL PROTECTION, DEPARTMENT OF	
Environmental Protection, Division of--	
Environmental Laboratory Certification	
Fund--Fund No. 3340	200
Environmental Protection, Division of—Fees	
and Operating Expenses—Fund No. 3336	200
Environmental Protection, Division of—	
Hazardous Waste Emergency and	
Response Fund—Acct. No. 3331	199
Environmental Protection, Division of—Mining	
and Reclamation Operations Fund—Fund	
No. 3324	198
Environmental Protection, Division of--Mountaintop	
Removal Fund--Fund No. 3490	201
Environmental Protection, Division of—Oil	
and Gas Operating Permits—Fund No. 3323	198
Environmental Protection, Division of—Oil	
and Gas Reclamation Trust—Fund No. 3322	197
Environmental Protection, Division of—Solid	

Waste Enforcement Fund—Fund No. 3333	200
Environmental Protection, Division of—Solid Waste Reclamation and Environmental Response Fund—Fund No. 3332	199
Environmental Protection, Division of—Special Reclamation Fund—Fund No. 3321	197
Environmental Protection, Division of--Stream Restoration Fund--Fund No. 3349	201
Environmental Protection, Division of— Underground Storage Tanks Administrative Fund—Fund No. 3325	198
Oil and Gas Conservation Commission—Fund No. 3371	201
Solid Waste Management Board—Fund No. 3288	197

EXECUTIVE

Agriculture, Department of—Agricultural Fees Fund--Fund No. 1401	160
Agriculture, Department of--Donated Food Fund-- Fund No. 1446	162
Agriculture, Department of—Farm Operating Fund—Fund No. 1412	161
Agriculture, Department of--General John McCausland Memorial Farm—Fund No. 1409	161
Agriculture, Department of—West Virginia Rural Rehabilitation Program—Fund No. 1408	161
Attorney General—Anti-Trust Enforcement— Fund No. 1507	162
Attorney General--Preneed Funeral Guarantee Fund--162 Fund No. 1514	162
Attorney General--Preneed Funeral Regulation Fund-- Fund No. 1513	162
Auditor's Office—Land Operating Fund— Fund No. 1206	158
Auditor's Office--Office of the Chief Inspector-- Fund No. 1235	160
Auditor's Office--Purchasing Card Administration Fund--Fund No. 1234	159

Auditor's Office—Securities Regulation Fund—	
Fund No. 1225	159
Auditor's Office--Technology Support and Acquisition--	
Fund No. 1233	159
Chief Technology Officer Administration Fund--	
Fund No. 1028	158
Secretary of State--Service Fees and Collection	
Account--Fund No. 1612	163
Secretary of State – State Election Fund –	
Fund No. 1614	163
Treasurer's Office--Technology Support and	
Acquisition--Fund No. 1329	160

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF

Barbers and Cosmetologists, Board of—	
Fund No. 5425	168
Family Protection Services Board--Domestic	
Violence Legal Services Fund--Fund No. 5455	177
Health Care Authority, West Virginia—Fund	
No. 5375	174
Health, Division of—Health Facility	
Licensing—Fund No. 5172	173
Health, Division of—Hepatitis B Vaccine—	
Fund No. 5183	173
Health, Division of—Hospital Services Revenue	
Account(Special Fund) (Capital Improvement,	
Renovation and Operations)—Fund No. 5156	171
Health, Division of—Laboratory Services—	
Fund No. 5163	173
Health, Division of--Lead Abatement Fund--	
Fund No. 5204	174
Health, Division of--Tobacco Settlement	
Expenditure Fund--Fund No. 5124	169
Health, Division of—Vital Statistics—Fund	
No. 5144	171
Health, Division of – West Virginia	
Birth to Three Fund – Fund 5214	174
Human Services, Division of--Child Support	

Enforcement--Fund No. 5094	175
Human Services, Division of—Health Care	
Provider Tax—Fund No. 5090	175
Human Services, Division of--James "Tiger" Morton	
Catastrophic Illness Fund--Fund No. 5454	176
Human Services, Division of—Medical Services	
Trust Fund—Fund No. 5185	176
Medicine, West Virginia Board of--Fund No. 5106	169

HIGHER EDUCATION POLICY COMMISSION

Higher Education Policy Commission--1977 State	
System Registration Fee Refund Revenue	
Construction Fund--Fund No. 4905	204
Higher Education Policy Commission--	
Fairmont State College – Fund No. 4457	205
Higher Education Policy Commission--Registration Fee--	
Capitol Improvement Fund--Fund No. 4902	202
Higher Education Policy Commission--Tuition Fee--	
Capitol Improvement Fund--Fund No. 4903	203
Higher Education Policy Commission--Tuition Fee--	
Revenue Bond Construction Fund--Fund No. 4906	204
Higher Education Policy Commission--State University	
System Revenue Bond Construction Fund--	
Fund No. 4907	205
Higher Education Policy Commission--West Virginia	
University Health Sciences Center--Fund No. 4179	201

LEGISLATIVE

Crime Victims Compensation Fund—Fund	
No. 1731	157

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF

Corrections, West Virginia Division of--Parolee	
Supervision Fees--Fund No. 6362	178
Corrections, West Virginia Division of--West	
Virginia Community Corrections Fund--Fund	
No. 6386	182
Criminal Justice Services--Court Security	

Fund--Fund No. 6804	182
Fire Commission—Fire Marshal Fees—Fund No. 6152	182
Law Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund--Fund No. 6003	177
Regional Jail and Correctional Facility Authority—Fund No. 6675	180
State Armory Board—General Armory Fund— Fund No. 6057	177
State Police, West Virginia--Bail Bond Enforcer Fund--Fund No. 6532	180
State Police, West Virginia--Central Abuse Registry Fund--Fund No. 6527	180
State Police, West Virginia--Drunk Driving Prevention Fund--Fund No. 6513	179
State Police, West Virginia--Motor Vehicle Inspection Fund--Fund No. 6501	178
State Police, West Virginia--Surplus Real Property Proceeds Fund--Fund No. 6516	179
State Police, West Virginia--Surplus Transfer Account--Fund No. 6519	179
Veterans Affairs, Division of—Veterans Home—Fund No. 6754	181

MISCELLANEOUS BOARDS AND COMMISSIONS

Examiners for Speech-Language Pathology and Audiology, West Virginia Board of—Fund No. 8646	210
Hospital Finance Authority--Fund No. 5475	206
Licensed Dietitians, West Virginia Board of-- Fund No. 8680	210
Licensed Practical Nurses, West Virginia State Board of Examiners for --Fund No. 8517	207
Massage Therapy Licensure--Fund No. 8671	210
Municipal Bond Commission--Fund No. 7253	206
Public Service Commission—Fund No. 8623	207
Public Service Commission—Consumer Advocate— Fund No. 8627	209

Public Service Commission—Gas Pipeline	
Division—Fund No. 8624	208
Public Service Commission—Motor Carrier	
Division—Fund No. 8625	208
Real Estate Commission—Fund No. 8635	209
Registered Professional Nurses, West Virginia Board of	
Examiners for --Fund No. 8520	207
Respiratory Care, West Virginia Board of --	
Fund No. 8676	210

TAX AND REVENUE, DEPARTMENT OF

Alcohol Beverage Control Administration—	
Fund No. 7352	187
Alcohol Beverage Control Administration—	
Wine License Special Fund—Fund No. 7351	186
Banking, Division of—Fund No. 3041	183
Insurance Commissioner—Fund No. 7152	184
Insurance Commissioner—Consumer Advocate—	
Fund No. 7151	184
Insurance Commissioner—Examination Revolving	
Fund—Fund No. 7150	184
Racing Commission—Administration and	
Promotion—Fund No. 7304	185
Racing Commission—Administration, Promotion	
and Education Fund—Fund No. 7307	186
Racing Commission—General Administration—	
Fund No. 7305	186
Racing Commission--Relief Fund—Fund No. 7300	185
Tax Division—Cemetery Company Account—	
Fund No. 7071	183
Tax Division—Special Audit and Investigative	
Unit—Fund No. 7073	183

TRANSPORTATION, DEPARTMENT OF

Highways, Division of--A. James Manchin Fund--	
Fund No. 8319	190
Motor Vehicles, Division of—Dealer Recovery	
Fund--Fund No. 8220	189

Motor Vehicles, Division of—Driver
 Rehabilitation—Fund No. 8214 188

Motor Vehicles, Division of—Driver’s License
 Reinstatement Fund—Fund No. 8213 188

Motor Vehicles, Division of—Insurance
 Certificate Fees—Fund No. 8215 188

Motor Vehicles, Division of—Motorboat
 Licenses—Fund No. 8216 189

Motor Vehicles, Division of—Returned Check
 Fees—Fund No. 8217 189

§4. Appropriations from lottery net profits.

Culture and History, Division of--Lottery Education
 Fund--Fund No. 3534 216

Educational Broadcasting Authority--Lottery Education
 Fund--Fund No. 3587 217

Education and the Arts, Department of--Office of the
 Secretary--Control Account--Lottery Education
 Fund--Fund No. 3508 215

Education, Arts, Sciences and Tourism Debt Service
 Fund--Fund No. 2252 211

Education, State Department of—Fund No. 3951 213

Education, State Department of—School
 Building Authority—Debt Service Fund--Fund
 No. 3963 214

Development Office, West Virginia—Division of
 Tourism--Fund No. 3067 211

Higher Education Policy Commission--Lottery
 Education--Higher Education Policy Commission--
 Fund No. 4925 218

Library Commission--Lottery Education Fund--
 Fund No. 3559 217

Natural Resources, Division of—Fund No. 3267 212

Senior Services, Bureau of--Fund No. 5405 217

§5. Appropriations from state excess lottery revenue fund.

APPROPRIATIONS

Economic Development Authority – Economic
 Development Project Fund – Fund No. 3167 220
 Education Improvement Fund--Fund No. 4295 221
 Higher Education Improvement Fund--Fund No. 4297 222
 Joint Expenses – Fund No. 1735 223
 Lottery Commission--Excess Lottery Revenue
 Fund Surplus--Fund No. 7208 223
 Lottery Commission – General Purpose Account –
 Fund No. 7206 220
 Lottery Commission--Refundable Credit--Fund No. 7207 222
 School Building Authority--Fund No. 3514 221
 State Park Improvement Fund--Fund No. 3277 222
 West Virginia Infrastructure Council--Fund No. 3390 221

§6. Appropriations of federal funds.

ADMINISTRATION, DEPARTMENT OF

Children’s Health Insurance Agency--Fund No. 8838 227
 Prosecuting Attorney’s Institute--West Virginia--
 Fund No. 8834 226

COMMERCE, BUREAU OF

Development Office, West Virginia--Fund
 No. 8705 234
 Forestry, Division of—Fund No. 8703 233
 Geological and Economic Survey—Fund No. 8704 233
 Labor, Division of—Fund No. 8706 234
 Miners’ Health, Safety and Training, Division of—
 Fund No. 8709 234
 Natural Resources, Division of--Fund No. 8707 234

EDUCATION, DEPARTMENT OF

State Board of Education—Vocational Division—
 Fund No. 8714 227
 State Department of Education—Fund No. 8712 227
 State Department of Education—Aid for
 Exceptional Children—Fund No. 8715 228

State Department of Education—School Lunch Program—Fund No. 8713	227
---	-----

EDUCATION AND THE ARTS, DEPARTMENT OF

Culture and History, Division of—Fund No. 8718	228
Educational Broadcasting Authority— Fund No. 8721	229
Education and the Arts, Department of--Office of the Secretary--Fund No. 8841	228
Library Commission—Fund No. 8720	228
Rehabilitation, State Board of—Division of Rehabilitation Services—Fund No. 8734	229

EMPLOYMENT PROGRAMS, BUREAU OF

Employment Programs, Bureau of--Fund No. 8835	234
---	-----

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Environmental Protection, Division of-- Fund No. 8708	235
--	-----

EXECUTIVE

Agriculture, Department of—Fund No. 8736	225
Agriculture, Department of—Meat Inspection— Fund No. 8737	226
Agriculture, Department of--State Soil Conservation Committee--Fund No. 8783	226
Auditor's Office--National White Collar Crime Center--Fund No. 8807	225
Governor's Office—Commission for National and Community Service—Fund No. 8800	225
Governor's Office—Governor's Cabinet on Children and Families—Fund No. 8792	224
Governor's Office—Office of Economic Opportunity—Fund No. 8797	225
Secretary of State – Fund No. 8854	226

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF

Consolidated Medical Service Fund—Fund	
No. 8723	229
Health, Division of—Central Office—Fund	
No. 8802	229
Health, Division of--West Virginia Safe	
Drinking Water Treatment--Fund No. 8824	230
Human Services, Division of—Fund No. 8722	230
Human Rights Commission—Fund No. 8725	230
West Virginia Health Care Authority –	
Fund No. 8851	230

LEGISLATIVE

Crime Victims Compensation Fund—Fund	
No. 8738	224

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF

Adjutant General—State Militia—Fund	
No. 8726	231
Corrections, Division of--Fund No. 8836	231
Criminal Justice Services, Division of—	
Fund No. 8803	232
Emergency Services, Office of—Fund No. 8727	231
Juvenile Services, Division of – Fund No. 8855	232
State Police, West Virginia--Fund No. 8741	231
Veterans Affairs, Division of—Veterans	
Home—Fund No. 8728	231

MISCELLANEOUS BOARDS AND COMMISSIONS

Public Service Commission—Gas Pipeline	
Division—Fund No. 8744	236
Public Service Commission—Motor Carrier	
Division—Fund No. 8743	236

SENIOR SERVICES, BUREAU OF

Senior Services, Bureau of--Fund No. 8724	235
---	-----

TAX AND REVENUE, DEPARTMENT OF

Tax Division—Fund No. 7069	232
----------------------------------	-----

TRANSPORTATION, DEPARTMENT OF

Aeronautics Commission--Fund No. 8831	233
Motor Vehicles, Division of--Fund No. 8787	232
Public Port Authority--Fund No. 8830	233
Public Transit, Division of—Fund No. 8745	233

§7. Appropriations from federal block grants.

Criminal Justice Services, Division of--Juvenile	
Accountability Incentive--Fund No. 8829	239
Criminal Justice Services, Division of--Local	
Law Enforcement--Fund No. 8833	239
Development Office, West Virginia—Community	
Development—Fund No. 8746	237
Development Office, West Virginia—Workforce	
Investment Act--Fund No. 8848	237
Education, State Department of—Education	
Grant—Fund No. 8748	237
Governor's Office—Office of Economic	
Opportunity—Fund No. 8799	236
Health, Division of--Abstinence Education	
Program--Fund No. 8825	238
Health, Division of—Community Mental Health	
Services—Fund No. 8794	238
Health, Division of—Maternal and Child	
Health—Fund No. 8750	237
Health, Division of—Preventive Health—	
Fund No. 8753	237
Health, Division of—Substance Abuse Prevention	
and Treatment—Fund No. 8793	238
Human Services, Division of—Child Care and	
Development—Fund No. 8817	239
Human Services, Division of—Energy	
Assistance—Fund No. 8755	238
Human Services, Division of—Social Services—	
Fund No. 8757	238
Human Services, Division of--Temporary Assistance	
Needy Families--Fund No. 8816	239

- §8. Awards for claims against the state.
- §9. Appropriations from surplus accrued.
 - Agriculture, Department of – Fund No. 0132 241
 - Consolidated Medical Services Fund – Fund No. 0525 240
 - Emergency Services, Office of – Fund No. 0443 241
 - General Services, Division of – Fund No. 0230 241
- §10. Special revenue appropriations.
- §11. State improvement fund appropriations.
- §12. Specific funds and collection accounts.
- §13. Appropriations for refunding erroneous payment.
- §14. Sinking fund deficiencies.
- §15. Appropriations for local governments.
- §16. Total appropriations.
- §17. General school fund.

1 **Section 1. Appropriations from general revenue.**— From
 2 the state fund, general revenue, there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set forth in
 4 article two, chapter five-a of the code the following amounts, as
 5 itemized, for expenditure during the fiscal year two thousand
 6 four.

LEGISLATIVE

1—Senate

Fund 0165 FY 2004 Org 2100

	Activity	General Revenue Fund
1	Compensation of Members (R) 003	\$ 1,010,000
2	Compensation and Per Diem of Officers and Employees (R) 005	3,003,210
4	Employee Benefits (R) 010	597,712
5	Current Expenses and Contingent Fund (R) 021	700,000

7	Repairs and Alterations (R)	064	450,000
8	Computer Supplies (R)	101	40,000
9	Computer Systems (R)	102	250,000
10	Printing Blue Book (R)	103	150,000
11	Expenses of Members (R)	399	700,000
12	BRIM Premium (R)	913	<u>18,877</u>
13	Total		\$ 6,919,799

14 The appropriations for the senate for the fiscal year 2003
 15 are to remain in full force and effect and are hereby
 16 reappropriated to June 30, 2004. Any balances so
 17 reappropriated may be transferred and credited to the fiscal year
 18 2004 accounts.

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

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

33 The clerk of the senate, with the written approval of the
 34 president, or the president of the senate shall have authority to
 35 employ such staff personnel during any session of the Legisla-
 36 ture as shall be needed in addition to staff personnel authorized
 37 by the senate resolution adopted during any such session. The
 38 clerk of the senate, with the written approval of the president,

39 or the president of the senate shall have authority to employ
 40 such staff personnel between sessions of the Legislature as shall
 41 be needed, the compensation of all staff personnel during and
 42 between sessions of the Legislature, notwithstanding any such
 43 senate resolution, to be fixed by the president of the senate. The
 44 clerk is hereby authorized to draw his or her requisitions upon
 45 the auditor for the payment of all such staff personnel for such
 46 services, payable out of the appropriation for Compensation and
 47 Per Diem of Officers and Employees or Current Expenses and
 48 Contingent Fund of the senate.

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

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

2—House of Delegates

Fund 0170 FY 2004 Org 2200

1	Compensation of Members (R)	003	\$ 2,200,000
2	Compensation and Per Diem of Officers		
3	and Employees (R)	005	600,000
4	Current Expenses and		
5	Contingent Fund (R)	021	4,221,162
6	Expenses of Members (R)	399	1,120,000
7	BRIM Premium (R)	913	<u>20,515</u>
8	Total		\$ 8,161,677

9 The appropriations for the house of delegates for the fiscal
10 year 2003 are to remain in full force and effect and are hereby
11 reappropriated to June 30, 2004. Any balances so
12 reappropriated may be transferred and credited to the fiscal year
13 2004 accounts.

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

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

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2004 Org 2300

1	Joint Committee on		
2	Government and Finance (R)	104	\$ 6,317,298
3	Legislative Printing (R)	105	940,000
4	Legislative Rule-Making		
5	Review Committee (R)	106	226,050
6	Legislative Computer System (R)	107	1,138,121
7	Joint Standing Committee		
8	on Education (R)	108	74,500
9	Tax Reduction and Federal Funding		
10	Increased Compliance		
11	(TRAFFIC) (R)	642	3,000,000
12	BRIM Premium (R)	913	<u>14,220</u>
13	Total		\$11,710,189

14 The appropriations for the joint expenses for the fiscal year
 15 2003 are to remain in full force and effect and are hereby
 16 reappropriated to June 30, 2004. Any balances so
 17 reappropriated may be transferred and credited to the fiscal year
 18 2004 accounts.

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

26 The appropriation for the Tax Reduction and Federal
 27 Funding Increased Compliance (TRAFFIC) (fund 0175, activity
 28 642) is intended for possible general state tax reductions or the
 29 offsetting of any reductions in federal funding for state pro-
 30 grams. It is not intended as a general appropriation for expendi-
 31 ture by the Legislature.

JUDICIAL

4—Supreme Court—

General Judicial

Fund 0180 FY 2004 Org 2400

1	Personal Services (R)	001	\$ 45,723,244
2	Annual Increment (R)	004	630,000
3	Employee Benefits	010	14,325,916
4	Unclassified	099	7,422,951
5	Judges' Retirement System (R)	110	5,329,500
6	Other Court Costs (R)	111	0
7	Judicial Training Program (R)	112	469,006
8	Mental Hygiene Fund (R)	113	0
9	Guardian Ad Litem (R)	265	0
10	Guardianship Attorney Fees (R)	588	175,000
11	BRIM Premium (R)	913	<u>50,386</u>
12	Total		\$ 74,126,003

13 The appropriations to the supreme court of appeals for the
 14 fiscal years 2000, 2001, 2002 and 2003 are to remain in full
 15 force and effect and are hereby reappropriated to June 30, 2004.
 16 Any balances so reappropriated may be transferred and credited
 17 to the fiscal year 2004 accounts.

18 This appropriation shall be administered by the administra-
 19 tive director of the supreme court of appeals, who shall draw
 20 requisitions for warrants in payment in the form of payrolls,
 21 making deductions therefrom as required by law for taxes and
 22 other items.

23 The appropriation for the Judges' Retirement System is to
 24 be transferred to the consolidated public retirement board, in
 25 accordance with the law relating thereto, upon requisition of the
 26 administrative director of the supreme court of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2004 Org 0100

1	Personal Services	001	\$ 2,371,414
2	Salary of Governor	002	90,000
3	Annual Increment	004	19,500
4	Employee Benefits	010	725,000
5	Unclassified	099	1,122,591
6	National Governors' Association	123	77,500
7	Southern Governors' Association	314	5,740
8	BRIM Premium	913	<u>195,286</u>
9	Total		\$ 4,607,031

10 Any unexpended balances remaining in the appropriations
 11 for Publication of Papers and Transition Expenses (fund 0101,

12 activity 465) and Publication of Papers and Transition
 13 Expenses—Surplus (fund 0101, activity 359) at the close of the
 14 fiscal year 2003 are hereby reappropriated for expenditure
 15 during the fiscal year 2004.

6—Governor’s Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2004 Org 0100

1	Unclassified—Total	096	\$	466,389
2	To be used for current general expenses, including compen-			
3	sation of employees, household maintenance, cost of official			
4	functions and additional household expenses occasioned by			
5	such official functions.			

7—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2004 Org 0100

1	Unclassified	099	\$	308,638
2	Family Resource Networks (R)	274		1,325,203
3	Starting Points Centers and			
4	Parent Education Services (R)	316		<u>1,048,826</u>
5	Total		\$	2,682,667

6 Any unexpended balances remaining in the appropriations
 7 for Family Resource Networks (fund 0104, activity 274),
 8 Starting Points Centers and Parent Education Services (fund
 9 0104, activity 316), and Educare (fund 0104, activity 895) at the

10 close of the fiscal year 2003 are hereby reappropriated for
 11 expenditure during the fiscal year 2004, with the exception of
 12 fund 0104, fiscal year 2003, activity 274 (\$50,794) and fund
 13 0104, fiscal year 2003, activity 316 (\$50,794) which shall
 14 expire on June 30, 2003.

8—*Governor’s Office*—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2004 Org 0100

1	Civil Contingent Fund (R)	614	\$ 3,000,000
2	Business & Economic Development		
3	Stimulus (R)	586	<u>1,500,000</u>
4	Total		\$ 4,500,000

5 Any unexpended balances remaining in the appropriations
 6 for Civil Contingent Fund—Total (fund 0105, activity 114),
 7 Civil Contingent Fund—Total—Surplus (fund 0105, activity
 8 238), Civil Contingent Fund (fund 0105, activity 614), and
 9 Business and Economic Development Stimulus (fund 0105,
 10 activity 586) at the close of the fiscal year 2003 are hereby
 11 reappropriated for expenditure during the fiscal year 2004.

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

16 The above appropriation is intended to provide contingency
 17 funding for accidental, unanticipated, emergency or unplanned
 18 events which may occur during the fiscal year and is not to be
 19 expended for the normal day-to-day operations of the gover-
 20 nor’s office.

9—Auditor’s Office—

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2004 Org 1200

1	Personal Services	001	\$ 2,087,640
2	Salary of Auditor	002	70,000
3	Annual Increment	004	54,705
4	Employee Benefits	010	657,507
5	Unclassified	099	711,436
6	Office Automation (R)	117	328,310
7	BRIM Premium	913	<u>2,064</u>
8	Total		\$ 3,911,662

9 Any unexpended balances remaining in the appropriation
 10 for Office Automation (fund 0116, activity 117) at the close of
 11 the fiscal year 2003 is hereby reappropriated for expenditure
 12 during the fiscal year 2004. ~~*with the exception of fund 0116,~~
 13 ~~fiscal year 2003, activity 099 (\$126,580) which shall expire on~~
 14 ~~June 30, 2003.*~~

10—Treasurer’s Office

(WV Code Chapter 12)

Fund 0126 FY 2004 Org 1300

1	Personal Services	001	\$ 1,767,893
2	Salary of Treasurer	002	70,000
3	Annual Increment	004	20,450
4	Employee Benefits	010	548,246
5	Unclassified (R)	099	1,266,522
6	Abandoned Property Program	118	282,558

* CLERK’S NOTE: Language deleted by the Governor.

19	BRIM Premium	913	<u>77,862</u>
20	Total		\$ 8,916,243

21 Any unexpended balances remaining in the appropriations
 22 for Gypsy Moth Program (fund 0131, activity 119), Black Fly
 23 Control (fund 0131, activity 137), Mingo County Surface Mine
 24 Project (fund 0131, activity 296), Charleston Farmers Market
 25 (fund 0131, activity 476), Capital Improve-
 26 ments—Total—Surplus (fund 0131, activity 672), Microbiol-
 27 ogy Program (fund 0131, activity 785), and Moorefield
 28 Agriculture Center (fund 0131, activity 786) at the close of the
 29 fiscal year 2003 are hereby reappropriated for expenditure
 30 during the fiscal year 2004, with the exception of ~~*fund 0131,~~
 31 ~~fiscal year 2003, activity 099 (\$79,333),~~ * fund 0131, fiscal year
 32 2003, activity 119 (\$12,930), fund 0131, fiscal year 2003,
 33 activity 137 (\$65,000), fund 0131, fiscal year 2003, activity 296
 34 (\$62,000), and fund 0131, fiscal year 2003, activity 785
 35 (\$2,308) which shall expire on June 30, 2003.

36 A portion of the Unclassified appropriation may be trans-
 37 ferred to a special revenue fund for the purpose of matching
 38 federal funds for marketing and development activities.

12—Department of Agriculture—

*State ~~*Soil*~~ Conservation Committee*

(WV Code Chapter 19)

Fund 0132 FY 2004 Org 1400

1	Personal Services	001	\$ 464,113
2	Annual Increment	004	7,900
3	Employee Benefits	010	173,425
4	Unclassified	099	331,252

* CLERK’S NOTE: Language deleted by the Governor.

5	Soil Conservation Projects (R)	120	2,688,089
6	BRIM Premium	913	3,444
7	Maintenance of Flood		
8	Control Projects (R)	522	<u>1,778,787</u>
9	Total		\$ 5,447,010

10 Any unexpended balances remaining in the appropriations
 11 for Soil Conservation Projects (fund 0132, activity 120),
 12 Conservation Reserve Enhancement Program (fund 0132,
 13 activity 141), Soil Conservation Projects—Surplus (fund 0132,
 14 activity 269), and Maintenance of Flood Control Projects (fund
 15 0132, activity 522) at the close of the fiscal year 2003 are
 16 hereby reappropriated for expenditure during the fiscal year
 17 2004, with the exception of fund 0132, fiscal year 2003, activity
 18 120 (\$208,335), which shall expire on June 30, 2003.

13—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2004 Org 1400

1	Personal Services	001	\$ 388,195
2	Annual Increment	004	8,241
3	Employee Benefits	010	146,140
4	Unclassified	099	<u>73,171</u>
5	Total		\$ 615,747

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

14—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2004 Org 1400

1	Fairs and Festivals	122	\$	0
2	Commissioner's Awards			
3	and Programs	737		0
4	Commissioner's Awards			
5	and Programs-Total	971		<u>43,650</u>
6	Total		\$	43,650

15—Attorney General

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

Fund 0150 FY 2004 Org 1500

1	Personal Services (R)	001	\$	2,331,889
2	Salary of Attorney General	002		75,000
3	Annual Increment (R)	004		41,159
4	Employee Benefits (R)	010		761,235
5	Unclassified	099		203,715
6	Better Government Bureau	740		294,600
7	BRIM Premium	913		<u>82,794</u>
8	Total		\$	3,790,392

9 Any unexpended balances remaining in the above appropri-
 10 ations for Personal Services (fund 0150, activity 001), Annual
 11 Increment (fund 0150, activity 004), and Employee Benefits
 12 (fund 0150, activity 010) at the close of the fiscal year 2003 are
 13 hereby reappropriated for expenditure during the fiscal year
 14 2004, with the exception of fund 0150, fiscal year 2003, activity
 15 001 (\$83,443), fund 0150, fiscal year 2003, activity 010

16 (~~\$23,332, *fund 0150, fiscal year 2003, activity 099 (\$19,314),~~
 17 ~~and fund 0150, fiscal year 2003, activity 740 (\$11,560), and~~
 18 ~~fund 0150, fiscal year 2003, activity 913 (\$2,815)*~~ which shall
 19 expire on June 30, 2003.

20 When legal counsel or secretarial help is appointed by the
 21 attorney general for any state spending unit, this account shall
 22 be reimbursed from such spending units specifically appropri-
 23 ated account or from accounts appropriated by general language
 24 contained within this bill: *Provided*, That the spending unit
 25 shall reimburse at a rate and upon terms agreed to by the state
 26 spending unit and the attorney general: *Provided, however*, That
 27 if the spending unit and the attorney general are unable to agree
 28 on the amount and terms of the reimbursement, the spending
 29 unit and the attorney general shall submit their proposed
 30 reimbursement rates and terms to the joint committee on
 31 government and finance for final determination.

16—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2004 Org 1600

1	Personal Services	001	\$ 607,425
2	Salary of Secretary of State	002	65,000
3	Annual Increment	004	9,800
4	Employee Benefits	010	191,601
5	Unclassified (R)	099	268,041
6	BRIM Premium	913	<u>24,031</u>
7	Total		\$ 1,165,898

8 Any unexpended balances remaining in the appropriations
 9 for Unclassified—Surplus (fund 0155, activity 097), Unclassified
 10 (fund 0155, activity 099), Technology Improvements (fund

* CLERK’S NOTE: Language deleted by the Governor.

11 0155, activity 599), and Administrative Law Division Improve-
 12 ments (fund 0155, activity 880) at the close of the fiscal year
 13 2003 are hereby reappropriated for expenditure during the fiscal
 14 year 2004.

17—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2004 Org 1601

1	Unclassified—Total	096	\$	11,291
---	------------------------------	-----	----	--------

DEPARTMENT OF ADMINISTRATION

18—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2004 Org 0201

1	Unclassified	099	\$	301,877
2	Pay Equity Reserve	364		250,000
3	Reorganization Initiative	638		0
4	Lease Rental Payments	516		11,480,409
5	BRIM Premium	913		<u>7,186</u>
6	Total		\$	12,039,472

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

19—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2004 Org 0205

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

20—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2004 Org 0209

1	Personal Services	001	\$	539,306
2	Annual Increment	004		11,090
3	Employee Benefits	010		134,711
4	Unclassified	099		362,928
5	GAAP Project (R)	125		743,511
6	BRIM Premium	913		<u>58,889</u>
7	Total		\$	1,850,435

8 Any unexpended balance remaining in the appropriation for
 9 GAAP Project (fund 0203, activity 125) at the close of the
 10 fiscal year 2003 is hereby reappropriated for expenditure during
 11 the fiscal year 2004 with the exception of fund 0203, fiscal year
 12 2003, activity 125 (\$69,897), which shall expire on June 30,
 13 2003.

21—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2004 Org 0211

1	Personal Services	001	\$	576,602
---	-----------------------------	-----	----	---------

110	APPROPRIATIONS	[Ch. 20
2	Annual Increment	004 20,300
3	Employee Benefits	010 235,026
4	Unclassified	099 600,000
5	Fire Service Fee	126 <u>14,000</u>
6	Total	\$ 1,445,928

7 Any unexpended balances remaining in the appropriations
8 for Capitol Complex-Capital Outlay (fund 0230, activity 417),
9 Capitol Building Preservation (fund 0230, activity 503), Capitol
10 Building Preservation-Surplus (fund 0230, activity 675),
11 Capital Improvements-Capitol Complex-Surplus (fund 0230,
12 activity 676), and Capitol Building Roof-Total-Surplus (fund
13 0230, activity 820) at the close of the fiscal year 2003 are
14 hereby reappropriated for expenditure during the fiscal year
15 2004.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2004 Org 0213

1	Personal Services	001 \$ 620,344
2	Annual Increment	004 9,273
3	Employee Benefits	010 176,242
4	Unclassified	099 111,766
5	BRIM Premium	913 <u>2,633</u>
6	Total	\$ 920,258

7 The division of highways shall reimburse the Unclassified
8 appropriation (fund 2031, activity 099) within the division of
9 purchasing for all actual expenses incurred pursuant to the
10 provisions of section thirteen, article two-a, chapter seventeen
11 of the code.

23-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2004 Org 0217

1	Unclassified-Total	096	\$	26,408
2	To pay expenses for members of the commission on			
3	uniform state laws.			

24-Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2004 Org 0218

1	Retro Payments-Total	652	\$	2,000,000
2	These funds may be transferred to a special account for the			
3	payment of premiums, self-insurance losses, loss adjustment			
4	expenses and loss prevention engineering fees and may be			
5	transferred to a special account for disbursement for payment			
6	of premiums and insurance losses.			

25-Education and State Employees' Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2004 Org 0219

1	Personal Services	001	\$	574,084
2	Annual Increment	004		8,200
3	Employee Benefits	010		166,359
4	Unclassified	099		137,334
5	BRIM Premium	913		<u>2,116</u>
6	Total		\$	888,093

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2004 Org 0220

1	Personal Services	001	\$	212,246
2	Annual Increment	004		1,765
3	Employee Benefits	010		60,912
4	Unclassified	099		42,391
5	BRIM Premium	913		<u>2,425</u>
6	Total		\$	319,739

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2004 Org 0221

1	Personal Services	001	\$	548,011
2	Annual Increment	004		4,000
3	Employee Benefits	010		189,671
4	Unclassified	099		315,074
5	Appointed Counsel Fees and			
6	Public Defender Corporations (R) ..	127		0
7	Public Defender Corporations	352		12,773,436
8	Appointed Counsel Fees	788		13,061,008
9	BRIM Premium	913		<u>36,785</u>
10	Total		\$	26,927,985

11 Any unexpended balances remaining in the above appropri-
 12 ation for Appointed Counsel Fees and Public Defender Corpo-
 13 rations (fund 0226, activity 127) at the close of the fiscal year
 14 2003 is hereby reappropriated for expenditure during the fiscal
 15 year 2004.

16 The director of public defender services may transfer funds
 17 from Public Defender Corporations (fund 0226, activity 352) to
 18 Appointed Counsel Fees (fund 0226, activity 788) in the
 19 appropriation above.

28-Committee for the Purchase of

Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2004 Org 0224

1 Unclassified-Total 096 \$ 3,896

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2004 Org 0225

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

30-West Virginia Prosecuting Attorneys' Institute

Fund 0557 FY 2004 Org 0228

1	Forensic Medical Examinations (R) . . .	683	\$	162,033
2	Federal Funds/Grant Match (R)	749		<u>120,505</u>
3	Total		\$	282,538

4 Any unexpended balances remaining in the appropriations
 5 for Forensic Medical Examinations (fund 0557, activity 683)

6 and Federal Funds/Grant Match (fund 0557, activity 749) at the
 7 close of the fiscal year 2003 are hereby reappropriated for
 8 expenditure during the fiscal year 2004, with the exception of
 9 fund 0557, fiscal year 2003, activity 683 (\$8,000), and fund
 10 0557, fiscal year 2003, activity 749 (\$2,794) which shall expire
 11 on June 30, 2003.

31-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2004 Org 0230

1	Unclassified-Total (R)	096	\$	7,122,654
---	----------------------------------	-----	----	-----------

2 Any unexpended balance remaining in the appropriation for
 3 Unclassified-Total (fund 0588, activity 096) at the close of the
 4 fiscal year 2003 is hereby reappropriated for expenditure during
 5 the fiscal year 2004.

DEPARTMENT OF EDUCATION

32-State Department of Education-

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2004 Org 0402

1	Personal Services	001	\$	213,210
2	Annual Increment	004		3,302
3	Employee Benefits	010		77,578
4	Unclassified	099		<u>1,640,000</u>
5	Total		\$	1,934,090

33-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2004 Org 0402

1	Personal Services	001	\$	604,970
2	Annual Increment	004		12,050
3	Employee Benefits	010		221,763
4	Unclassified	099		203,561
5	BRIM Premium	913		<u>25,949</u>
6	Total		\$	1,068,293

34-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2004 Org 0402

1	Personal Services	001	\$	2,809,896
2	Annual Increment	004		41,611
3	Employee Benefits	010		883,273
4	Unclassified (R)	099		2,726,918
5	WV Education Information			
6	System (WVEIS)	138		3,046,762
7	34/1000 Waiver	139		400,000
8	Increased Enrollment	140		0
9	Teacher Mentor (R)	158		0
10	National Teacher Certification (R)	161		50,000
11	Allowance for County Transfers	264		46,890
12	HVAC Technicians	355		315,192
13	Early Retirement			
14	Notification Incentive	366		200,000
15	FBI Checks	372		97,835
16	Principals Leadership Training	373		24,779
17	Bridges Program	394		300,000
18	Governor's Honors Academy	478		0

116	APPROPRIATIONS	[Ch. 20
19	Foreign Student Education (R)	636 82,786
20	State Teacher of the Year	640 38,009
21	Principals Mentorship	649 65,000
22	Allowance for Work Based Learning ..	744 120,000
23	Regional Education Service Agencies ..	972 4,737,706
24	Sparse Population Allocation	973 625,000
25	Enrollment Error Correction	974 296,205
26	BRIM Premium	913 <u>160,292</u>
27	Total	\$ 17,068,154

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

30 Any unexpended balances remaining in the appropriations
 31 for Unclassified (fund 0313, activity 099), Increased Enroll-
 32 ment (fund 0313, activity 140), Teacher Mentor (fund 0313,
 33 activity 158), National Teacher Certification (fund 0313,
 34 activity 161), and Foreign Student Education (fund 0313,
 35 activity 636) at the close of the fiscal year 2003 are hereby
 36 reappropriated for expenditure during the fiscal year 2004.

35-State Department of Education-

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2004 Org 0402

1	Special Education-Counties	159 \$ 7,271,757
2	Special Education-Institutions	160 3,249,099
3	Educational Programs at Beckley	
4	Center *(R)*	192 0
5	Educational Programs at Beckley and	
6	Burlington Centers *(R)*	975 467,048
7	Education of Juveniles Held in	

* CLERK'S NOTE: Language deleted by the Governor.

8	Predispositional Juvenile		
9	Detention Centers	302	572,900
10	Education of Institutionalized		
11	Juveniles and Adults	472	8,785,481
12	Potomac Center	810	<u>808,275</u>
13	Total		\$ 21,154,560

14 Any unexpended balance remaining in the appropriation for
 15 Unclassified–Surplus (fund 0314, activity 097) at the close of
 16 the fiscal year 2003 is hereby reappropriated for expenditure
 17 during the fiscal year 2004.

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

36-State Department of Education-

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund-0317 FY 2004 Org 0402

1	Other Current Expenses	022	\$ 128,797,160
2	Professional Educators	151	733,209,258
3	Service Personnel	152	243,289,005
4	Fixed Charges	153	87,201,295
5	Transportation	154	36,629,741
6	Administration	155	2,907,884
7	Improve Instructional Programs	156	<u>33,000,000</u>
8	Basic Foundation Allowances		1,265,034,343
9	Less Local Share		<u>(300,957,610)</u>
10	Total Basic State Aid		964,076,733
11	Early Childhood Collaborative	018	34,760,421
12	Public Employees'		
13	Insurance Matching	012	171,889,586
14	Teachers' Retirement System	019	302,110,205

15	School Building Authority	453	<u>22,642,530</u>
16	Total		\$ 1,495,479,475

37-State Board of Education-

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2004 Org 0402

1	Personal Services	001	\$ 916,403
2	Annual Increment	004	14,732
3	Employee Benefits	010	294,435
4	Unclassified	099	1,110,000
5	Wood Products-Forestry		
6	Vocational Program	146	56,220
7	Albert Yanni Vocation Program	147	124,263
8	Vocational Aid	148	14,007,210
9	Adult Basic Education	149	2,987,191
10	Partnership Development/Staff	171	259,810
11	Adult Advisory Council	621	289,025
12	Aquaculture Support	769	<u>100,000</u>
13	Total		\$ 20,159,289

38-State Board of Education-

Division of Educational Performance Audits

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2004 Org 0402

1	Personal Services	001	\$ 0
2	Annual Increment	004	0
3	Employee Benefits	010	0
4	Unclassified - Total	096	500,000
5	Unclassified	099	<u>0</u>
6	Total		\$ 500,000

39-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2004 Org 0403

1	Personal Services	001	\$ 6,691,692
2	Annual Increment	004	5,350
3	Employee Benefits	010	2,434,699
4	Unclassified	099	1,613,470
5	BRIM Premium	913	<u>47,094</u>
6	Total		\$ 10,792,305

7 Any unexpended balance remaining in the appropriation for
 8 Capital Outlay, Repairs and Equipment-Surplus (fund 0320,
 9 activity 677) at the close of the fiscal year 2003 is hereby
 10 reappropriated for expenditure during the fiscal year 2004.

DEPARTMENT OF EDUCATION AND THE ARTS

40-Department of Education and the Arts-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2004 Org 0431

1	Unclassified (R)	099	\$ 777,135
2	Center for Professional		
3	Development (R)	115	1,607,423
4	Center for Professional Development-		
5	Principals' Academy (R)	415	438,180
6	Energy Express	861	500,000
7	BRIM Premium	913	<u>2,200</u>
8	Total		\$ 3,324,938

9 Any unexpended balances remaining in the appropriations
 10 for the Unclassified (fund 0294, activity 099), Center for
 11 Professional Development (fund 0294, activity 115), and Center
 12 for Professional Development-Principals' Academy (fund 0294,
 13 activity 415) at the close of the fiscal year 2003 are hereby
 14 reappropriated for expenditure during the fiscal year 2004, with
 15 the exception of fund 0294, fiscal year 2003, activity 415
 16 (\$74,644), and fund 0294, fiscal year 2003, activity 099
 17 (\$27,056) which shall expire on June 30, 2003.

41-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2004 Org 0432

1	Personal Services	001	\$ 2,144,527
2	Annual Increment	004	39,855
3	Employee Benefits	010	790,108
4	Unclassified	099	470,000
5	Culture and History Programming	732	275,000
6	BRIM Premium	913	<u>34,436</u>
7	Total		\$ 3,753,926

8 The Unclassified appropriation includes funding for the arts
 9 funds, department programming funds, grants, fairs and
 10 festivals and Camp Washington Carver and shall be expended
 11 only upon authorization of the division of culture and history
 12 and in accordance with the provisions of chapter five-a, article
 13 three, and chapter twelve of the code.

14 All federal moneys received as reimbursement to the
 15 division of culture and history for moneys expended from the
 16 general revenue fund for the arts fund and historical preserva-
 17 tion are hereby reappropriated for the purposes as originally
 18 made, including personal services, current expenses and
 19 equipment.

42-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2004 Org 0433

1	Personal Services	001	\$ 1,046,426
2	Annual Increment	004	28,100
3	Employee Benefits	010	371,503
4	Unclassified	099	220,331
5	Services to Blind and Handicapped	181	38,456
6	BRIM Premium	913	<u>22,330</u>
7	Total		\$ 1,727,146

43-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2004 Org 0439

1	Personal Services	001	\$ 3,030,517
2	Annual Increment	004	61,492
3	Employee Benefits	010	1,039,610
4	Unclassified	099	592,586
5	Lease Revenue Bonds	646	0
6	BRIM Premium	913	<u>38,110</u>
7	Total		\$ 4,762,315

8 These funds may be transferred to special revenue accounts
 9 for matching college, university, city, county, federal and/or
 10 other generated revenues.

44-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2004 Org 0932

1	Personal Services	001	\$ 6,488,519
2	Annual Increment	004	134,049
3	Independent Living Services	009	24,000
4	Employee Benefits	010	2,623,325
5	Unclassified	099	130,000
6	Workshop Development	163	1,816,149
7	Supported Employment		
8	Extended Services	206	119,032
9	Ron Yost Personal Assistance Fund . . .	407	340,000
10	BRIM Premium	913	<u>50,010</u>
11	Total		\$ 11,725,084

12 Any unexpended balance remaining in the appropriation for
 13 Technology-Related Assistance Revolving Loan Fund for
 14 Individuals with Disabilities (fund 0310, activity 766) at the
 15 close of the fiscal year 2003 is hereby reappropriated for
 16 expenditure during the fiscal year 2004 and may be transferred
 17 to a special account for the purpose of disbursement or loan.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

45-Department of Health and Human Resources-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2004 Org 0501

1	Unclassified-Total	096	\$ 137,779
---	------------------------------	-----	------------

46-Division of Health-

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2004 Org 0506

1	Personal Services	001	\$ 8,279,060
2	Annual Increment	004	177,256
3	Employee Benefits	010	3,469,346
4	Level 1, 2 and 3 Trauma Centers	013	900,000
5	Unclassified	099	5,604,254
6	Safe Drinking Water Program	187	506,098
7	Pet Scan Support	209	100,000
8	Women, Infants and Children	210	45,000
9	Basic Public Health Services Support	212	4,323,708
10	Early Intervention	223	3,307,043
11	Cancer Registry	225	272,501
12	CARDIAC Project	375	220,000
13	State EMS Technical Assistance	379	1,403,674
14	EMS Program for Children	381	49,710
15	Statewide EMS Program Support	383	552,970
16	Primary Care Centers-Mortgage Finance	413	550,000
17	Black Lung Clinics	467	198,646
18	Center for End of Life	545	200,000
19	Pediatric Dental Services	550	150,000
20	Vaccine for Children	551	432,257
21	Adult Influenza Vaccine	552	65,000
22	Tuberculosis Control	553	253,908
23	Maternal and Child Health Clinics,		
24	Clinicians and Medical Contracts		
25	and Fees (R)	575	4,614,188
26	Epidemiology Support	626	379,516
27	Primary Care Support	628	7,254,178
28	Level 1 and 2 Trauma Centers	650	0
29	Neurological Research		
30	and Development	634	0
31	State Aid to Local Health Departments	702	9,257,684
32	Health Right Free Clinics	727	2,697,836
33	Osteoporosis Prevention Fund	729	156,423
34	Emergency Response Entities -		
35	Special Projects	822	500,000

36	Women's Right to Know	546	200,000
37	BRIM Premium	913	<u>161,860</u>
38	Total		\$ 56,282,116

39 Any unexpended balances remaining in the appropriations
 40 for Unclassified (fund 0407, activity 099, fiscal year 1997), and
 41 Maternal and Child Health Clinics, Clinicians and Medical
 42 Contracts and Fees (fund 0407, activity 575) at the close of the
 43 fiscal year 2003 are hereby reappropriated for expenditure
 44 during the fiscal year 2004, with the exception of fund 0506,
 45 fiscal year 2003, activity 575 (\$45,000), which shall expire on
 46 June 30, 2003.

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

47-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2004 Org 0506

1	Personal Services	001	\$ 616,833
2	Annual Increment	004	11,991
3	Employee Benefits	010	250,602
4	Special Olympics	208	26,074
5	Behavioral Health Program-		
6	Unclassified (R)	219	42,690,722
7	Family Support Act	221	1,092,753
8	Institutional Facilities Operations	335	44,096,851
9	Colin Anderson Community		
10	Placement (R)	803	3,264,325
11	Renaissance Program	804	194,000
12	BRIM Premium	913	<u>875,704</u>
13	Total		\$ 93,119,855

14 Any unexpended balances remaining in the appropriations
15 for Behavioral Health Program-Unclassified (fund 0525,
16 activity 219), and Colin Anderson Community Placement (fund
17 0525, activity 803) at the close of the fiscal year 2003 are
18 hereby reappropriated for expenditure during the fiscal year
19 2004, with the exception of fund 0525, fiscal year 2003, activity
20 219 (\$1,611,765), and fund 0525, fiscal year 2003, activity 803
21 (\$1,000,000) which shall expire on June 30, 2003.

22 The secretary of the department of health and human
23 resources, prior to the beginning of the fiscal year, shall file
24 with the legislative auditor and the department of administra-
25 tion an expenditure schedule for each formerly separate
26 spending unit which has been consolidated into the above
27 account and which receives a portion of the above appropriation
28 for Institutional Facilities Operations. The secretary shall also,
29 within fifteen days after the close of the six-month period of
30 said fiscal year, file with the legislative auditor and the depart-
31 ment of administration an itemized report of expenditures made
32 during the preceding six-month period.

33 From the Colin Anderson Community Placement (fund
34 0525, activity 803) funds may be both expended for the
35 community placement costs of the Colin Anderson clients and
36 transferred to the Medical Services Program Fund to pay the
37 Medicaid state share of the Medicaid cost of Colin Anderson
38 clients in the community.

39 From the above appropriation to Institutional Facilities
40 Operations, together with available funds from the division of
41 health-hospital services revenue account (fund 5156, activity
42 335) and tobacco settlement expenditure fund (fund 5124,
43 activity 335), on July 1, 2003, the sum of two hundred thousand
44 dollars shall be transferred to the department of agriculture-land
45 division as advance payment for the purchase of food products;
46 actual payments for such purchases shall not be required until
47 such credits have been completely expended.

48 Additional funds have been appropriated in fund 5124,
 49 fiscal year 2004, organization 0506 and fund 5156, fiscal year
 50 2004, organization 0506, for the operation of the institutional
 51 facilities. The secretary of the department of health and human
 52 resources is authorized to utilize up to ten percent of the funds
 53 from the Institutional Facilities Operations line item to facilitate
 54 cost effective and cost saving services at the community level.

48-Division of Health-

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2004 Org 0506

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

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

49-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2004 Org 0510

1	Personal Services	001	\$	678,511
2	Annual Increment	004		14,900
3	Employee Benefits	010		231,960
4	Unclassified	099		234,013
5	BRIM Premium	913		<u>17,970</u>
6	Total		\$	1,177,354

50-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2004 Org 0511

1	Personal Services	001	\$ 22,204,915
2	Annual Increment	004	648,734
3	Employee Benefits	010	8,512,817
4	Unclassified	099	20,305,924
5	Child Care Development	144	1,446,802
6	Medical Services Contracts and Office		
7	of Managed Care	183	2,329,730
8	Medical Services	189	253,453,990
9	Women's Commission	191	133,271
10	Social Services	195	60,105,425
11	Family Preservation Program	196	1,565,000
12	Domestic Violence Legal Services Fund	384	150,000
13	James "Tiger" Morton Catastrophic		
14	Illness Fund	455	940,000
15	Child Protective Services Case Workers	468	8,866,767
16	Medical Services Trust Fund Transfer .	512	5,000,000
17	OSCAR and RAPIDS	515	3,471,648
18	WV Teaching Hospitals		
19	Tertiary/Safety Net	547	1,750,000
20	Child Welfare System	603	2,581,948
21	Commission for the Deaf and		
22	Hard of Hearing	704	263,032
23	Child Support Enforcement	705	2,758,468
24	Medicaid Auditing	706	590,841
25	Temporary Assistance for Needy		
26	Families/Maintenance of Effort ...	707	22,969,096
27	Child Care-Maintenance of		
28	Effort and Match	708	4,409,643
29	Grants for Licensed Domestic Violence		
30	Programs and Statewide Prevention	750	1,000,000

31	Indigent Burials (R)	851	1,274,000
32	BRIM Premium	913	<u>667,631</u>
33	Total		\$ 427,399,682

34 Any unexpended balance remaining in the appropriation for
 35 Indigent Burials (fund 0403, activity 851) at the close of the
 36 fiscal year 2003 is hereby reappropriated for expenditure during
 37 the fiscal year 2004.

38 The above appropriation for James "Tiger" Morton
 39 Catastrophic Illness Fund (activity 455) shall be transferred to
 40 the James "Tiger" Morton Catastrophic Illness Fund (fund
 41 5454) as provided by article five-q, chapter sixteen of the code.

42 The above appropriation for Domestic Violence Legal
 43 Services Fund (activity 384) shall be transferred to the Domes-
 44 tic Violence Legal Services Fund (fund 5455).

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

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

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

51-Department of Military Affairs and Public Safety-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2004 Org 0601

1	Unclassified (R)	099	\$	632,054
2	BRIM Premium	913		<u>4,816</u>
3	Total		\$	636,870

4 Any unexpended balance remaining in the appropriation for
5 Unclassified (fund 0430, activity 099) at the close of the fiscal
6 year 2003 is hereby reappropriated for expenditure during the
7 fiscal year 2004.

52-Adjutant General-

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2004 Org 0603

1	Personal Services	001	\$	387,196
2	Annual Increment	004		9,500
3	Employee Benefits	010		120,822
4	Unclassified (R)	099		14,564,338
5	BRIM Premium	913		<u>20,344</u>
6	Total		\$	15,102,200

7 Any unexpended balance remaining in the appropriation for
8 Unclassified (fund 0433, activity 099) at the close of the fiscal
9 year 2003 is hereby reappropriated for expenditure during the
10 fiscal year 2004.

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

53-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2004 Org 0605

1	Personal Services	001	\$	122,751
2	Annual Increment	004		1,744
3	Employee Benefits	010		115,929
4	Unclassified	099		119,325
5	Salaries of Members of West Virginia			
6	Parole Board	227		225,000
7	BRIM Premium	913		<u>22,208</u>
8	Total		\$	606,957

54-Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2004 Org 0606

1	Personal Services	001	\$	222,636
2	Annual Increment	004		5,300
3	Employee Benefits	010		83,587
4	Unclassified	099		110,233
5	Federal Emergency Management			
6	Agency Match (R)	188		210,937
7	Early Warning Flood System	877		324,000
8	Radiological Emergency Preparedness	554		25,600
9	BRIM Premium	913		<u>6,680</u>
10	Total		\$	988,973

11 Any unexpended balances remaining in the appropriations
 12 for Federal Emergency Management Agency Match (fund
 13 0443, activity 188) and Flood Reparations (fund 0443, activity
 14 400) at the close of the fiscal year 2003 are hereby
 15 reappropriated for expenditure during the fiscal year 2004.

55-Division of Corrections-

Central Office

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

Fund 0446 FY 2004 Org 0608

1	Personal Services	001	\$	384,881
2	Annual Increment	004		5,775
3	Employee Benefits	010		117,178
4	Unclassified	099		<u>97,594</u>
5	Total		\$	605,428

6 Any unexpended balance remaining in the appropriation for
 7 Management Information System (fund 0446, activity 398) at
 8 the close of the fiscal year 2003 is hereby reappropriated for
 9 expenditure during the fiscal year 2004.

56-Division of Corrections-

Correctional Units

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

Fund 0450 FY 2004 Org 0608

1	Employee Benefits	010	\$	347,367
2	Unclassified	099		729,093
3	Charleston Work Release	456		842,328
4	Beckley Correctional Center	490		917,400
5	Huntington Work Release	495		721,135
6	Anthony Center	504		4,060,261
7	Huttonsville Correctional Center	514		13,427,651
8	Northern Correctional Facility	534		5,956,185
9	Inmate Medical Expenses	535		11,110,767
10	Pruntytown Correctional Center	543		5,651,370
11	Payments to Federal, County and/or			

12	Regional Jails	555	8,303,000
13	Corrections Academy	569	992,962
14	Martinsburg Correctional Center	663	0
15	Parole Services	686	1,997,449
16	Special Services	687	2,088,914
17	St. Mary's Correctional Facility	881	11,366,500
18	Denmar Correctional Facility	882	3,578,058
19	Ohio County Correctional Facility	883	1,177,177
20	Mt. Olive Correctional Facility	888	17,537,863
21	Lakin Correctional Facility	896	7,381,145
22	BRIM Premium	913	<u>560,889</u>
23	Total		\$ 98,747,514

24 Any unexpended balance remaining in the appropriation for
 25 Capital Outlay (fund 0450, activity 511) at the close of the
 26 fiscal year 2003 is hereby reappropriated for expenditure during
 27 the fiscal year 2004.

28 The commissioner of corrections shall within fifteen days
 29 after the close of each six-month period of said fiscal year, file
 30 with the legislative auditor and the department of administra-
 31 tion an itemized report of expenditures made during the
 32 preceding six-month period. Such report shall include the total
 33 of expenditures made for personal services, annual increment,
 34 current expenses (inmate medical expenses and other), repairs
 35 and alterations and equipment. The commissioner of corrections
 36 shall also have the authority to transfer between line items
 37 appropriated to the individual correctional units above and may
 38 transfer funds from the individuals units to Payments to
 39 Federal, County and/or Regional Jails (fund 0450, organization
 40 555) or the Inmate Medical Expenses (fund 0450, organization
 41 535).

42 From the above appropriation to Unclassified, on July 1,
 43 2003, the sum of three hundred thousand dollars shall be
 44 transferred to the department of agriculture-land division as

45 advance payment for the purchase of food products; actual
 46 payments for such purchases shall not be required until such
 47 credits have been completely expended.

57-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2004 Org 0612

1	Personal Services	001	\$ 27,917,001
2	Annual Increment	004	191,550
3	Employee Benefits	010	5,594,693
4	Unclassified	099	6,708,423
5	Vehicle Purchase	451	1,000,000
6	Barracks Maintenance		
7	and Construction (R)	494	1,719,388
8	Trooper Class	521	3,755,986
9	Barracks Lease Payments	556	318,768
10	Communications and		
11	Other Equipment (R)	558	613,285
12	Trooper Retirement Fund	605	24,875,529
13	Handgun Administration Expense	747	70,375
14	Automated Fingerprint		
15	Identification System	898	495,293
16	BRIM Premium	913	<u>3,351,098</u>
17	Total		\$ 76,611,389

18 Any unexpended balances remaining in the appropriations
 19 for Barracks Maintenance and Construction (fund 0453, activity
 20 494), and Communications and Other Equipment (fund 0453,
 21 activity 558) at the close of the fiscal year 2003 are hereby
 22 reappropriated for expenditure during the fiscal year 2004.

58-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2004 Org 0613

1	Personal Services	001	\$	872,723
2	Annual Increment	004		25,480
3	Employee Benefits	010		380,309
4	Unclassified	099		50,000
5	Veterans' Field Offices	228		136,371
6	Veterans' Toll Free Assistance Line ...	328		5,000
7	Veterans' Reeducation Assistance (R) .	329		211,604
8	Veterans' Grant Program (R)	342		150,000
9	Women's Veterans' Monument (R) ...	385		0
10	Memorial Day Patriotic Exercise	697		20,000
11	BRIM Premium	913		<u>23,741</u>
12	Total		\$	1,875,228

13 Any unexpended balances remaining in the appropriations
 14 for Veterans' Reeducation Assistance (fund 0456, activity 329),
 15 Veterans' Field Office Improvements (fund 0456, activity 331),
 16 Veterans' Grant Program (fund 0456, activity 342), Women's
 17 Veterans' Monument (fund 0456, activity 385), and Veterans'
 18 Monuments (fund 0456, activity 817) at the close of the fiscal
 19 year 2003 are hereby reappropriated for expenditure during the
 20 fiscal year 2004.

59-Division of Veterans' Affairs-

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2004 Org 0618

1	Personal Services	001	\$	668,646
---	-------------------------	-----	----	---------

2	Annual Increment	004	14,150
3	Employee Benefits	010	305,110
4	Unclassified	099	<u>144,763</u>
5	Total		\$ 1,132,669

60-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2004 Org 0619

1	Personal Services	001	\$ 613,761
2	Annual Increment	004	11,478
3	Employee Benefits	010	222,360
4	Unclassified	099	146,248
5	Safe Schools Hotline	560	250,000
6	BRIM Premium	913	<u>20,940</u>
7	Total		\$ 1,264,787

61-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2004 Org 0620

1	Personal Services	001	\$ 248,802
2	Annual Increment	004	3,645
3	Employee Benefits	010	83,776
4	Unclassified	099	155,775
5	Statistical Analysis Program	597	52,837
6	Sentencing Commission	976	123,000
7	Community Corrections in Mercer,		
8	Harrison, and Ohio Counties	977	300,000
9	BRIM Premium	913	<u>1,000</u>
10	Total		\$ 968,835

62-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2004 Org 0621

1	Personal Services	001	\$	0
2	Annual Increment	004		0
3	Employee Benefits	010		0
4	Unclassified (R)	099		0
5	Central Office	701		1,822,092
6	WV Industrial Home for Youth	979		10,669,115
7	Davis Center	980		2,113,692
8	Eastern Regional Juvenile Center	981		1,024,150
9	Northern Regional Juvenile Center	982		912,807
10	North Central Regional Juvenile Center	983		1,599,320
11	Southern Regional Juvenile Center	984		1,701,438
12	Tiger Morton Center	985		1,810,884
13	Donald R. Kuhn Juvenile Center	986		3,530,534
14	J.M. "Chick" Buckbee Juvenile Center	987		1,831,385
15	Salem Canine	988		87,501
16	Davis Canine	989		83,536
17	The Academy	990		128,668
18	Mt. Hope Juvenile Center	991		417,000
19	BRIM Premium	913		<u>20,930</u>
20	Total		\$	27,753,052

21 Any unexpended balance remaining in the appropriation for
 22 Unclassified (fund 0570, activity 099) at the close of the fiscal
 23 year 2003 is hereby reappropriated for expenditure during the
 24 fiscal year 2004.

25 From the above appropriation ~~*to Unclassified,*~~ on July 1,
 26 2003, the sum of fifty thousand dollars shall be transferred to
 27 the department of agriculture-land division as advance payment

* CLERK'S NOTE: Language deleted by the Governor.

28 for the purchase of food products; actual payments for such
29 purchases shall not be required until such credits have been
30 completely expended.

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

63-Division of Protective Services

(WV Code Chapter 15)

Fund 0585 FY 2004 Org 0622

1	Personal Services	001	\$	826,051
2	Annual Increment	004		4,000
3	Employee Benefits	010		330,260
4	Equipment (R)	070		0
5	Unclassified (R)	099		583,281
6	BRIM Premium	913		<u>3,575</u>
7	Total		\$	1,747,167

8 Any unexpended balances remaining in the appropriations
9 for Equipment (fund 0585, activity 070), Unclassified-Surplus
10 (fund 0585, activity 097), and Unclassified (fund 0585, activity
11 099) at the close of the fiscal year 2003 are hereby
12 reappropriated for expenditure during the fiscal year 2004.

DEPARTMENT OF TAX AND REVENUE

64-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2004 Org 0702

1	Personal Services (R)	001	\$	10,950,709
2	Annual Increment	004		259,060

APPROPRIATIONS

3	Employee Benefits (R)	010	3,561,722
4	Unclassified (R)	099	5,475,655
5	Multi State Tax Commission	653	41,238
6	GIS Development Project	562	150,000
7	BRIM Premium	913	<u>5,058</u>
8	Total		\$ 20,443,442

9 Any unexpended balances remaining in the appropriations
 10 for Unclassified-Surplus (fund 0470, activity 097), Personal
 11 Services (fund 0470, activity 001), Employee Benefits (fund
 12 0470, activity 010), and Unclassified (fund 0470, activity 099)
 13 at the close of the fiscal year 2003 are hereby reappropriated for
 14 expenditure during the fiscal year 2004.

65-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2004 Org 0709

1	Unclassified-Total	096	\$ 642,620
---	------------------------------	-----	------------

66-Division of Professional and Occupational Licenses-

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2004 Org 0933

1	Unclassified	099	\$ 5,812
2	BRIM Premium	913	<u>1,388</u>
3	Total		\$ 7,200

DEPARTMENT OF TRANSPORTATION

67-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2004 Org 0804

1	Unclassified	099	\$ 3,402,793
2	BRIM Premium	913	<u>8,989</u>
3	Total		\$ 3,411,782

68-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2004 Org 0805

1	Unclassified (R)	099	\$ 1,294,162
2	Federal Funds/Grant Match	749	<u>1,000,000</u>
3	Total		\$ 2,294,162

4 Any unexpended balances remaining in the appropriations
5 for Unclassified (fund 0510, activity 099), and Grant Match
6 (fund 0510, activity 388) at the close of the fiscal year 2003 are
7 hereby reappropriated for expenditure during the fiscal year
8 2004, with the exception of fund 0510, fiscal year 2003, activity
9 099 (\$44,002), fund 0510, fiscal year 2003, activity 388
10 (\$34,000) which shall expire on June 30, 2003.

69-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2004 Org 0806

1	Unclassified-Total (R)	096	\$ 725,533
---	------------------------------	-----	------------

2 Any unexpended balance remaining in the appropriation for
3 Unclassified-Total (fund 0581, activity 096) at the close of the
4 fiscal year 2003 is hereby reappropriated for expenditure during
5 the fiscal year 2004, with the exception of fund 0581, fiscal

6 year 2003, activity 096 (\$27,659) which shall expire on June
7 30, 2003.

70-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2004 Org 0807

1	Unclassified (R)	099	\$ 1,227,801
2	Civil Air Patrol	234	<u>105,257</u>
3	Total		\$ 1,333,058

4 Any unexpended balances remaining in the appropriations
5 for Unclassified (fund 0582, activity 099) at the close of the
6 fiscal year 2003 are hereby reappropriated for expenditure
7 during the fiscal year 2004, with the exception of fund 0582,
8 fiscal year 2003, activity 099 (\$54,899) which shall expire on
9 June 30, 2003.

BUREAU OF COMMERCE

71-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2004 Org 0305

1	Personal Services	001	\$ 1,657,488
2	Annual Increment	004	45,100
3	Employee Benefits	010	626,439
4	Unclassified	099	89,630
5	Aerial Tanker Airplanes	752	200,000
6	BRIM Premium	913	<u>156,271</u>
7	Total		\$ 2,774,928

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

72-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2004 Org 0306

1	Personal Services	001	\$ 1,243,962
2	Annual Increment	004	35,138
3	Employee Benefits	010	411,944
4	Unclassified	099	201,317
5	Mineral Mapping System (R)	207	1,349,859
6	Geographic Information System (R) . . .	214	294,031
7	BRIM Premium	913	<u>16,044</u>
8	Total		\$ 3,552,295

9 Any unexpended balances remaining in the appropriations
 10 for Mineral Mapping System (fund 0253, activity 207),
 11 Geographic Information System (fund 0253, activity 214), and
 12 Computer Upgrade-Surplus (fund 0253, activity 874), at the
 13 close of the fiscal year 2003 are hereby reappropriated for
 14 expenditure during the fiscal year 2004, with the exception of
 15 fund 0253, fiscal year 2003, activity 214 (\$16,576), and fund
 16 0253, fiscal year 2003, activity 207 (\$77,122) which shall
 17 expire on June 30, 2003.

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

73-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2004 Org 0307

1	Personal Services	001	\$ 2,359,130
2	Annual Increment	004	33,034
3	Employee Benefits	010	709,428
4	Unclassified	099	3,046,819
5	Partnership Grants (R)	131	3,000,000
6	National Youth Science Camp	132	169,362
7	Local Economic Development		
8	Partnerships (R)	133	1,600,500
9	ARC Assessment	136	167,308
10	Institute for Software Research	217	84,681
11	West Virginia Steel Advisory	230	67,745
12	Mid-Atlantic Aerospace Complex (R) ..	231	196,425
13	Guaranteed Work Force Grant (R)	242	2,702,576
14	Mingo County Surface Mine Project ...	296	125,000
15	Small Business		
16	Financial Assistance (R)	360	404,982
17	Robert C. Byrd Institute for Advanced/ 18 Flexible Manufacturing-Technology 19 Outreach and Programs for 20 Environmental and 21 Advanced Technologies	367	611,100
22	Advantage Valley	389	87,300
23	Chemical Alliance Zone	390	45,000
24	WV High Tech Consortium	391	177,300
25	Charleston Farmers Market (R)	476	90,000
26	Industrial Park Assistance (R)	480	500,000
27	Leverage Technology and Small 28 Business Development Program (R)	525	718,438
29	International Offices (R)	593	776,004
30	Blanchette Rockefeller 31 Neurological Institute	635	0
32	Economic Development	655	0
33	WV Manufacturing 34 Extension Partnership	731	169,362

35	Small Business Work Force (R)	735	529,106
36	Polymer Alliance	754	84,681
37	National Institute		
38	of Chemical Studies	805	84,681
39	Local Economic		
40	Development Assistance (R)	819	4,500,000
41	Community College		
42	Workforce Development (R)	878	722,408
43	Hardwood Alliance Zone	992	50,000
44	BRIM Premium	913	<u>1,464</u>
45	Total		\$ 23,813,834

46 Any unexpended balances remaining in the appropriations
47 for Partnership Grants (fund 0256, activity 131), Local Eco-
48 nomic Development Partnerships (fund 0256, activity 133),
49 Mid-Atlantic Aerospace Complex (fund 0256, activity 231),
50 Guaranteed Work Force Grant (fund 0256, activity 242), Small
51 Business Financial Assistance (fund 0256, activity 360),
52 Charleston Farmers Market (fund 0256, activity 476), Industrial
53 Park Assistance (fund 0256, activity 480), Leverage Technol-
54 ogy and Small Business Development Program (fund 0256,
55 activity 525), International Offices (fund 0256, activity 593),
56 Small Business Work Force (fund 0256, activity 735), Local
57 Economic Development Assistance (fund 0256, activity 819),
58 Community College Workforce Development (fund 0256,
59 activity 878), Economic Development Assistance (fund 0256,
60 activity 900), and Technology Initiatives (fund 0256, activity
61 901) at the close of the fiscal year 2003 are hereby
62 reappropriated for expenditure during the fiscal year 2004, with
63 the exception of fund 0256, fiscal year 2003, activity 131
64 (\$136,000), fund 0256, fiscal year 2003, activity 231 (\$7,421),
65 fund 0256, fiscal year 2003, activity 242 (\$423,891), fund 0256,
66 fiscal year 2003, activity 360 (\$13,843), fund 0256, fiscal year
67 2003, activity 480 (\$18,872), fund 0256, fiscal year 2003,
68 activity 525 (\$27,141), fund 0256, fiscal year 2003, activity 735
69 (\$24,826), fund 0256, fiscal year 2003, activity 819 (\$238,000),

70 and fund 0256, fiscal year 2003, activity 878 (\$27,291) which
71 shall expire on June 30, 2003.

72 The above appropriation to Local Economic Development
73 Partnerships shall be used by the West Virginia development
74 office for the award of funding assistance to county and
75 regional economic development corporations or authorities
76 participating in the certified development community program
77 developed under the provisions of section three, article two,
78 chapter five-b of the code. The West Virginia development
79 office shall award the funding assistance through a matching
80 grant program, based upon a formula whereby funding assis-
81 tance may not exceed thirty thousand dollars per county served
82 by an economic development corporation or authority.

74-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2004 Org 0308

1	Personal Services	001	\$ 1,728,316
2	Annual Increment	004	25,072
3	Employee Benefits	010	624,700
4	Unclassified	099	480,538
5	BRIM Premium	913	<u>40,058</u>
6	Total		\$ 2,898,684

75-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2004 Org 0310

1	Personal Services	001	\$ 6,970,016
2	Annual Increment	004	226,437
3	Employee Benefits	010	3,744,817

4	Gypsy Moth Suppression Program -		
5	Wildlife Management Areas	014	50,000
6	Unclassified	099	9,633
7	Litter Control Conservation Officers . . .	564	192,823
8	Law Enforcement-Federal Audit	563	350,000
9	Upper Mud River Flood Control	654	171,217
10	Law Enforcement	806	844,625
11	BRIM Premium	913	<u>251,260</u>
12	Total		\$ 12,810,828

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

18 The above appropriation for Law Enforcement-Federal
 19 Audit (fund 0265, activity 563) shall only be expended after the
 20 division of natural resources has executed the Memorandum of
 21 Agreement resolving pending claims of the U.S. Fish and
 22 Wildlife Service and upon written approval of the Commis-
 23 sioner of the Bureau of Commerce.

76-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2004 Org 0314

1	Personal Services	001	\$ 3,648,406
2	Annual Increment	004	70,950
3	Employee Benefits	010	1,339,000
4	Unclassified	099	769,336
5	BRIM Premium	913	35,421
6	WV Diesel Equipment Commission . . .	712	<u>38,034</u>
7	Total		\$ 5,901,147

77-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2004 Org 0319

1	Personal Services	001	\$	110,950
2	Annual Increment	004		750
3	Employee Benefits	010		27,270
4	Unclassified	099		<u>30,345</u>
5	Total		\$	169,315

78-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2004 Org 0320

1	Unclassified-Total	096	\$	0
2	Unclassified	099		63,352
3	Coal Forum (Coal Miner Statue)	015		<u>25,000</u>
4	Total		\$	88,352

DEPARTMENT OF ENVIRONMENTAL PROTECTION*79-Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2004 Org 0311

1	Personal Services	001	\$	98,917
2	Annual Increment	004		795
3	Employee Benefits	010		23,256
4	Unclassified	099		16,121
5	BRIM Premium	913		<u>2,228</u>
6	Total		\$	141,317

80-Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Fund 0263 FY 2004 Org 0313

1	West Virginia's Contribution			
2	to the Interstate Commission			
3	on Potomac River Basin-Total	134	\$	42,300

81-Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Fund 0264 FY 2004 Org 0313

1	West Virginia's Contribution to the			
2	Ohio River Valley Water			
3	Sanitation Commission-Total	135	\$	120,870

82-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2004 Org 0313

1	Personal Services	001	\$	4,402,434
2	Annual Increment	004		73,538
3	Employee Benefits	010		1,435,444
4	Unclassified	099		876,955
5	Dam Safety	607		213,639
6	Office of Water Resources			
7	Non-Enforcement Activity	855		1,154,877
8	Welch DEP Office			
9	Continuing Operation	993		92,000
10	BRIM Premium	913		<u>12,462</u>
11	Total		\$	8,261,349

83-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2004 Org 0325

1	Unclassified	099	\$	87,412
2	BRIM Premium	913		<u>2,586</u>
3	Total		\$	89,998

BUREAU OF SENIOR SERVICES*84-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2004 Org 0508

1	Personal Services	001	\$	125,099
2	Annual Increment	004		2,257
3	Employee Benefits	010		50,805
4	Unclassified	099		506,331
5	Silver Haired Legislature	202		15,000
6	Area Agencies Administration	203		78,685
7	Alzheimers Respite Care	565		100,000
8	BRIM Premium	913		<u>2,075</u>
9	Total		\$	880,252

HIGHER EDUCATION POLICY COMMISSION*85-Higher Education Policy Commission-**Administration-**Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2004 Org 0441

1	Unclassified	099	\$ 2,098,920
2	WVNET	169	2,096,505
3	EPSCOR	571	0
4	Vice Chancellor for Health Sciences-Rural		
5	Health Initiative Program and Site		
6	Support	595	4,065,467
7	Vice Chancellor for Health Sciences-Rural		
8	Health Residency Program	601	300,000
9	West Virginia Council for Community .		
10	and Technical Education	392	<u>449,141</u>
11	Total		\$ 9,010,033

12 Any unexpended balances remaining in the appropriations
13 for Vice Chancellor for Health Sciences-Rural Health Initiative
14 Program and Site Support (fund 0589, activity 595), Vice
15 Chancellor for Health Sciences-Rural Health Residency
16 Program (fund 0589, activity 601), and West Virginia Council
17 for Community and Technical Education (fund 0589, activity
18 392) at the close of the fiscal year 2003 are hereby
19 reappropriated for expenditure during the fiscal year 2004, with
20 the exception of fund 0589, fiscal year 2003, activity 392,
21 organization 0441 (\$7,739); fund 0589, fiscal year 2003,
22 activity 595, organization 0441 (\$70,437); fund 0343, fiscal
23 year 2003, activity 595, organization 0463 (\$55,205); fund
24 0347, fiscal year 2003, activity 595, organization 0471
25 (\$230,045); and fund 0347, fiscal year 2003, activity 601,
26 organization 0471 (\$75,000) which shall expire on June 30,
27 2003.

86-Higher Education Policy Commission-

System-

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2004 Org 0442

1	Bluefield State College	408	\$ 1,812,400
2	Bluefield State Community and		
3	Technical College	409	5,471,035
4	Concord College	410	8,567,177
5	Eastern West Virginia Community and		
6	Technical College	412	2,004,733
7	Fairmont State College	414	11,691,739
8	Fairmont State Community and		
9	Technical College	421	7,098,730
10	Glenville State College	428	5,332,888
11	Glenville State Community and		
12	Technical College	430	0
13	Shepherd College	432	8,823,522
14	Shepherd Community and		
15	Technical College	434	2,162,714
16	West Liberty State College	439	8,956,727
17	West Virginia State College	441	9,940,460
18	West Virginia State Community and		
19	Technical College	445	2,803,931
20	Southern West Virginia Community and		
21	Technical College	446	7,375,150
22	West Virginia Northern Community and		
23	Technical College	447	5,728,387
24	Marshall University	448	40,761,056
25	Marshall Medical School	173	13,395,900
26	Marshall University Medical School		
27	BRIM Subsidy	449	564,721
28	Marshall University Community and		
29	Technical College	487	5,357,306
30	West Virginia University	459	105,811,878
31	WVU - School of Health Sciences	174	43,637,011
32	WVU School of Health Sciences -		

33	Charleston Division	175	3,909,083
34	West Virginia University School of		
35	Medicine BRIM Subsidy	460	1,115,519
36	West Virginia University -		
37	Parkersburg	471	8,177,741
38	Potomac State College of		
39	West Virginia University	475	0
40	West Virginia University -		
41	Potomac State	994	4,064,886
42	West Virginia University Institute		
43	for Technology	479	6,413,689
44	West Virginia University Institute		
45	for Technology Community and		
46	Technical College	486	3,272,796
47	Primary Health Education Medical School		
48	Program Support	177	2,136,731
49	FSC and BSC CTC Distribution Reserve	995	<u>1,946,115</u>
50	Total		\$ 328,334,025

51 Any unexpended balances remaining in the appropriations
52 for Primary Health Education Medical School Program Support
53 (fund 0586, activity 177), Jackson’s Mill (fund 0586, activity
54 461), Marshall University Forensic Lab (fund 0586, activity
55 572), Jackson’s Mill-Surplus (fund 0586, activity 842), and
56 WVU College of Engineering and Mineral Resources-Diesel
57 Training - Transfer (fund 0586, activity 852) at the close of
58 fiscal year 2003 are hereby reappropriated for expenditure
59 during the fiscal year 2004, with the exception of fund 0343,
60 fiscal year 2003, activity 177, organization 0463 (\$60,187) and
61 fund 0347, fiscal year 2003, activity 177, organization 0471
62 (\$188,220) which shall expire on June 30, 2003.

63 Included in the appropriation for WVU - School of Health
64 Sciences and Marshall Medical School are \$943,080 and
65 \$295,477, respectively, for Graduate Medical Education which
66 may be transferred to the Department of Health and Human

67 Resources' Medical Service Fund (fund 5084) for the purpose
68 of matching federal or other funds to be used in support of
69 graduate medical education, subject to the Vice-Chancellor for
70 Health Sciences and the Secretary of the Department of Health
71 and Human Resources. If approval is denied, the funds may be
72 utilized by the respective institutions for expenditure on
73 graduate medical education.

74 Included in the above appropriation for WVU - School of
75 Health Sciences is \$511,105 for the WVU Charleston Division
76 Poison Control Hotline. This amount shall be enhanced by an
77 allocation for the director's salary as well as in-kind assistance.
78 These amounts shall be allocated equally among the four
79 quarters of the fiscal year for disbursement to the WVU-
80 Charleston Division Poison Control Hotline. Also included is
81 \$800,000 for the Blanchette Rockefeller Neurological Institute.

82 Included in the above appropriation for West Virginia
83 University is \$34,500 for the Marshall and WVU Faculty and
84 Course Development International Study Project, \$246,429 for
85 the WVU Law School - Skills Program, \$147,857 for the WVU
86 Coal and Energy Research Bureau, \$19,714 for the WVU
87 College of Engineering and Mineral Resources - Diesel
88 Training - Transfer, \$153,000 for the WVU-Sheep Study, and
89 \$40,000 for a veterinarian.

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

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

98 Included in the above appropriation for Southern West
99 Virginia Community and Technical College is \$373,774 for the
100 Marshall University - Southern WV Community and Technical
101 College 2+2 Program, \$98,912 for delivery of the associate
102 degree nursing program to Eastern WV Community and
103 Technical College, and \$25,000 for the Appleread Program.

104 Included in the above appropriation for Concord College is
105 \$100,000 for the Geographic Alliance.

106 Included in the above appropriation for Shepherd College
107 is \$100,000 for the Gateway Program.

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

87-Higher Education Policy Commission-

Health Sciences-

Control Account

(WV Code Chapter 18B)

Fund 0590 FY 2004 Org 0477

1 Any unexpended balances remaining in the appropriations
2 for Primary Health Education Medical School Program Support
3 (fund 0590, activity 177), Correctional Telemedicine Project
4 (fund 0590, activity 406), WVU Charleston Division-Poison
5 Control Hot Line (fund 0590, activity 510), Capital Outlay and
6 Equipment (fund 0590, activity 542), and Rural Health Initia-
7 tive Site Support Program (fund 0590, activity 853) at the close
8 of the fiscal year 2003 are hereby reappropriated for expendi-
9 ture during the fiscal year 2004.

*88-Higher Education Policy Commission-**Legislative-**Funding Priorities**Control Account*

(WV Code Chapter 18B)

Fund 0591 FY 2004 Org 0441

1	Internal Peer Equity	961	\$ 1,000,000
2	Research Challenge (R)	502	<u>663,351</u>
3	Total		\$ 1,663,351

4 Any unexpended balances remaining in the appropriations
5 for Independently Accredited Community and Technical
6 College Development (fund 0591, activity 491), and Research
7 Challenge (fund 0591, activity 502) at the close of the fiscal
8 year 2003 are hereby reappropriated for expenditure during the
9 fiscal year 2004, with the exception of fund 0591, fiscal year
10 2003, activity 491, organization 0441 (\$1,632); fund 0351,
11 fiscal year 2003, activity 491, organization 0464 (\$7,950); fund
12 0355, fiscal year 2003, activity 491, organization 0482
13 (\$7,938); fund 0361, fiscal year 2003, activity 491, organization
14 0484 (\$62,872); fund 0364, fiscal year 2003, activity 491,
15 organization 0485 (\$56,808); fund 0377, fiscal year 2003,
16 activity 491, organization 0491 (\$15,713); fund 0380, fiscal
17 year 2003, activity 491, organization 0487 (\$7,140); fund 0383,
18 fiscal year 2003, activity 491, organization 0489 (\$4,129); fund
19 0587, fiscal year 2003, activity 491, organization 0492
20 (\$5,436); and fund 0348, fiscal year 2003, activity 502, *~~organi-~~
21 ~~zation 0348*~~ (\$6,344) which shall expire on June 30, 2003.

* CLERK'S NOTE: Language deleted by the Governor.

22 The above appropriation shall be allocated only to the
 23 State's post-secondary institutions with compacts approved by
 24 the Higher Education Policy Commission, as stated in §18B-
 25 1A-5.

1 Total TITLE II, Section 1-
 2 General Revenue \$ 3,033,963,648

1 **Sec. 2. Appropriations from state road fund.**-From the
 2 state road fund there are hereby appropriated conditionally upon
 3 the fulfillment of the provisions set forth in article two, chapter
 4 five-a of the code the following amounts, as itemized, for
 5 expenditure during the fiscal year two thousand four.

DEPARTMENT OF TRANSPORTATION

89-Division of Motor Vehicles

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

Fund 9007 FY 2004 Org 0802

	Activity	State Road Fund
1	Personal Services 001	\$ 13,022,017
2	Annual Increment 004	191,750
3	Employee Benefits 010	5,233,458
4	Unclassified 099	20,547,069
5	International Fuel Tax Agreement 536	<u>560,644</u>
6	Total	\$ 39,554,938

90-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2004 Org 0803

1	Debt Service	040	\$ 50,000,000
2	Maintenance	237	243,700,000
3	Maintenance, Contract Paving and		
4	Secondary Road Maintenance	272	30,000,000
5	Bridge Repair and Replacement	273	15,000,000
6	Inventory Revolving	275	2,000,000
7	Equipment Revolving	276	10,000,000
8	General Operations	277	38,768,000
9	Interstate Construction	278	70,000,000
10	Other Federal Aid Programs	279	340,700,000
11	Appalachian Programs	280	150,000,000
12	Nonfederal Aid Construction	281	20,000,000
13	Highway Litter Control	282	<u>1,600,000</u>
14	Total		\$ 971,768,000

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

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

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

29 It is the intent of the Legislature to capture and match all
30 federal funds available for expenditure on the Appalachian
31 highway system at the earliest possible time. Therefore, should
32 amounts in excess of those appropriated be required for the

33 purposes of Appalachian programs, funds in excess of the
 34 amount appropriated may be made available upon recommen-
 35 dation of the commissioner and approval of the governor.
 36 Further, for the purpose of Appalachian programs, funds
 37 appropriated to line items may be transferred to other line items
 38 upon recommendation of the commissioner and approval of the
 39 governor.

1 Total TITLE II, Section 2-
 2 State Road Fund \$ 1,012,023,195

1 **Sec. 3. Appropriations from other funds.**-From the funds
 2 designated there are hereby appropriated conditionally upon the
 3 fulfillment of the provisions set forth in article two, chapter
 4 five-a of the code the following amounts, as itemized, for
 5 expenditure during the fiscal year two thousand four.

LEGISLATIVE

91-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2004 Org 2300

	Activity	Other Funds
1 Personal Services	001	\$ 202,800
2 Annual Increment	004	4,770
3 Employee Benefits	010	64,134
4 Unclassified	099	50,000
5 Economic Loss Claim		
6 Payment Fund (R)	334	<u>2,441,500</u>
7 Total		\$ 2,763,204

8 Any unexpended balance remaining in the appropriation for
 9 Economic Loss Claim Payment Fund (fund 1731, activity 334)
 10 at the close of the fiscal year 2003 is hereby reappropriated for
 11 expenditure during the fiscal year 2004.

EXECUTIVE

92-Chief Technology Officer Administration Fund

(WV Code Chapter 5)

Fund 1028 FY 2004 Org 0100

1	Unclassified	099	\$ 1,872,961
2	EPSCOR Undergraduate Scientific		
3	Instrumentation Program	829	<u>150,000</u>
4	Total		\$ 2,022,961

93-Auditor's Office-

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2004 Org 1200

1	Personal Services	001	\$ 209,629
2	Annual Increment	004	7,500
3	Employee Benefits	010	67,081
4	Unclassified	099	<u>395,416</u>
5	Total		\$ 679,626

6 There is hereby appropriated from this fund, in addition to
 7 the above appropriation, the necessary amount for the expendi-
 8 ture of funds other than personal services or employee benefits
 9 to enable the division to pay the direct expenses relating to land
 10 sales as provided in Chapter eleven-a of the West Virginia
 11 Code.

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

94-Auditor's Office-

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2004 Org 1200

1	Personal Services	001	\$	723,298
2	Annual Increment	004		8,700
3	Employee Benefits	010		199,985
4	Unclassified	099		<u>765,873</u>
5	Total		\$	1,697,856

95-Auditor's Office-

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2004 Org 1200

1	Unclassified-Total	096	\$	747,368
---	--------------------------	-----	----	---------

96-Auditor's Office-

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2004 Org 1200

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

*97-Auditor's Office-**Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2004 Org 1200

1	Personal Services	001	\$	1,769,646
2	Annual Increment	004		30,000
3	Employee Benefits	010		568,489
4	Unclassified	099		<u>555,261</u>
5	Total		\$	2,923,396

*98-Treasurer's Office-**Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1329 FY 2004 Org 1300

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

*99-Department of Agriculture-**Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2004 Org 1400

1	Personal Services	001	\$	936,844
2	Annual Increment	004		10,550
3	Employee Benefits	010		317,340
4	Unclassified	099		<u>1,313,366</u>
5	Total		\$	2,578,100

100-Department of Agriculture-

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2004 Org 1400

1 Student and Farm Loans-Total 235 \$ 541,538

101-Department of Agriculture-

General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2004 Org 1400

1 Unclassified-Total 096 \$ 80,133

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

102-Department of Agriculture-

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2004 Org 1400

1 Unclassified-Total 096 \$ 1,028,903

103-Department of Agriculture-

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2004 Org 1400

1	Unclassified-Total	096	\$	2,200,000
---	--------------------------	-----	----	-----------

*104-Attorney General-**Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2004 Org 1500

1	Personal Services	001	\$	220,551
2	Annual Increment	004		935
3	Employee Benefits	010		66,885
4	Unclassified	099		<u>178,285</u>
5	Total		\$	466,656

*105-Attorney General-**Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2004 Org 1500

1	Unclassified-Total	096	\$	227,284
---	--------------------------	-----	----	---------

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

(WV Code Chapter 47)

Fund 1514 FY 2004 Org 1500

1	Unclassified-Total	096	\$	775,000
---	--------------------------	-----	----	---------

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

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2004 Org 1600

1	Personal Services	001	\$	968,032
2	Annual Increment	004		7,450
3	Employee Benefits	010		234,869
4	Unclassified	099		<u>1,143,662</u>
5	Total		\$	2,354,013

*108-Secretary of State-**State Election Fund*

(WV Code Chapter 3)

Fund 1614 FY 2004 Org 1600

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

DEPARTMENT OF ADMINISTRATION*109-Office of the Secretary-**Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2004 Org 0201

- | | | | | |
|---|--|-----|----|------------|
| 1 | Tobacco Settlement Fund-Transfer | 902 | \$ | 28,000,000 |
|---|--|-----|----|------------|
- 2 The above appropriation for Tobacco Settlement Fund-
- 3 Transfer shall be transferred to the Division of Health (fund
- 4 5124, org 0506) for expenditure.

*110-Division of Finance-**Public Employees Insurance Reserve Fund*

(WV Code Chapter 5A)

Fund 2207 FY 2004 Org 0209

- 1 Public Employees Insurance Reserve
 2 Fund-Transfer 903 \$ 6,000,000
- 3 The above appropriation for Public Employees Insurance
 4 Reserve Fund-Transfer shall be transferred to the Medical
 5 Services Trust Fund (fund 5185, org 0511) for expenditure.

111-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2004 Org 0210

- | | | | |
|---|-----------------------------|-----|------------------|
| 1 | Personal Services | 001 | \$ 6,511,072 |
| 2 | Annual Increment | 004 | 83,915 |
| 3 | Employee Benefits | 010 | 1,846,596 |
| 4 | Unclassified | 099 | <u>1,754,727</u> |
| 5 | Total | | \$ 10,196,310 |

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

- 9 There is hereby appropriated from this fund, in addition to
 10 the above appropriation, the necessary amount for the expendi-
 11 ture of funds other than personal services or employee benefits
 12 to enable the division to provide information processing
 13 services to user agencies. These services include, but are not
 14 limited to, data processing equipment, office automation and
 15 telecommunications.

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

112-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2004 Org 0222

1	Personal Services	001	\$ 2,586,137
2	Annual Increment	004	54,850
3	Employee Benefits	010	822,814
4	Unclassified	099	<u>901,244</u>
5	Total		\$ 4,365,045

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

113-WV Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2004 Org 0228

1	Unclassified-Total (R)	096	\$ 574,113
---	------------------------------	-----	------------

2 Any unexpended balances remaining in the appropriations
 3 for Unclassified-Total (fund 2521, activity 096) at the close of
 4 the fiscal year 2003 are hereby reappropriated for expenditure
 5 during the fiscal year 2004.

DEPARTMENT OF EDUCATION*114-State Board of Education-**Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2004 Org 0402

1 Unclassified-Total (R) 096 \$ 550,000

2 Any unexpended balance remaining in the appropriation for
 3 Unclassified-Total (fund 3937, activity 096) at the close of the
 4 fiscal year 2003 is hereby reappropriated for expenditure during
 5 the fiscal year 2004.

*115-State Department of Education-**School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 2004 Org 0402

1	Personal Services	001	\$	661,719
2	Annual Increment	004		6,900
3	Employee Benefits	010		230,170
4	Unclassified	099		<u>264,549</u>
5	Total		\$	1,163,338

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

116-State Department of Education-
FFA-FHA Camp and Conference Center
(WV Code Chapter 18)

Fund 3960 FY 2004 Org 0402

1	Personal Services	001	\$	780,000
2	Annual Increment	004		11,350
3	Employee Benefits	010		275,354
4	Unclassified	099		<u>1,033,296</u>
5	Total		\$	2,100,000

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 29)

Fund 3508 FY 2004 Org 0431

1	EPSCOR (R)	571	\$	300,000
2	Research Challenge (R)	502		<u>325,000</u>
3	Total		\$	625,000

4 Any unexpended balance remaining in the appropriation for
5 Unclassified-Total (fund 3508, activity 096), Research Chal-
6 lenge (fund 3508, activity 502), and EPSCOR (fund 3508,
7 activity 571) at the close of the fiscal year 2003 is hereby
8 reappropriated for expenditure during the fiscal year 2004.

*118-Division of Culture and History-**Public Records and Preservation Revenue Fund*

(WV Code Chapter 5A)

Fund 3542 FY 2004 Org 0432

1	Unclassified--Total	096	\$	0
2	Unclassified	099		922,227
3	Project ACCESS	865		<u>300,000</u>
4	Total		\$	1,222,227

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

(WV Code Chapter 18)

Fund 8664 FY 2004 Org 0932

1	Unclassified	099	\$	2,802,182
2	Workshop Development	163		450,000
3	Workshop-Supported Employment	484		<u>50,000</u>
4	Total		\$	3,302,182

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*120-Board of Barbers and Cosmetologists*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2004 Org 0505

1	Personal Services	001	\$	235,246
---	-------------------------	-----	----	---------

2	Annual Increment	004	4,861
3	Employee Benefits	010	79,353
4	Unclassified	099	<u>124,738</u>
5	Total		\$ 444,198

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

121-WV Board of Medicine

(WV Code Chapter 30)

Fund 5106 FY 2004 Org 0506

1	Unclassified-Total	096	\$ 1,170,080
---	--------------------------	-----	--------------

122-Division of Health-

Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2004 Org 0506

1	ABCA Tobacco Retailer Education		
2	Program-Transfer	239	\$ 200,000
3	Institutional Facilities		
4	Operations (R)	335	22,149,408
5	Tobacco Education Program (R)	906	<u>5,650,592</u>
6	Total		\$ 28,000,000

7 Any unexpended balances remaining in the above appropri-
 8 ations for Institutional Facilities Operations (fund 5124, activity
 9 335), and Tobacco Education Program (fund 5124, activity 906)
 10 at the close of the fiscal year 2003 are hereby reappropriated for
 11 expenditure during the fiscal year 2004.

12 From the above appropriation for ABCA Tobacco Retailer
13 Education Program-Transfer, \$200,000 shall be transferred to
14 the Alcohol Beverage Control Administration (fund 7352, org
15 0708) for expenditure.

16 The secretary of the department of health and human
17 resources, prior to the beginning of the fiscal year, shall file
18 with the legislative auditor and the department of administra-
19 tion an expenditure schedule for each formerly separate
20 spending unit which has been consolidated into the above
21 account and which receives a portion of the above appropriation
22 for Institutional Facilities Operations. The secretary shall also,
23 within fifteen days after the close of the six-month period of
24 said fiscal year, file with the legislative auditor and the depart-
25 ment of administration an itemized report of expenditures made
26 during the preceding six-month period.

27 Additional funds have been appropriated in fund 0525,
28 fiscal year 2004, organization 0506, and fund 5156, fiscal year
29 2004, organization 0506, for the operation of the institutional
30 facilities. The secretary of the department of health and human
31 resources is authorized to utilize up to ten percent of the funds
32 from the Institutional Facilities Operations line item to facilitate
33 cost effective and cost saving services at the community level.

34 From the above appropriation to Institutional Facilities
35 Operations, together with available funds from the division of
36 health-hospital services revenue account (fund 5156, activity
37 335) and consolidated medical services fund (fund 0525,
38 activity 335), on July 1, 2003, the sum of two hundred thousand
39 dollars shall be transferred to the department of agriculture-land
40 division as advance payment for the purchase of food products;
41 actual payments for such purchases shall not be required until
42 such credits have been completely expended.

123-Division of Health-

Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2004 Org 0506

1	Personal Services	001	\$	263,211
2	Annual Increment	004		8,203
3	Employee Benefits	010		114,073
4	Unclassified.	099		<u>99,950</u>
5	Total		\$	485,437

124-Division of Health-

Hospital Services Revenue Account

(Special Fund)

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2004 Org 0506

1	Debt Service (R)	040	\$	2,420,000
2	Institutional Facilities			
3	Operations (R)	335		34,591,434
4	Medical Services Trust Fund-			
5	Transfer (R)	512		<u>23,300,000</u>
6	Total		\$	60,311,434

7 Any unexpended balance remaining in the appropriation for
 8 hospital services revenue account at the close of the fiscal year
 9 2003 is hereby reappropriated for expenditure during the fiscal
 10 year 2004, except for fund 5156, activity 335 (fiscal years 1998

11 and 1999) and fund 5156, activity 040 (fiscal year 2002) which
12 shall expire on June 30, 2003.

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

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

23 Necessary funds from the above appropriation may be used
24 for medical facilities operations, either in connection with this
25 account or in connection with the line item designated Institu-
26 tional Facilities Operations in the consolidated medical service
27 fund (fund 0525, fiscal year 2004, organization 0506) and the
28 tobacco settlement expenditure fund (fund 5124, fiscal year
29 2004, organization 0506).

30 From the above appropriation to Institutional Facilities
31 Operations, together with available funds from the consolidated
32 medical services fund (fund 0525, activity 335) and the tobacco
33 settlement expenditure fund (fund 5124, activity 335), on July
34 1, 2003, the sum of two hundred thousand dollars shall be
35 transferred to the department of agriculture-land division as
36 advance payment for the purchase of food products; actual
37 payments for such purchases shall not be required until such
38 credits have been completely expended.

125-Division of Health-

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2004 Org 0506

1	Personal Services	001	\$	502,830
2	Annual Increment	004		9,450
3	Employee Benefits	010		183,491
4	Unclassified	099		<u>217,476</u>
5	Total		\$	913,247

*126-Division of Health-**Health Facility Licensing*

(WV Code Chapter 16)

Fund 5172 FY 2004 Org 0506

1	Personal Services	001	\$	201,430
2	Annual Increment	004		2,800
3	Employee Benefits	010		43,712
4	Unclassified	099		<u>125,070</u>
5	Total		\$	373,012

*127-Division of Health-**Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2004 Org 0506

1	Personal Services	001	\$	56,071
2	Annual Increment	004		1,150
3	Employee Benefits	010		20,804
4	Unclassified	099		<u>2,996,821</u>
5	Total		\$	3,074,846

128-Division of Health-

Lead Abatement Fund

(WV Code Chapter 16)

Fund 5204 FY 2004 Org 0506

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

129-Division of Health-

West Virginia Birth to Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2004 Org 0506

1	Personal Services	001	\$	500,000
2	Annual Increment	004		4,000
3	Employee Benefits	010		192,276
4	Unclassified	099		<u>20,303,724</u>
5	Total		\$	21,000,000

130-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 2004 Org 0507

1	Personal Services	001	\$	1,940,548
2	Annual Increment	004		0
3	Employee Benefits	010		577,273
4	Unclassified	099		3,463,470
5	Hospital Assistance.....	025		<u>500,000</u>
6	Total		\$	6,481,291

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

131-Division of Human Services-

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2004 Org 0511

1	Unclassified-Total	096	\$ 143,350,133
---	--------------------	-------	-----	----------------

2 From the above appropriation, an amount not to exceed two
 3 hundred thousand dollars shall be transferred to a special
 4 revenue account in the treasury for use by the department of
 5 health and human resources for administrative purposes. The
 6 remainder of all moneys deposited in the fund shall be trans-
 7 ferred to the West Virginia medical services fund.

132-Division of Human Services-

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2004 Org 0511

1	Unclassified-Total (R)	096	\$ 30,781,971
---	------------------------	-------	-----	---------------

2 Any unexpended balance remaining in the appropriation for
 3 Unclassified-Total (fund 5094, activity 096) at the close of the
 4 fiscal year 2003 is hereby reappropriated for expenditure during
 5 the fiscal year 2004.

133-Division of Human Services-

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2004 Org 0511

1	Payment to Non-State Hospitals DPSH .	492	\$	0
2	Eligibility Expansion	582		1,958,066
3	State Institutions DPSH Payments	583		0
4	Hospice Services	584		0
5	Public Employees Insurance Reserve Fund-			
6	Transfer	903		6,000,000
7	Match Drop	585		0
8	Unclassified	099		<u>27,877,927</u>
9	Total		\$	35,835,993

10 The above appropriation to Unclassified shall be used to
11 provide state match of Medicaid expenditures as defined and
12 authorized in subsection (c) of Chapter 9-4A-2a. Expenditures
13 from the fund are limited to the following: Payment of back-
14 logged billings, Funding for services to future federally
15 mandated population groups and payment of the required state
16 match for medicaid disproportionate share payments. The
17 remainder of all moneys deposited in the fund shall be trans-
18 ferred to the division of human services accounts.

134-Division of Human Services-

James "Tiger" Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2004 Org 0511

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

*135-Family Protection Services Board-
Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2004 Org 0511

1 Unclassified-Total 096 \$ 372,245

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

136-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 2004 Org 0601

1 Unclassified-Total 096 \$ 20,000

137-State Armory Board-

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2004 Org 0603

1 Unclassified-Total 096 \$ 675,067

138-West Virginia Division of Corrections-

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2004 Org 0608

1	Personal Services	001	\$	116,774
2	Annual Increment	004		1,651
3	Employee Benefits	010		52,130
4	Unclassified	099		<u>234,989</u>
5	Total		\$	405,544

139-West Virginia State Police-

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2004 Org 0612

1	Personal Services	001	\$	1,141,117
2	Annual Increment	004		3,600
3	Employee Benefits	010		346,696
4	Unclassified	099		562,979
5	BRIM Premium	913		<u>190,683</u>
6	Total		\$	2,245,075

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

140-West Virginia State Police-

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2004 Org 0612

1	Unclassified	099	\$	885,531
2	BRIM Premium	913		<u>97,381</u>
3	Total		\$	982,912

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

141-West Virginia State Police-

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2004 Org 0612

1	Unclassified	099	\$	469,082
2	BRIM Premium	913		<u>48,687</u>
3	Total		\$	517,769

4 From the cash balance available the amount of \$1,200,000
5 shall be transferred to fund 6519, fiscal year 2004, organization
6 0612 as reimbursement for funds transferred by legislative
7 action during fiscal year 2003.

142-West Virginia State Police-

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2004 Org 0612

1	Unclassified (R)	099	\$	350,000
---	------------------------	-----	----	---------

2	BRIM Premium	913	<u>34,086</u>
3	Total		\$ 384,086

4 Any unexpended balances remaining in the appropriations
 5 for Unclassified (fund 6519, activity 099) at the close of the
 6 fiscal year 2003 is hereby reappropriated for expenditure during
 7 the fiscal year 2004 with the exception of fund 6519, fiscal year
 8 2002, activity 099 which shall expire on June 30, 2003.

143-West Virginia State Police-

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2004 Org 0612

1	Unclassified	099	\$ 193,884
2	BRIM Premium	913	<u>11,678</u>
3	Total		\$ 205,562

144-West Virginia State Police-

Bail Bond Enforcer Fund

(WV Code Chapter 15)

Fund 6532 FY 2004 Org 0612

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

145-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2004 Org 0615

1	Personal Services	001	\$ 1,215,646
2	Annual Increment	004	14,750

3	Employee Benefits	010	406,374
4	Debt Service	040	9,000,000
5	Unclassified	099	<u>672,230</u>
6	Total		\$ 11,309,000

7 The Legislature reasonably expects the West Virginia
8 Regional Jail and Correctional Facility Authority to reimburse
9 the West Virginia State Police for the cost of the acquisition of
10 the approximate 32 acres and three buildings situated along
11 Academy Drive, Institute, West Virginia, and abutting the West
12 Virginia State Police Academy from proceeds of bonds issued
13 by the West Virginia Economic Development Authority on
14 behalf of the West Virginia Regional Jail and Correctional
15 Facility Authority, anticipated to be issued on or about Septem-
16 ber 1, 2003. The source of original payment for the land
17 acquisition was fund 6516, organization 0612 and upon
18 issuance of the bonds, proceeds thereof not to exceed the
19 amount of such capital expenditures will be applied to reim-
20 bursement of fund 6516, organization 0612 from the appropri-
21 ate account(s) or fund(s) from the West Virginia Regional Jail
22 and Correctional Facility Authority or its trustee. The maximum
23 amount of such reimbursement is \$1,500,000 and the maximum
24 principal amount of bonds to be issued for design, acquisition,
25 construction, and equipping of the Regional Jail and Economic
26 Development Authority Projects is \$50,000,000.

146-Division of Veterans' Affairs-

Veterans' Home

(WV Code Chapter 19A)

Fund 6754 FY 2004 Org 0618

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

147-Fire Commission-

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2004 Org 0619

1	Personal Services	001	\$	750,985
2	Annual Increment	004		7,000
3	Employee Benefits	010		272,000
4	Unclassified	099		<u>289,950</u>
5	Total		\$	1,319,935

6 Any unexpended cash balance remaining in fund 6152 at
 7 the close of the fiscal year 2003 is hereby available for expendi-
 8 ture as part of the fiscal year 2004 appropriation.

148-Division of Criminal Justice Services-

WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2004 Org 0620

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

149-Criminal Justice Services-

Court Security Fund

(Executive Order)

Fund 6804 FY 2004 Org 0620

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

DEPARTMENT OF TAX AND REVENUE

150-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2004 Org 0303

1	Personal Services	001	\$	1,485,680
2	Annual Increment	004		13,350
3	Employee Benefits	010		451,851
4	Unclassified	099		<u>643,683</u>
5	Total		\$	2,594,564

151-Tax Division-

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2004 Org 0702

1	Personal Services	001	\$	17,274
2	Annual Increment	004		125
3	Employee Benefits	010		5,384
4	Unclassified	099		<u>10,144</u>
5	Total		\$	32,927

152-Tax Division-

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2004 Org 0702

1	Personal Services	001	\$	830,304
2	Annual Increment	004		16,000

3	Employee Benefits	010	270,407
4	Unclassified	099	<u>362,179</u>
5	Total		\$ 1,478,890

*153-Insurance Commissioner-**Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2004 Org 0704

1	Personal Services	001	\$ 556,330
2	Annual Increment	004	2,500
3	Employee Benefits	010	143,220
4	Unclassified	099	<u>487,760</u>
5	Total		\$ 1,189,810

*154-Insurance Commissioner-**Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2004 Org 0704

1	Personal Services	001	\$ 276,028
2	Annual Increment	004	2,000
3	Employee Benefits	010	88,390
4	Unclassified	099	<u>104,153</u>
5	Total		\$ 470,571

155-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2004 Org 0704

1	Personal Services	001	\$ 2,716,953
2	Annual Increment	004	35,000
3	Employee Benefits	010	866,220
4	Unclassified	099	<u>949,834</u>
5	Total		\$ 4,568,007

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

156-Racing Commission-

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2004 Org 0707

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

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

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

157-Racing Commission-

Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2004 Org 0707

1	Personal Services	001	\$ 66,444
2	Annual Increment	004	1,000

APPROPRIATIONS

[Ch. 20]

3	Employee Benefits	010	24,152
4	Unclassified	099	<u>47,358</u>
5	Total		\$ 138,954

*158-Racing Commission-**General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2004 Org 0707

1	Personal Services	001	\$ 1,805,943
2	Annual Increment	004	20,250
3	Employee Benefits	010	482,303
4	Unclassified	099	<u>374,550</u>
5	Total		\$ 2,683,046

*159-Racing Commission-**Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Fund 7307 FY 2004 Org 0707

1	Unclassified-Total	096	\$ 65,000
---	--------------------------	-----	-----------

*160-Alcohol Beverage Control Administration-**Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2004 Org 0708

1	Personal Services	001	\$ 224,718
2	Annual Increment	004	3,200
3	Employee Benefits	010	78,856

4	Unclassified	099	<u>156,016</u>
5	Total		\$ 462,790

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

161-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2004 Org 0708

1	Personal Services	001	\$ 3,585,014
2	Annual Increment	004	76,000
3	Employee Benefits	010	1,281,893
4	Unclassified (R)	099	<u>1,918,070</u>
5	Total		\$ 6,860,977

6 Any unexpended balance remaining in Unclassified (fund
 7 7352, activity 099) at the close of the fiscal year 2003 is hereby
 8 reappropriated for expenditure during the fiscal year 2004.

9 From the above appropriation an amount of \$500,000 shall
 10 be used for the Tobacco/Alcohol Education Program. To the
 11 extent permitted by law, classified exempt positions shall be
 12 provided from Personal Services line item for the educator-
 13 inspector positions to be used in the education and enforcement
 14 activities relating to underage tobacco and alcohol use and
 15 sales.

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

18 The above appropriation includes the salary of the commis-
 19 sioner and the salaries, expenses and equipment of administra-
 20 tive offices, warehouses and inspectors.

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

DEPARTMENT OF TRANSPORTATION

162-Division of Motor Vehicles-

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2004 Org 0802

1	Personal Services	001	\$	394,810
2	Annual Increment	004		5,650
3	Employee Benefits	010		165,707
4	Unclassified	099		<u>277,355</u>
5	Total		\$	843,522

163-Division of Motor Vehicles-

Driver Rehabilitation

(WV Code Chapter 17C)

Fund 8214 FY 2004 Org 0802

1	Unclassified-Total	096	\$	182,194
---	--------------------------	-----	----	---------

164-Division of Motor Vehicles-

Insurance Certificate Fees

(WV Code Chapter 20)

Fund 8215 FY 2004 Org 0802

1	Personal Services	001	\$	621,000
---	-------------------------	-----	----	---------

Ch. 20]	APPROPRIATIONS		189
2	Annual Increment	004	15,750
3	Employee Benefits	010	258,546
4	Unclassified	099	<u>48,165</u>
5	Total		\$ 943,461

165-Division of Motor Vehicles-

Motorboat Licenses

(WV Code Chapter 20)

Fund 8216 FY 2004 Org 0802

1	Unclassified-Total	096	\$ 247,704
---	--------------------------	-----	------------

166-Division of Motor Vehicles-

Returned Check Fees

(WV Code Chapter 17)

Fund 8217 FY 2004 Org 0802

1	Unclassified-Total	096	\$ 16,000
---	--------------------------	-----	-----------

167-Division of Motor Vehicles-

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2004 Org 0802

1	Unclassified-Total	096	\$ 200,000
---	--------------------------	-----	------------

168-Division of Highways-

A. James Manchin Fund

(WV Code Chapter 17)

Fund 8319 FY 2004 Org 0803

1 Unclassified-Total 096 \$ 3,625,000

BUREAU OF COMMERCE

169-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2004 Org 0305

1	Personal Services	001	\$	368,845
2	Annual Increment	004		7,200
3	Employee Benefits	010		136,784
4	Unclassified	099		<u>262,771</u>
5	Total		\$	775,600

170-Division of Forestry-

Timberland Enforcement Operations

(WV Code Chapter 19)

Fund 3082 FY 2004 Org 0305

1 Unclassified-Total 096 \$ 150,000

171-Division of Forestry-

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2004 Org 0305

1 Unclassified-Total 096 \$ 3,722,575

172-Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2004 Org 0306

1	Personal Services	001	\$	42,818
2	Annual Increment	004		709
3	Employee Benefits	010		10,873
4	Unclassified	099		<u>173,756</u>
5	Total		\$	228,156

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

173-West Virginia Development Office-

Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 2004 Org 0307

1	Energy Assistance-Total (R)	647	\$	300,000
2	Any unexpended balance remaining in the appropriation for			
3	Energy Assistance-Total (fund 3144, activity 647) at the close			
4	of the fiscal year 2003 is hereby reappropriated for expenditure			
5	during the fiscal year 2004.			

174-West Virginia Development Office-

Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2004 Org 0307

1	Unclassified-Total (R)	096	\$	478,943
---	----------------------------------	-----	----	---------

2 Any unexpended balance remaining in the above appropria-
 3 tion for Unclassified-Total (fund 3162, activity 096) at the close
 4 of the fiscal year 2003 is hereby reappropriated for expenditure
 5 during the fiscal year 2004.

175-Division of Labor-

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2004 Org 0308

1	Personal Services	001	\$	940,540
2	Annual Increment	004		13,160
3	Employee Benefits	010		377,410
4	Unclassified	099		<u>560,576</u>
5	Total		\$	1,891,686

176-Division of Labor-

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2004 Org 0308

1	Personal Services	001	\$	162,700
2	Annual Increment	004		1,813
3	Employee Benefits	010		65,027
4	Unclassified	099		<u>86,521</u>
5	Total		\$	316,061

177-Division of Labor-

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2004 Org 0308

1	Unclassified-Total	096	\$	115,031
---	--------------------------	-----	----	---------

*178-Division of Labor-**Amusement Rides/Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2004 Org 0308

1	Unclassified-Total	096	\$	101,135
---	--------------------------	-----	----	---------

179-Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2004 Org 0310

1	Personal Services	001	\$	0
2	Annual Increment	004		0
3	Employee Benefits	010		0
4	Unclassified	099		0
5	Capital Improvements and			
6	Land Purchase (R)	248		1,260,000
7	Administration	155		1,656,690
8	Wildlife Resources	023		6,074,534
9	Law Enforcement.	806		6,074,534
10	Radio System	024		<u>2,000,000</u>
11	Total		\$	17,065,758

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

15 Any unexpended balance remaining in the appropriation for
 16 Capital Improvements and Land Purchase (fund 3200, activity

17 248) at the close of the fiscal year 2003 is hereby
18 reappropriated for expenditure during the fiscal year 2004.

180-Division of Natural Resources-

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2004 Org 0310

1 Unclassified-Total 096 \$ 20,000

181-Division of Natural Resources-

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2004 Org 0310

1	Personal Services	001	\$	192,000
2	Annual Increment	004		1,400
3	Employee Benefits	010		79,324
4	Unclassified	099		<u>88,356</u>
5	Total		\$	361,080

182-Division of Natural Resources-

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2004 Org 0310

1	Personal Services	001	\$	234,568
2	Annual Increment	004		6,400
3	Employee Benefits	010		98,304
4	Unclassified	099		<u>146,355</u>

1 Unclassified-Total 096 \$ 20,000

186-Miners' Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3351 FY 2004 Org 0314

1	Personal Services	001	\$	400,300
2	Employee Benefits	010		143,750
3	Unclassified	099		845,950
4	WV Mining Extension Service	026		<u>150,000</u>
5	Total		\$	1,540,000

BUREAU OF EMPLOYMENT PROGRAMS

187-Bureau of Employment Programs-

Workers' Compensation Fund

(WV Code Chapter 23)

Fund 3440 FY 2004 Org 0322

1	Personal Services	001	\$	29,400,673
2	Annual Increment	004		443,253
3	Employee Benefits	010		11,114,158
4	Unclassified (R)	099		28,301,647
5	Technology Improvements (R)	599		2,000,000
6	Employer Excess Liability Fund	226		<u>117,197</u>
7	Total		\$	71,376,928

8 Any unexpended balance remaining in the appropriations
 9 for Unclassified (fund 3440, activity 099), and Technology
 10 Improvements (fund 3440, activity 599) at the close of the
 11 fiscal year 2003 are hereby reappropriated for expenditure
 12 during the fiscal year 2004.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

188-Solid Waste Management Board

(WV Code Chapter 20)

Fund 3288 FY 2004 Org 0312

1	Personal Services	001	\$	631,065
2	Annual Increment	004		3,700
3	Employee Benefits	010		190,621
4	Unclassified	099		<u>1,894,662</u>
5	Total		\$	2,720,048

189-Division of Environmental Protection-

Special Reclamation Trust Fund

(WV Code Chapter 22A)

Fund 3321 FY 2004 Org 0313

1	Personal Services	001	\$	827,610
2	Annual Increment	004		7,850
3	Employee Benefits	010		346,868
4	Unclassified	099		<u>17,643,140</u>
5	Total		\$	18,825,468

190-Division of Environmental Protection-

Oil and Gas Reclamation Trust

(WV Code Chapter 22B)

Fund 3322 FY 2004 Org 0313

1	Unclassified-Total	096	\$	150,000
---	--------------------------	-----	----	---------

191-Division of Environmental Protection-

Oil and Gas Operating Permits

(WV Code Chapter 22B)

Fund 3323 FY 2004 Org 0313

1	Personal Services	001	\$	264,368
2	Annual Increment	004		3,400
3	Employee Benefits	010		89,686
4	Unclassified	099		<u>503,448</u>
5	Total		\$	860,902

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

(WV Code Chapter 22)

Fund 3324 FY 2004 Org 0313

1	Personal Services	001	\$	5,108,765
2	Annual Increment	004		53,503
3	Employee Benefits	010		1,927,506
4	Unclassified	099		<u>3,356,496</u>
5	Total		\$	10,446,270

*193-Division of Environmental Protection-**Underground Storage Tanks-**Administrative Fund*

(WV Code Chapter 20)

Fund 3325 FY 2004 Org 0313

1	Personal Services	001	\$	300,313
2	Annual Increment	004		3,200
3	Employee Benefits	010		103,371

4	Unclassified	099	<u>124,523</u>
5	Total		\$ 531,407

*194-Division of Environmental Protection-**Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Fund 3331 FY 2004 Org 0313

1	Personal Services	001	\$ 525,160
2	Annual Increment	004	6,680
3	Employee Benefits	010	163,706
4	Unclassified	099	<u>928,550</u>
5	Total		\$ 1,624,096

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

(WV Code Chapter 20)

Fund 3332 FY 2004 Org 0313

1	Personal Services	001	\$ 238,196
2	Annual Increment	004	1,900
3	Employee Benefits	010	73,084
4	Unclassified	099	<u>1,008,156</u>
5	Total		\$ 1,321,336

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

(WV Code Chapter 20)

Fund 3333 FY 2004 Org 0313

1	Personal Services	001	\$ 1,608,921
2	Annual Increment	004	26,850
3	Employee Benefits	010	545,959
4	Unclassified	099	<u>729,391</u>
5	Total		\$ 2,911,121

*197-Division of Environmental Protection-**Fees and Operating Expenses*

(WV Code Chapter 16)

Fund 3336 FY 2004 Org 0313

1	Personal Services	001	\$ 3,725,624
2	Annual Increment	004	32,650
3	Employee Benefits	010	1,169,957
4	Unclassified	099	<u>2,226,479</u>
5	Total		\$ 7,154,710

*198-Division of Environmental Protection-**Environmental Laboratory**Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2004 Org 0313

1	Personal Services	001	\$ 133,798
2	Annual Increment	004	2,050
3	Employee Benefits	010	50,672
4	Unclassified	099	<u>185,322</u>
5	Total		\$ 371,842

199-Division of Environmental Protection-

Stream Restoration Fund

Fund 3349 FY 2004 Org 0313

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

200-Division of Environmental Protection-

Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2004 Org 0313

1 Unclassified-Total 096 \$ 1,415,856

201-Oil and Gas Conservation Commission

(WV Code Chapter 22)

Fund 3371 FY 2004 Org 0315

1	Personal Services	001	\$	154,969
2	Annual Increment	004		1,900
3	Employee Benefits	010		30,726
4	Unclassified	099		<u>47,362</u>
5	Total		\$	234,957

HIGHER EDUCATION POLICY COMMISSION

202-Health Sciences-

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2004 Org 0463

1 Unclassified-Total (R) 096 \$ 15,359,467

2 Any unexpended balance remaining in the appropriation for
3 the West Virginia University Health Sciences Center is hereby
4 reappropriated for expenditure during the fiscal year 2004.

203-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 2004 Org 0442

1	Debt Service (R)	040	\$ 5,622,243
2	General Capital Expenditures (R)	306	<u>500,000</u>
3	Total		\$ 6,122,243

4 Any unexpended balances remaining in the appropriations
5 are hereby reappropriated for expenditure during the fiscal year
6 2004 with the exception of fund 4902, fiscal year 2000, activity
7 251, fund 4902, fiscal year 2000, activity 438, and fund 4902,
8 fiscal year 2002, activity 306 (\$7,000,000) which shall expire
9 on June 30, 2003.

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

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

204-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 2004 Org 0442

1	Debt Service (R)	040	\$ 14,965,858
2	General Capital Expenditures (R)	306	500,000
3	Facilities Planning		
4	and Administration (R)	386	<u>387,975</u>
5	Total		\$ 15,853,833

6 Any unexpended balances remaining in the appropriations
 7 are hereby reappropriated for expenditure during the fiscal year
 8 2004 with the exception of fund 4903, fiscal year 1999 and
 9 fiscal year 2000, activity 040, fund 4903, fiscal year 2000,
 10 activity 258, fund 4903, fiscal year 2000, activity 438, fund
 11 4903, fiscal year 1996, activity 458, and fund 4903, fiscal year
 12 2002, activity 306 (\$22,800,000) which shall expire on June 30,
 13 2003.

14 The total amount of this appropriation shall be paid from
 15 the special capital improvement fund created in article twelve-
 16 b, chapter eighteen of the code. Projects are to be paid on a cash
 17 basis and made available from the date of passage.

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

205-Higher Education Policy Commission-

*1977 State System Registration Fee Refund Revenue Construction
Fund*

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2004 Org 0442

1 Any unexpended balance remaining in the appropriation at
2 the close of the fiscal year 2003 is hereby reappropriated for
3 expenditure during the fiscal year 2004.

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

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

206-Higher Education Policy Commission-

Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2004 Org 0442

1 Any unexpended balance remaining in the appropriation at
 2 the close of the fiscal year 2003 is hereby reappropriated for
 3 expenditure during the fiscal year 2004.

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

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

207-Higher Education Policy Commission-

State University System Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4907 FY 2004 Org 0442

1 Any unexpended balance remaining in the appropriation at
 2 the close of the fiscal year 2003 is hereby reappropriated for
 3 expenditure during the fiscal year 2004.

208-Higher Education Policy Commission-

Fairmont State College

(WV Code Chapters 18 and 18B)

Fund 4457 FY 2004 Org 0484

1 Capital Improvements - Total (R) 958 \$ 235,000

2 The total amount of this appropriation is from the sale of
 3 the Shaw House and shall be used for the additional purchase
 4 of real property or technology, or for capital improvements at
 5 Fairmont State College. The above appropriation shall be
 6 available from the date of passage.

MISCELLANEOUS BOARDS AND COMMISSIONS

209-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2004 Org 0509

1	Personal Services	001	\$	46,074
2	Annual Increment	004		650
3	Employee Benefits	010		15,753
4	Unclassified.	099		<u>88,687</u>
5	Total		\$	151,164

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

210-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2004 Org 0706

1	Personal Services	001	\$	161,262
2	Annual Increment	004		4,100
3	Employee Benefits	010		58,913
4	Unclassified	099		<u>81,890</u>
5	Total		\$	306,165

211-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2004 Org 0906

1 Unclassified-Total 096 \$ 348,090

212-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2004 Org 0907

1 Unclassified-Total 096 \$ 882,136

213-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2004 Org 0926

1	Personal Services	001	\$ 7,916,582
2	Annual Increment	004	130,000
3	Employee Benefits	010	2,535,487
4	Unclassified	099	2,449,324
5	Debt Payment/Capital Outlay	520	350,000
6	BRIM Premium	913	<u>139,752</u>
7	Total		\$ 13,521,145

8 The total amount of this appropriation shall be paid from a
9 special revenue fund out of collections for special license fees
10 from public service corporations as provided by law.

11 The Public Service Commission is authorized to spend up
12 to \$250,000, from surplus funds in this account, to meet the
13 expected deficiencies in the Motor Carrier Division account due

14 to passage of enrolled house bill no. 2715, regular session,
15 1997.

214-Public Service Commission-

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8624 FY 2004 Org 0926

1	Personal Services	001	\$	146,426
2	Annual Increment	004		5,556
3	Employee Benefits	010		50,587
4	Unclassified	099		<u>87,053</u>
5	Total		\$	289,622

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

215-Public Service Commission-

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2004 Org 0926

1	Personal Services	001	\$	1,582,433
2	Annual Increment	004		40,000
3	Employee Benefits	010		548,205
4	Unclassified	099		<u>574,469</u>
5	Total		\$	2,745,107

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

216-Public Service Commission-

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2004 Org 0926

1	Personal Services	001	\$	480,577
2	Annual Increment	004		5,900
3	Employee Benefits	010		135,446
4	Unclassified	099		284,633
5	BRIM Premium	913		<u>2,453</u>
6	Total		\$	909,009

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

217-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2004 Org 0927

1	Personal Services	001	\$	360,695
2	Annual Increment	004		5,900
3	Employee Benefits	010		115,491
4	Unclassified	099		<u>237,335</u>
5	Total		\$	719,421

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

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

(WV Code Chapter 30)

Fund 8646 FY 2004 Org 0930

1 Unclassified-Total 096 \$ 54,945

219-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2004 Org 0935

1 Unclassified-Total 096 \$ 115,000

220-WV Board of Licensed Dietitians

Fund 8680 FY 2004 Org 0936

1 Unclassified-Total 096 \$ 20,000

221-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2004 Org 0938

1 Unclassified-Total 096 \$ 80,000

1 Total TITLE II, Section 3-

2 Other Funds \$ 674,270,312

1 **Sec. 4. Appropriations from lottery net profits.-**Net
2 profits of the lottery are to be deposited by the director of the
3 lottery to the following accounts in the amounts indicated. The
4 director of the lottery shall prorate each deposit of net profits in

5 the proportion the appropriation for each account bears to the
 6 total of the appropriations for all accounts.

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

222-Education, Arts, Sciences and Tourism-

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2004 Org 0211

	Activity	Lottery Funds
1 Debt Service-Total	310	\$ 10,000,000

223-West Virginia Development Office-

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2004 Org 0304

1 Tourism-Telemarketing Center	463	\$ 90,000
2 Tourism-Advertising (R)	618	3,597,930
3 State Parks and Recreation		
4 Advertising (R)	619	684,000

212	APPROPRIATIONS	[Ch. 20
5	Capitol Complex-Capital Outlay (R) . . .	417 2,000,000
6	WV Film Development Office	498 102,139
7	Motor Sports Council	513 90,000
8	Tourism-Special Projects (R)	859 1,000,000
9	Tourism-Unclassified (R)	662 <u>4,185,765</u>
10	Total	\$ 11,749,834

11 Any unexpended balances remaining in the appropriations
12 for Tourism-Advertising (fund 3067, activity 618), State Parks
13 and Recreation Advertising (fund 3067, activity 619), Capitol
14 Complex-Capital Outlay (fund 3067, activity 417), Tourism-
15 Special Projects (fund 3067, activity 859), Tourism-Unclassi-
16 fied (fund 3067, activity 662), and Tourism-Unclassified-
17 Lottery Surplus (fund 3067, activity 773) at the close of the
18 fiscal year 2003 are hereby reappropriated for expenditure
19 during the fiscal year 2004.

224-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2004 Org 0310

1	Unclassified (R)	099 \$ 2,437,952
2	Pricketts Fort State Park	324 108,000
3	Non-Game Wildlife	527 488,938
4	West Virginia Stream Partners Program	637 90,000
5	Gypsy Moth Suppression	
6	Program for State Parks	017 <u>50,000</u>
7	Total	\$ 3,174,890

8 Any unexpended balances remaining in the appropriations
9 for Unclassified (fund 3267, activity 099), State Recreation
10 Area Improvements (fund 3267, activity 307), Capital Outlay-
11 Parks (fund 3267, activity 288), Flood Reparations (fund 3267,
12 activity 400), Parks Operations-Unclassified (fund 3267,
13 activity 645), State Parks-Special Projects (fund 3267, activity

14 860), Computerized Lodging Reservation System (fund 3267,
 15 activity 910), and State Parks Repairs, Renovations, Mainte-
 16 nance and Life Safety Repairs (fund 3267, activity 911) at the
 17 close of the fiscal year 2003 are hereby reappropriated for
 18 expenditure during the fiscal year 2004.

225-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2004 Org 0402

1	Teachers' Retirement System	019	\$ 6,494,130
2	Educational Program Allowance	996	250,000
3	Traditional Student Increased		
4	Enrollment-5 years through		
5	12 th grade	997	2,000,000
6	Safe Schools	143	1,000,000
7	Computer Basic Skills (R)	145	4,000,000
8	S.U.C.C.E.S.S (R)	255	4,000,000
9	Computer Study	998	100,000
10	Technology Repair and		
11	Modernization (R)	298	1,000,000
12	Program Modernization	305	725,000
13	READS Program	365	300,000
14	MATH Program	368	300,000
15	Vocational Education		
16	Equipment Replacement	393	819,750
17	Assessment Program	396	6,629,697
18	Employment Programs Rate Relief	401	878,189
19	Adverse Impact on Counties	968	600,000
20	Three Tier Funding	411	1,000,000
21	Technology and Telecommunications		
22	Initiative (R)	596	807,806
23	Virtual Schools on the Internet	178	445,668
24	Teacher Reimbursement	573	150,000

214	APPROPRIATIONS		[Ch. 20
25	Teacher Relocation	574	50,000
26	National Science Foundation Match/WV		
27	Science	578	300,000
28	Statewide Assistance	656	0
29	Educational Enhancements	695	2,427,000
30	Educational Development	823	<u>1,500,000</u>
31	Total		\$ 35,777,240

32 Any unexpended balances remaining in the appropriations
33 for Computer Basic Skills (fund 3951, activity 145),
34 S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair
35 and Modernization (fund 3951, activity 298), Computer Basic
36 Skills-Total (fund 3951, activity 567), Technology and Tele-
37 communications Initiative (fund 3951, activity 596), Technol-
38 ogy Demonstration Project (fund 3951, activity 639), and
39 Educational Development (fund 3951, activity 823) at the close
40 of the fiscal year 2003 are hereby reappropriated for expendi-
41 ture during the fiscal year 2004.

226-State Department of Education-

School Building Authority-

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2004 Org 0402

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

227-Department of Education and the Arts-

Office of the Secretary-

Control Account-

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2004 Org 0431

1	WVU Center for Excellence		
2	in Disabilities	658	\$ 0
3	Center for Excellence in Disabilities . . .	967	100,000
4	Special Olympic Games	966	25,000
5	Commission for National		
6	Community Service	193	160,050
7	Technical Prep Program	440	500,000
8	Arts Programs (R)	500	40,000
9	Hospitality Training	600	533,500
10	Energy Express	861	0
11	Teacher Education Partnerships (R) . . .	576	0
12	College Readiness (R)	579	200,000
13	LATA Access (R)	580	725,000
14	Neurological Research		
15	and Development	634	0
16	Challenger Learning Center	862	60,000
17	WV Humanities Council	168	<u>350,000</u>
18	Total		\$ 2,693,550

19 Any unexpended balances remaining in the appropriations
 20 for Unclassified (fund 3508, activity 099), Arts Programs (fund
 21 3508, activity 500), Teacher Education Partnerships (fund 3508,
 22 activity 576), College Readiness (fund 3508, activity 579),
 23 LATA Access (fund 3508, activity 580), and WV2001 Project
 24 (fund 3508, activity 836) at the close of fiscal year 2003 are
 25 hereby reappropriated for expenditure during the fiscal year
 26 2004.

*228-Division of Culture and History-**Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2004 Org 0432

1	Huntington Symphony	027	\$	75,000
2	Martin Luther King, Jr.			
3	Holiday Celebration	031		12,000
4	Fairs and Festivals	122		2,000,000
5	Archeological Curation/Capital			
6	Improvements (R)	246		422,715
7	Historic Preservation Grants (R)	311		449,388
8	West Virginia Public Theater	312		240,000
9	Tri-County Fair Association	343		125,000
10	George Tyler Moore Center for the			
11	Study of the Civil War	397		50,000
12	Theater Arts of West Virginia	464		350,000
13	Grants for Competitive			
14	Arts Program (R)	624		810,000
15	Contemporary American			
16	Theater Festival	811		90,000
17	Independence Hall (R)	812		50,000
18	Mountain State Forest Festival	864		50,000
19	Project ACCESS (R)	865		<u>0</u>
20	Total		\$	4,724,103

21 Any unexpended balances remaining in the appropriations
22 for Archeological Curation/Capital Improvements (fund 3534,
23 activity 246), Historic Preservation Grants (fund 3534, activity
24 311), Capital Outlay, Repairs and Equipment (fund 3534,
25 activity 589), Grants for Competitive Arts Program (fund 3534,
26 activity 624), Independence Hall (fund 3534, activity 812), and
27 Project ACCESS (fund 3534, activity 865) at the close of the
28 fiscal year 2003 are hereby reappropriated for expenditure
29 during the fiscal year 2004.

229-Library Commission-

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2004 Org 0433

1	Books and Films	179	\$	150,000
2	Grants to Public Libraries	182		7,348,884
3	Libraries-Special Projects	625		990,000
4	Infomine Network	884		<u>900,091</u>
5	Total		\$	9,388,975

230-Educational Broadcasting Authority-

Lottery Education Fund

(WV Code Chapter 10)

Fund 3587 FY 2004 Org 0439

1	Star Schools	509	\$	242,500
2	Mountain Stage	249		<u>180,000</u>
3	Total		\$	422,500

4 Any unexpended balance remaining in the above appropria-
5 tion for Digital Conversion (fund 3587, activity 247) at the
6 close of the fiscal year 2003 is hereby reappropriated for
7 expenditure during the fiscal year 2004.

231-Bureau of Senior Services-

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2004 Org 0508

1	Local Programs Service Delivery Costs	200	\$	2,475,250
2	In-Home Services for Senior Citizens ..	224		1,000,000
3	Nutrition Services for the Elderly	337		1,000,000

4	Senior Citizen Centers		
5	and Programs (R)	462	3,900,000
6	Direct Services	481	2,800,000
7	Transfer to Division of Human Services		
8	for Health Care and Title XIX Waiver		
9	for Senior Citizens	539	13,000,000
10	Senior Services Medicaid Transfer	871	10,300,000
11	Legislative Initiatives		
12	for the Elderly	904	3,700,000
13	Long Term Care Ombudsmen	905	<u>96,000</u>
14	Total		\$ 38,271,250

15 Any unexpended balances remaining in the appropriations
 16 for Senior Citizen Centers and Programs (fund 5405, activity
 17 462), and Holly Grove Mansion Restoration (fund 5405,
 18 activity 685) at the close of the fiscal year 2003 are hereby
 19 reappropriated for expenditure during the fiscal year 2004.

20 The above appropriation for Transfer to Division of Human
 21 Services for Health Care and Title XIX Waiver for Senior
 22 Citizens along with the federal moneys generated thereby shall
 23 be used for reimbursement for services provided under the
 24 program. Further, the program shall be preserved within the
 25 aggregate of these funds.

232-Higher Education Policy Commission-

Lottery Education-

Higher Education Policy Commission-

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2004 Org 0441

1	Unclassified (R)	099	\$ 3,000,000
2	Higher Education Grant Program (R) . .	164	18,000,000
3	Tuition Contract Program (R)	165	749,561
4	Minority Doctoral Fellowship (R)	166	150,000
5	Underwood - Smith Scholarship		
6	Program-Student Awards (R)	167	150,000
7	School of Osteopathic Medicine (R) . . .	172	6,618,138
8	School of Osteopathic Medicine BRIM		
9	Subsidy (R)	403	90,249
10	Rural Health Initiative - Medical Schools		
11	Support (R)	581	522,923
12	Vice Chancellor for Health Sciences -		
13	Rural Health Initiative Program and		
14	Site Support (R)	595	868,000
15	Health Sciences Scholarship (R)	176	148,500
16	Higher Education-Special Projects (R) .	488	1,901,808
17	MA Public Health Program and		
18	Health Science Technology (R) . . .	623	65,379
19	HEAPS Grant Program (R)	867	3,000,000
20	WV Engineering, Science, and		
21	Technology Scholarship		
22	Program (R)	868	500,000
23	Health Sciences Career		
24	Opportunities Program (R)	869	65,898
25	HSTA Program (R)	870	<u>1,017,341</u>
26	Total		<u>\$ 36,847,797</u>

27 Any unexpended balances remaining in the appropriations
 28 at the close of fiscal year 2003 are hereby reappropriated for
 29 expenditure during the fiscal year 2004.

30 Included in the appropriation for Higher Education -
 31 Special Projects is \$1,400,000 for the WVU-Health Sciences
 32 Eastern Rural Health Initiative and ~~*\$561,808~~ \$501,808* for
 33 the Fairmont State College E-Learning Clusters and Services.

* CLERK'S NOTE: This amount was reduced by the Governor by \$60,000.

34 Total TITLE II, Section 4-
 35 Lottery Revenue \$ 171,050,139

1 **Sec. 5. Appropriations from state excess lottery revenue**

2 **fund.-** In accordance with section eighteen-a, article twenty-
 3 two, chapter twenty nine of the code, the following appropria-
 4 tions shall be deposited and disbursed by the director of the
 5 lottery to the following accounts in this section in the amounts
 6 indicated.

233-Lottery Commission-

General Purpose Account

Fund 7206 FY 2004 Org 0705

	Activity	Funds
1	Unclassified-Total-Transfer 402	\$ 65,000,000

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

234-Economic Development Authority-

Economic Development Project Fund

Fund 3167 FY 2004 Org 0307

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

2 Pursuant to subsection (f), section eighteen-a, article
 3 twenty-two, chapter twenty-nine of the code, excess lottery
 4 revenues are authorized to be transferred to the lottery fund as
 5 reimbursement of amounts transferred to the economic develop-
 6 ment project fund pursuant to section four of this title and

7 subsection (f), section eighteen, article twenty-two, chapter
8 twenty-nine of the code.

235-Education Improvement Fund

Fund 4295 FY 2004 Org 0441

1 Unclassified-Total-Transfer (R) 402 \$ 17,000,000

2 Any unexpended balance remaining in the appropriation at
3 the close of fiscal year 2003 is hereby reappropriated for
4 expenditure during the fiscal year 2004.

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

236-School Building Authority

Fund 3514 FY 2004 Org 0402

1 Unclassified-Total-Transfer (R) 402 \$ 20,000,000

2 Any unexpended balance remaining in the appropriation at
3 the close of fiscal year 2003 is hereby reappropriated for
4 expenditure during the fiscal year 2004.

5 The above appropriation for Unclassified-Total-Trans-
6 fer(activity 402) shall be transferred to the School Building
7 Debt Service Fund (fund 3515, org 0402) established by section
8 six, article nine-d, chapter eighteen of the code.

237-West Virginia Infrastructure Council

Fund 3390 FY 2004 Org 0316

1 Unclassified-Total-Transfer (R) 402 \$ 40,000,000

2 Any unexpended balance remaining in the appropriation at
 3 the close of the fiscal year 2003 is hereby reappropriated for
 4 expenditure during the fiscal year 2004.

5 The above appropriation for Unclassified-Total-Trans-
 6 fer(activity 402) shall be transferred to the West Virginia
 7 Infrastructure Fund (fund 3384, org 0316) created by section
 8 nine, article fifteen-a, chapter thirty-one of the code.

238-Higher Education Improvement Fund

Fund 4297 FY 2004 Org 0441

1 Unclassified-Total (R) 096 \$ 10,000,000

2 Any unexpended balance remaining in the appropriation at
 3 the close of the fiscal year 2003 is hereby reappropriated for
 4 expenditure during the fiscal year 2004.

239-State Park Improvement Fund

Fund 3277 FY 2004 Org 0310

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

2 Any unexpended balance remaining in the appropriation at
 3 the close of the fiscal year 2003 is hereby reappropriated for
 4 expenditure during the fiscal year 2004.

240-Lottery Commission-

Refundable Credit

Fund 7207 FY 2004 Org 0705

1 Unclassified-Total-Transfer 402 \$ 10,000,000

2 The above appropriation for Unclassified-Total-Transfer
 3 (activity 402) shall be transferred to the General Revenue Fund
 4 to provide reimbursement for the refundable credit allowable
 5 under chapter eleven, article twenty-two, section twenty-one of
 6 the code. The amount of the required transfer shall be deter-
 7 mined solely by the state tax commissioner and shall be
 8 completed by the director of the lottery upon the commissioners
 9 request.

241-Lottery Commission-

Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2004 Org 0705

1 Unclassified-Total-Transfer 402 \$ 61,800,000

2 The above appropriation for Unclassified-Total-Transfer
 3 (activity 402) shall be transferred to the General Revenue Fund
 4 only after all funding required by chapter twenty-nine, article
 5 twenty-two, section eighteen-a of the code has been satisfied as
 6 determined by the director of the lottery.

242-Joint Expenses

(WV Code Chapter 4)

Fund 1735 FY 2004 Org 2300

1 Any unexpended balance remaining in the appropriation at
 2 the close of fiscal year 2003 is hereby reappropriated for
 3 expenditure during the fiscal year 2004.

4 The above appropriation for Tax Reduction and Federal
 5 Funding Increased Compliance (TRAFFIC)-Total (fund 0175,
 6 activity 620) is intended for possible general state tax reduc-
 7 tions or the offsetting of any reductions in federal funding for

8 state programs. It is not intended as a general appropriation for
9 expenditure by the Legislature.

10 Total TITLE II, Section 5-Excess

11 Lottery Funds \$ 247,800,000

1 **Sec. 6. Appropriations of federal funds.**-In accordance
2 with article eleven, chapter four of the code, from federal funds
3 there are hereby appropriated conditionally upon the fulfillment
4 of the provisions set forth in article two, chapter five-a of the
5 code the following amounts, as itemized, for expenditure during
6 the fiscal year two thousand four.

LEGISLATIVE

243-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2004 Org 2300

		Activity	Federal Funds
1	Unclassified-Total	096 \$	1,200,715

EXECUTIVE

244-Governor's Office-

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Fund 8792 FY 2004 Org 0100

1	Unclassified-Total	096 \$	450,000
---	------------------------------	--------	---------

245-Governor's Office-

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2004 Org 0100

1 Unclassified-Total 096 \$ 4,811,976

246-Governor's Office-

Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2004 Org 0100

1 Unclassified-Total 096 \$ 5,431,517

247-Auditor's Office-

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2004 Org 1200

1 Unclassified-Total 096 \$ 14,000,942

248-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2004 Org 1400

1 Unclassified-Total 096 \$ 4,246,459

249-Department of Agriculture-

Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2004 Org 1400

1 Unclassified-Total 096 \$ 818,829

250-Department of Agriculture-

State ~~Soil~~ Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2004 Org 1400

1 Unclassified-Total 096 \$ 341,174

251-Secretary of State-

(WV Code Chapter 3)

Fund 8854 FY 2004 Org 1600

1 Unclassified-Total 096 \$ 19,500,000

DEPARTMENT OF ADMINISTRATION

252-West Virginia Prosecuting Attorney's Institute

(WV Code Chapter 7)

Fund 8834 FY 2004 Org 0228

1 Unclassified-Total 096 \$ 199,468

* **CLERK'S NOTE:** Language deleted by the Governor.

253-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2004 Org 0230

1 Unclassified-Total 096 \$ 33,648,118

DEPARTMENT OF EDUCATION

254-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2004 Org 0402

1 Unclassified-Total 096 \$ 40,000,000

255-State Department of Education-

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2004 Org 0402

1 Unclassified-Total 096 \$ 85,000,000

256-State Board of Education-

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2004 Org 0402

1 Unclassified-Total 096 \$ 21,000,000

*257-State Department of Education-**Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2004 Org 0402

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

DEPARTMENT OF EDUCATION AND THE ARTS*258-Department of Education and the Arts-**Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2004 Org 0431

1 Unclassified-Total 096 \$ 7,402,293

259-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2004 Org 0432

1 Unclassified-Total 096 \$ 2,065,200

260-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2004 Org 0433

1 Unclassified-Total 096 \$ 1,932,637

261-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2004 Org 0439

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

262-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2004 Org 0932

1 Unclassified-Total 096 \$ 46,323,075

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

263-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2004 Org 0506

1 Unclassified-Total 096 \$ 7,308,797

264-Division of Health-

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2004 Org 0506

1 Unclassified-Total 096 \$ 63,692,425

265-Division of Health-

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2004 Org 0506

1 Unclassified-Total 096 \$ 16,000,000

266-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2004 Org 0507

1 Unclassified-Total 096 \$ 450,000

267-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2004 Org 0510

1 Unclassified-Total 096 \$ 510,467

268-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2004 Org 0511

1 Unclassified-Total 096 \$ 1,771,108,058

**DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY**

269-Adjutant General-State Militia

(WV Code Chapter 15)

Fund 8726 FY 2004 Org 0603

1 Unclassified-Total 096 \$ 57,396,445

270-Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2004 Org 0606

1 Unclassified-Total 096 \$ 8,693,164

271-Division of Corrections

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

Fund 8836 FY 2004 Org 0608

1 Unclassified-Total 096 \$ 650,000

272-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2004 Org 0612

1 Unclassified-Total 096 \$ 1,070,309

273-Division of Veterans' Affairs-

Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2004 Org 0618

1 Unclassified-Total 096 \$ 1,203,780

274-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2004 Org 0620

1 Unclassified-Total 096 \$ 12,147,834

275-Division of Juvenile Services

(WV Code Chapter 49)

Fund 8855 FY 2004 Org 0621

1 Unclassified-Total 096 \$ 331,000

DEPARTMENT OF TAX AND REVENUE*276-Tax Division*

(WV Code Chapter 11)

Fund 7069 FY 2004 Org 0702

1 Unclassified-Total 096 \$ 25,000

DEPARTMENT OF TRANSPORTATION*277-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2004 Org 0802

1 Unclassified-Total 096 \$ 9,819,900

278-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2004 Org 0805

1 Unclassified-Total 096 \$11,602,638

279-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2004 Org 0806

1 Unclassified-Total 096 \$ 2,395,000

280-Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2004 Org 0807

1 Unclassified-Total 096 \$ 196,875

BUREAU OF COMMERCE

281-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2004 Org 0305

1 Unclassified-Total 096 \$ 1,507,485

282-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2004 Org 0306

1 Unclassified-Total 096 \$ 386,000

283-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2004 Org 0307

1 Unclassified-Total 096 \$ 9,595,134

284-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2004 Org 0308

1 Unclassified-Total 096 \$ 540,822

285-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2004 Org 0310

1 Unclassified-Total 096 \$ 8,629,568

286-Division of Miners' Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2004 Org 0314

1 Unclassified-Total 096 \$ 590,765

BUREAU OF EMPLOYMENT PROGRAMS

287-Bureau of Employment Programs

(WV Code Chapter 21A)

Fund 8835 FY 2004 Org 0323

1	Unclassified	099	\$ 512,657
2	Reed Act 2002 - Unemployment		
3	Compensation.	622	2,374,000
4	Reed Act 2002 - Employment Services.	630	<u>1,371,000</u>
5	Total		\$ 4,257,657

6 Pursuant to the requirements of 42 U.S.C. 1103, Section
 7 903 of the Social Security Act, as amended, and the provisions
 8 of section nine, article nine, chapter twenty-one-a of the code
 9 of West Virginia, one thousand nine hundred thirty-one, as
 10 amended, the above appropriation to Unclassified shall be used
 11 by the bureau of employment programs for the specific purpose
 12 of administration of the state's unemployment insurance
 13 program or job service activities, subject to each and every
 14 restriction, limitation or obligation imposed on the use of the
 15 funds by those federal and state statutes.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

288-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2004 Org 0313

1	Unclassified-Total	096	\$ 98,015,470
---	--------------------------	-----	---------------

BUREAU OF SENIOR SERVICES

289-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2004 Org 0508

1	Unclassified-Total	096	\$ 14,249,100
---	--------------------------	-----	---------------

MISCELLANEOUS BOARDS AND COMMISSIONS

290-Public Service Commission-

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2004 Org 0926

1 Unclassified-Total 096 \$ 1,514,718

291-Public Service Commission-

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2004 Org 0926

1 Unclassified-Total 096 \$ 270,918

1 Total TITLE II, Section 6-

2 Federal Funds \$ 2,468,535,879

1 **Sec. 7. Appropriations from federal block grants.-**The
 2 following items are hereby appropriated from federal block
 3 grants to be available for expenditure during the fiscal year
 4 2004.

292-Governor's Office-

Office of Economic Opportunity

Fund 8799 FY 2004 Org 0100

1 Unclassified-Total 096 \$ 12,734,724

293-West Virginia Development Office-

Community Development

Fund 8746 FY 2004 Org 0307

1 Unclassified-Total 096 \$ 28,330,852

294-West Virginia Development Office-

Workforce Investment Act

Fund 8848 FY 2004 Org 0307

1 Unclassified-Total 096 \$ 55,369,286

295-State Department of Education-

Education Grant

Fund 8748 FY 2004 Org 0402

1 Unclassified-Total 096 \$ 130,000,000

296-Division of Health-

Maternal and Child Health

Fund 8750 FY 2004 Org 0506

1 Unclassified-Total 096 \$ 10,878,891

297-Division of Health-

Preventive Health

Fund 8753 FY 2004 Org 0506

1 Unclassified-Total 096 \$ 2,237,034

298-Division of Health-

Substance Abuse Prevention and Treatment

Fund 8793 FY 2004 Org 0506

1 Unclassified-Total 096 \$ 11,557,304

299-Division of Health-

Community Mental Health Services

Fund 8794 FY 2004 Org 0506

1 Unclassified-Total 096 \$ 3,314,733

300-Division of Health-

Abstinence Education Program

Fund 8825 FY 2004 Org 0506

1 Unclassified-Total 096 \$ 976,837

301-Division of Human Services-

Energy Assistance

Fund 8755 FY 2004 Org 0511

1 Unclassified-Total 096 \$ 21,100,942

302-Division of Human Services-

Social Services

Fund 8757 FY 2004 Org 0511

1 Unclassified-Total 096 \$ 15,346,237

303-Division of Human Services-

Temporary Assistance Needy Families

Fund 8816 FY 2004 Org 0511

1 Unclassified-Total 096 \$ 175,000,000

304-Division of Human Services-

Child Care and Development

Fund 8817 FY 2004 Org 0511

1 Unclassified-Total 096 \$ 38,080,000

305-Division of Criminal Justice Services-

Juvenile Accountability Incentive

Fund 8829 FY 2004 Org 0620

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

306-Division of Criminal Justice Services-

Local Law Enforcement

Fund 8833 FY 2004 Org 0620

1 Unclassified-Total 096 \$ 621,280

1 Total TITLE II, Section 7-

2 Federal Block Grants \$ 507,348,120

1 **Sec. 8. Awards for claims against the state.**—There are
2 hereby appropriated for fiscal year 2004, from the fund as

3 designated, in the amounts as specified, general revenue funds
4 in the amount of \$7,095,097, special revenue fund in the
5 amount of \$902,865, state road funds in the amount of
6 \$700,257, and federal funds in the amount of \$4,148 for
7 payment of claims against the state.

8 The total general revenue funds above do not include
9 payment for claims in the amount of \$937.34 from the supreme
10 court - general judicial, fund 0180, specifically made payable
11 from the appropriation for the current fiscal year 2003.

1 **Sec. 9. Appropriations from surplus accrued.** - The
2 following items are hereby appropriated from the state fund,
3 general revenue, and are to be available for expenditure during
4 the fiscal year 2004 out of surplus funds only, accrued from the
5 fiscal year ending the thirtieth day of June, two thousand three,
6 subject to the terms and conditions set forth in this section.

7 It is the intent and mandate of the Legislature that the
8 following appropriations be payable only from surplus accrued
9 as of the thirty-first day of July, two thousand three from the
10 fiscal year ending the thirtieth day of June two thousand three.

11 In the event that surplus revenues available on the thirty-
12 first day of July, two thousand three, are not sufficient to meet
13 all the appropriations made pursuant to this section, then the
14 appropriations shall be made to the extent that surplus funds are
15 available as of the date mandated and shall be allocated first to
16 provide the necessary funds to meet the first appropriation of
17 this section; next, to provide the funds necessary for the second
18 appropriation of this section.

307-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2004 Org 0506

1	Institutional Facilities			
2	Operations-Surplus	632	\$	0

3 The above appropriation for Institutional Facilities
4 Operations-Surplus shall be expended only to the extent
5 necessary to offset any shortfall in the Department of Health
6 and Human Resources-Division of Health-Tobacco Settlement
7 Expenditure Fund (fund 5124, fiscal year 2004, org 0506) as
8 determined by the Secretary of the Department of Administra-
9 tion.

308-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2004 Org 0211

1	Capitol Complex-			
2	Capital Outlay-Surplus	526	\$	0

309-Department of Agriculture-

(WV Code Chapter 19)

Fund 0132 FY 2004 Org 1400

1	Soil Conservation Projects-Surplus	269	\$	500,000
---	--	-----	----	---------

310-Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2004 Org 0606

1	Homeland Security Grant			
2	Match-Surplus	957	\$	250,000
1	Total TITLE II, Section 9-Surplus Accrued		<u>\$</u>	<u>750,000</u>

1 **Sec. 10. Special revenue appropriations.**-There are hereby
2 appropriated for expenditure during the fiscal year two thou-
3 sand four appropriations made by general law from special
4 revenue which are not paid into the state fund as general
5 revenue under the provisions of section two, article two, chapter
6 twelve of the code: *Provided*, That none of the money so
7 appropriated by this section shall be available for expenditure
8 except in compliance with and in conformity to the provisions
9 of articles two and three, chapter twelve and article two, chapter
10 five-a of the code, with due consideration to the digest of
11 legislative intent of the budget bill prepared pursuant to article
12 one, chapter four, unless the spending unit has filed with the
13 director of the budget and the legislative auditor prior to the
14 beginning of each fiscal year:

15 (a) An estimate of the amount and sources of all revenues
16 accruing to such fund;

17 (b) A detailed expenditure schedule showing for what
18 purposes the fund is to be expended.

1 **Sec. 11. State improvement fund appropriations.**-
2 Bequests or donations of nonpublic funds, received by the
3 governor on behalf of the state during the fiscal year two
4 thousand four, for the purpose of making studies and recom-
5 mendations relative to improvements of the administration and
6 management of spending units in the executive branch of state
7 government, shall be deposited in the state treasury in a
8 separate account therein designated state improvement fund.

9 There are hereby appropriated all moneys so deposited
10 during the fiscal year two thousand four to be expended as
11 authorized by the governor, for such studies and recommenda-
12 tions which may encompass any problems of organization,
13 procedures, systems, functions, powers or duties of a state
14 spending unit in the executive branch, or the betterment of the

15 economic, social, educational, health and general welfare of the
16 state or its citizens.

1 **Sec. 12. Specific funds and collection accounts.**-A fund
2 or collection account which by law is dedicated to a specific use
3 is hereby appropriated in sufficient amount to meet all lawful
4 demands upon the fund or collection account and shall be
5 expended according to the provisions of article three, chapter
6 twelve of the code.

1 **Sec. 13. Appropriations for refunding erroneous**
2 **payment.**-Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which it was
4 paid, for refund to the proper person.

5 When the officer authorized by law to collect money for the
6 state finds that a sum has been erroneously paid, he or she shall
7 issue his or her requisition upon the auditor for the refunding of
8 the proper amount. The auditor shall issue his or her warrant to
9 the treasurer and the treasurer shall pay the warrant out of the
10 fund into which the amount was originally paid.

1 **Sec. 14. Sinking fund deficiencies.**-There is hereby
2 appropriated to the governor a sufficient amount to meet any
3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development fund
5 which is under the supervision and control of the municipal
6 bond commission as provided by section twenty-b, article
7 eighteen, chapter thirty-one of the code, or in the funds of the
8 municipal bond commission because of the failure of any state
9 agency for either general obligation or revenue bonds or any
10 local taxing district for general obligation bonds to remit funds
11 necessary for the payment of interest and sinking fund require-
12 ments. The governor is authorized to transfer from time to time
13 such amounts to the municipal bond commission as may be
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state
16 of West Virginia through the governor from the first remittance
17 collected from the West Virginia housing development fund or
18 from any state agency or local taxing district for which the
19 governor advanced funds, with interest at the rate carried by the
20 bonds for security or payment of which the advance was made.

21 **Sec. 15. Appropriations for local governments.**-There are
22 hereby appropriated for payment to counties, districts and
23 municipal corporations such amounts as will be necessary to
24 pay taxes due counties, districts and municipal corporations and
25 which have been paid into the treasury:

26 (a) For redemption of lands;

27 (b) By public service corporations;

28 (c) For tax forfeitures.

29 **Sec. 16. Total appropriations.**-Where only a total sum is
30 appropriated to a spending unit, the total sum shall include
31 personal services, annual increment, employee benefits, current
32 expenses, repairs and alterations, equipment and capital outlay,
33 where not otherwise specifically provided and except as
34 otherwise provided in TITLE I-GENERAL PROVISIONS, Sec.
35 3.

36 **Sec. 17. General school fund.**-The balance of the proceeds
37 of the general school fund remaining after the payment of the
38 appropriations made by this act is appropriated for expenditure
39 in accordance with section sixteen, article nine-a, chapter
40 eighteen of the code.

TITLE III-ADMINISTRATION.

TITLE III--ADMINISTRATION.

§1. Appropriations conditional.

§2. Legislative intent.

§3. Constitutionality.

1 **Section 1. Appropriations conditional.**-The expenditure
2 of the appropriations made by this act, except those appropria-
3 tions made to the legislative and judicial branches of the state
4 government, are conditioned upon the compliance by the
5 spending unit with the requirements of article two, chapter
6 five-a of the code.

7 Where spending units or parts of spending units have been
8 absorbed by or combined with other spending units, it is the
9 intent of this act that reappropriations shall be to the succeeding
10 or later spending unit created, unless otherwise indicated.

1 **Sec. 2. Legislative intent.**-It is the intent of the Legislature
2 that the duly appointed members of the conference committee
3 on this bill may formulate and set forth in a budget digest
4 recommendations for the expenditure of money appropriated by
5 this bill after its enactment. It is the further intent of the
6 Legislature that the recommendations set forth in the budget
7 digest are an expression of legislative intent, do not have the
8 force and effect of law, and may not be construed to alter the
9 lawful enactment of this bill.

1 **Sec. 3. Constitutionality.**-If any part of this act is declared
2 unconstitutional by a court of competent jurisdiction, its
3 decision shall not affect any portion of this act which remains,
4 but the remaining portion shall be in full force and effect as if
5 the portion declared unconstitutional had never been a part of
6 the act.

CHAPTER 21

**(H. B. 3204 — By Delegates Michael, Anderson,
Proudfoot, H. White, Boggs and Warner)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand four, in the amount of one million two hundred fifty thousand dollars from the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2004, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2004, organization 0704, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the funds available for expenditure in
2 the fiscal year ending the thirtieth day of June, two thousand
3 four, to the insurance commissioner—insurance commission
4 fund, fund 7152, fiscal year 2004, organization 0704, be
5 decreased by expiring the amount of one million two hundred
6 fifty thousand dollars to the unappropriated balance of the state
7 fund, general revenue, to be available for appropriation during
8 the fiscal year two thousand four.

9 The purpose of this bill is to expire the sum of one million
10 two hundred fifty thousand dollars from the insurance
11 commissioner—insurance commission fund, fund 7152, fiscal

12 year 2004, organization 0704, to the unappropriated balance in
13 the state fund, general revenue, for the fiscal year ending the
14 thirtieth day of June, two thousand four, to be available for
15 appropriation during the fiscal year two thousand four.

CHAPTER 22

(H. B. 3205 — By Delegates Boggs, Frederick, Michael,
Cann, Stalnaker and Doyle)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand four, in the amount of one million two hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2004, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2004, organization 0926, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the funds available for expenditure in
2 the fiscal year ending the thirtieth day of June, two thousand
3 four, to the public service commission, fund 8623, fiscal year
4 2004, organization 0926, be decreased by expiring the amount
5 of one million two hundred fifty thousand dollars to the
6 unappropriated balance of the state fund, general revenue, to be
7 available for appropriation during the fiscal year two thousand
8 four.

9 The purpose of this bill is to expire the sum of one million
10 two hundred fifty thousand dollars from the public service
11 commission, fund 8623, fiscal year 2004, organization 0926, to
12 the unappropriated balance in the state fund, general revenue,
13 for the fiscal year ending the thirtieth day of June, two thousand
14 four, to be available for appropriation during the fiscal year two
15 thousand four.

CHAPTER 23

**(H. B. 3206 — By Delegates Stalnaker, Evans, Doyle,
Michael and Browning)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of tax and revenue—tax division, fund 0470, fiscal year 2003, organization 0702, and the department of transportation-aeronautics commission, fund 0582, fiscal year 2003, organization 0807, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of tax and revenue—tax division, fund 0470, fiscal year 2003, organization 0702, be amended and reduced in the existing line item as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF TAX AND REVENUE**

4 *65—Tax Division*

5 (WV Code Chapter 11)

6 Fund 0470 FY 2003 Org 0702

7			General
8		Act-	Revenue
9		ivity	Funds

10	4	Unclassified (R)	099	\$ 161,373
----	---	----------------------------	-----	------------

11 And, that the items of the total appropriation from the state
12 fund, general revenue, to the department of tax and reve-
13 nue—tax division, fund 0470, fiscal year 2003, organization
14 0702, be amended and increased in the line item as follows:

15 **TITLE II—APPROPRIATIONS.**

16 **Section 1. Appropriations from general revenue.**

17 **DEPARTMENT OF TAX AND REVENUE**

18 *65—Tax Division*

19 (WV Code Chapter 11)

20 Fund 0470 FY 2003 Org 0702

21			General
22		Act-	Revenue
23		ivity	Funds

24	1	Personal Services	001	\$ 137,175
25	3	Employee Benefits	010	24,198

26 And, that the items of the total appropriation from the state
27 fund, general revenue, to the department of transportation-

28 aeronautics commission, fund 0582, fiscal year 2003, organiza-
29 tion 0807, be amended and reduced in the existing line item as
30 follows:

31 TITLE II—APPROPRIATIONS.

32 **Section 1. Appropriations from general revenue.**

33 **DEPARTMENT OF TRANSPORTATION**

34 *70—Aeronautics Commission*

35 (WV Code Chapter 29)

36 Fund 0582 FY 2003 Org 0807

37	38	39	Act- ivity	General Revenue Funds
40	2	Civil Air Patrol	234	\$ 30,000

41 And, that the items of the total appropriations from the state
42 fund, general revenue, to the department of transportation-
43 aeronautics commission, fund 0582, fiscal year 2003, organiza-
44 tion 0807, be amended and increased in the line item as follows:

45 TITLE II—APPROPRIATIONS.

46 **Section 1. Appropriations from general revenue.**

47 **DEPARTMENT OF TRANSPORTATION**

48 *70-Aeronautics Commission*

49 (WV Code Chapter 29)

50 Fund 0582 FY 2003 Org 0807

51			General
52		Act-	Revenue
53		ivity	Funds
54	1	Unclassified (R)	099 \$ 30,000

55 The purpose of this supplementary appropriation bill is to
 56 supplement, amend, reduce and increase items of existing
 57 appropriations in the aforesaid account for the designated
 58 spending unit. The funds are for expenditure during the fiscal
 59 year two thousand three with no new money being appropri-
 60 ated.

CHAPTER 24

**(H. B. 3207 — By Delegates Mezzatesta, Stalnaker, Houston,
 Cann, Evans, Leach and R. M. Thompson)**

[Amended and Again Passed March 16, 2003, as a Result of the
 Objections of the Governor; in Effect From Passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of juvenile services, fund 0570, fiscal year 2003, organization 0621 and the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—division of juvenile services, fund 0570, fiscal year 2003, organization 0621, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 63—*Division of Juvenile Services*

6 (WV Code Chapter 49)

7 Fund 0570 FY 2003 Org 0621

8			General
9			Revenue
10			Funds
	Act- ivity		
11	1	Personal Services	001 \$ 2,017,000

12 And, that the items of the total appropriations from the state
13 fund, general revenue, to the department of military affairs and
14 public safety—division of corrections—correctional units, fund
15 0450, fiscal year 2003, organization 0608, be amended and
16 increased in the line item as follows:

17 TITLE II—APPROPRIATIONS.

18 Section 1. Appropriations from general revenue.

19 DEPARTMENT OF MILITARY AFFAIRS
20 AND PUBLIC SAFETY

21 57—*Division of Corrections*—

22 *Correctional Units*

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

24 Fund 0450 FY 2003 Org 0608

25				General
26		Act-		Revenue
27		ivity		Funds

28	5	Payments to Federal, County and/or			
29	6	Regional Jails	555	\$	2,017,000

30 The purpose of this supplementary appropriation bill is to
31 supplement, amend, reduce and increase items of existing
32 appropriations in the aforesaid accounts for the designated
33 spending units. The funds are for expenditure during the fiscal
34 year two thousand three with no new money being appropri-
35 ated.

CHAPTER 25

(H. B. 3208 — By Delegates Cann, Mezzatesta, Stalnaker,
Houston, Evans, Leach and R. M. Thompson)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608, be amended and reduced in the existing line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 57—*Division of Corrections—*

6 *Correctional Units*

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

8 Fund 0450 FY 2003 Org 0608

9 10 11		Act- ivity	General Revenue Funds
12	21 St. Mary's Correctional Facility . .	881	\$ 500,000
13	25 Lakin Correctional Facility	896	2,900,000

14 And, that the items of the total appropriation from the state
 15 fund, general revenue, to the department of military affairs and
 16 public safety—division of corrections—correctional units, fund
 17 0450, fiscal year 2003, organization 0608, be amended and
 18 increased in the line items as follows:

19 TITLE II—APPROPRIATIONS.

20 Section 1. Appropriations from general revenue.

21 DEPARTMENT OF MILITARY AFFAIRS
 22 AND PUBLIC SAFETY

23 57—*Division of Corrections—*

24 *Correctional Units*

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

26 Fund 0450 FY 2003 Org 0608

27			General
28		Act-	Revenue
29		ivity	Funds
30	5 Payments to Federal, County and/or		
31	6 Regional Jails	555	\$ 2,900,000
32	16 Inmate Medical Expenses	535	500,000

33 The purpose of this supplementary appropriation bill is to
 34 supplement, amend, reduce and increase items of existing
 35 appropriations in the aforesaid account for the designated
 36 spending unit. The funds are for expenditure during the fiscal
 37 year two thousand three with no new money being appropri-
 38 ated.

CHAPTER 26

**(H. B. 3209 — By Delegates Proudfoot, Mezzatesta, Stalnaker,
Cann, Houston, Evans and Leach)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—West Virginia parole board, fund 0440, fiscal year 2003, organization 0605, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—West Virginia parole board, fund 0440, fiscal year 2003, organization 0605, be amended and reduced in the existing line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Section 1. Appropriations from general revenue.**
- 3 **DEPARTMENT OF MILITARY AFFAIRS**
- 4 **AND PUBLIC SAFETY**
- 5 *54—West Virginia Parole Board*
- 6 (WV Code Chapter 62)
- 7 Fund 0440 FY 2003 Org 0605

8				General
9			Act-	Revenue
10			ivity	Funds
11	7	BRIM Premium	913	\$ 22,208

12 And, that the items of the total appropriations from the state
 13 fund, general revenue, to the department of military affairs and
 14 public safety—West Virginia parole board, fund 0440, fiscal
 15 year 2003, organization 0605, be amended and increased in the
 16 line item as follows:

17 TITLE II—APPROPRIATIONS.

18 Section 1. Appropriations from general revenue.

19 DEPARTMENT OF MILITARY AFFAIRS
 20 AND PUBLIC SAFETY

21 54—West Virginia Parole Board

22 (WV Code Chapter 62)

23 Fund 0440 FY 2003 Org 0605

24				General
25			Act-	Revenue
26			ivity	Funds
27	4	Unclassified	099	\$ 22,208

28 The purpose of this supplementary appropriation bill is to
 29 supplement, amend, reduce and increase items of existing
 30 appropriations in the aforesaid account for the designated
 31 spending unit. The funds are for expenditure during the fiscal
 32 year two thousand three with no new money being appropri-
 33 ated.

CHAPTER 27

(H. B. 3210 — By Delegates Mezzatesta, Stalnaker,
Houston, Evans and Cann)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of protective services, fund 0585, fiscal year 2003, organization 0622, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—division of protective services, fund 0585, fiscal year 2003, organization 0622, be amended and reduced in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Section 1. Appropriations from general revenue.**
- 3 **DEPARTMENT OF MILITARY AFFAIRS**
- 4 **AND PUBLIC SAFETY**
- 5 *64—Division of Protective Services*
- 6 (WV Code Chapter 15)
- 7 Fund 0585 FY 2003 Org 0622

8				General
9			Act-	Revenue
10			ivity	Funds
11	2	Annual Increment	004	\$ 26,450

12 And, that the items of the total appropriations from the state
 13 fund, general revenue, to the department of military affairs and
 14 public safety—division of protective services, fund 0585, fiscal
 15 year 2003, organization 0622, be amended and increased in the
 16 line item as follows:

17 TITLE II—APPROPRIATIONS.

18 Section 1. Appropriations from general revenue.

19 DEPARTMENT OF MILITARY AFFAIRS
 20 AND PUBLIC SAFETY

21 64—*Division of Protective Services*

22 (WV Code Chapter 15)

23 Fund 0585 FY 2003 Org 0622

24				General
25			Act-	Revenue
26			ivity	Funds
27	1	Personal Services	001	\$ 26,450

28 The purpose of this supplementary appropriation bill is to
 29 supplement, amend, reduce and increase items of existing
 30 appropriations in the aforesaid account for the designated
 31 spending unit. The funds are for expenditure during the fiscal
 32 year two thousand three with no new money being appropri-
 33 ated.

CHAPTER 28

(H. B. 3211 — By Delegates Warner, Boggs, Border, Browning, Frederick, R. M. Thompson and Ashley)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of five hundred seventy-seven thousand nine hundred nine dollars from the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606, in the amount of one hundred sixteen thousand three hundred eighteen dollars from the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, organization 0606, in the amount of two hundred thirty-one thousand eight hundred twenty-one dollars from the office of emergency services—flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606, in the amount of fifty-seven thousand one hundred twenty-two dollars from the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606, in the amount of one hundred twenty-three thousand four hundred eighty-eight dollars from the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606, in the amount of thirteen thousand three hundred fifty-eight dollars from the office of emergency services—flood disaster, February 2000—governor’s civil contingent fund, fund 6266, fiscal year 2003, organization 0606, in the amount of seventy-seven thousand nine hundred seventy-seven dollars from the governor’s office - flood disaster, January 1996, fund 1021, fiscal year 2003, organization 0100, in the amount of ten thousand six hundred

forty-one dollars from the division of health - flood disaster, January 1996, fund 5194, fiscal year 2003, organization 0506, in the amount of three thousand seven hundred nineteen dollars from the division of human services - flood disaster, January 1996, fund 5095, fiscal year 2003, organization 0511, in the amount of six thousand three hundred eighty-nine dollars from the division of health - flood disaster, June 1998, fund 5206, fiscal year 2003, organization 0506, and in the amount of one hundred fifty-one thousand two hundred seventy-four dollars from the West Virginia state police, central abuse registry fund, fund 6527, fiscal year 2003, organization 0612, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of administration—public defender services, fund 0226, fiscal year 2003, organization 0221 and to the department of military affairs and public safety— division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608.

WHEREAS, The Legislature finds that the account balance in the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, organization 0606, the office of emergency services— flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, February 2000—governor's civil contingent fund, fund 6266, fiscal year 2003, organization 0606, the governor's office - flood disaster, January 1996, fund 1021, fiscal year 2003, organization 0100, the division of health - flood disaster, January 1996, fund 5194, fiscal year 2003, organization 0506, the division of human services - flood disaster, January 1996, fund 5095, fiscal year 2003, organization 0511, the division of health - flood disaster, June 1998, fund 5206,

fiscal year 2003, organization 0506, and the West Virginia state police, central abuse registry fund, fund 6527, fiscal year 2003, organization 0612, exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the eighth day of January, two thousand three, setting forth therein the cash balance as of the first day of July, two thousand two; and further included the estimate of revenues for the fiscal year two thousand three, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand three; and

WHEREAS, By the provision of the statement of the state fund, general revenue and this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds in the office of emergency
2 services—flood disaster, January 1996, fund 6258, fiscal year
3 2003, organization 0606, be decreased by expiring the amount
4 of five hundred seventy-seven thousand nine hundred nine
5 dollars, the office of emergency services—flood disaster, May
6 1996, fund 6260, fiscal year 2003, be decreased by expiring the
7 amount of one hundred sixteen thousand three hundred eighteen
8 dollars, the office of emergency services—flood disaster, July
9 1996, fund 6261, fiscal year 2003, organization 0606, be
10 decreased by expiring the amount of two hundred thirty-one
11 thousand eight hundred twenty-one dollars, the office of
12 emergency services—flood disaster, September 1996, fund
13 6262, fiscal year 2003, organization 0606, be decreased by
14 expiring the amount of fifty-seven thousand one hundred
15 twenty-two dollars, the office of emergency services—flood

16 disaster, June 1998, fund 6264, fiscal year 2003, organization
17 0606, be decreased by expiring the amount of one hundred
18 twenty-three thousand four hundred eighty-eight dollars, the
19 office of emergency services—flood disaster, February
20 2000—governor’s civil contingent fund, fund 6266, fiscal year
21 2003, organization 0606, be decreased by expiring the amount
22 of thirteen thousand three hundred fifty-eight dollars, the
23 governor’s office - flood disaster, January 1996, fund 1021,
24 fiscal year 2003, organization 0100 be decreased by expiring
25 the amount of seventy-seven thousand nine hundred seventy-
26 seven dollars, the division of health - flood disaster, January
27 1996, fund 5194, fiscal year 2003, organization 0506, be
28 decreased by expiring the amount of ten thousand six hundred
29 forty-one dollars, the division of human services - flood
30 disaster, January 1996, fund 5095, fiscal year 2003, organiza-
31 tion 0511, be decreased by expiring the amount of three
32 thousand seven hundred nineteen dollars, the division of health
33 - flood disaster, June 1998, fund 5206, fiscal year 2003,
34 organization 0506, be decreased by expiring the amount of six
35 thousand three hundred eighty-nine dollars, and the West
36 Virginia state police, central abuse registry fund, fund 6527,
37 fiscal year 2003, organization 0612, be decreased by expiring
38 the amount of one hundred fifty-one thousand two hundred
39 seventy-four dollars to the unappropriated surplus balance of
40 the state fund, general revenue, and that the total appropriation
41 for fiscal year ending the thirtieth day of June, two thousand
42 three, to fund 0226, fiscal year 2003, organization 0221, be
43 supplemented and amended by increasing the total appropria-
44 tion as follows:

45 TITLE II—APPROPRIATIONS.

46 Section 1. Appropriations from general revenue.

47 DEPARTMENT OF ADMINISTRATION

264 APPROPRIATIONS [Ch. 28

48 28—*Public Defender Services*

49 (WV Code Chapter 29)

50 Fund 0226 FY 2003 Org 0221

51			General
52		Act-	Revenue
53		ivity	Fund

54	5	Appointed Counsel Fees and Public	
55	6	Defender Corporations—Surplus . 007	\$ 3,675,000

56 That the total appropriation for the fiscal year ending the
57 thirtieth day of June, two thousand three, to fund 0450, fiscal
58 year 2003, organization 0608, be supplemented and amended
59 by increasing the total appropriation as follows:

60 TITLE II—APPROPRIATIONS.

61 **Section 1. Appropriations from general revenue.**

62 **DEPARTMENT OF MILITARY AFFAIRS**
63 **AND PUBLIC SAFETY**

64 *57—Division of Corrections—*

65 *Correctional Units*

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

67 Fund 0450 FY 2003 Org 0608

68			General
69		Act-	Revenue
70		ivity	Funds

71	5	Payments to Federal, County, and/or	
72	6	Regional Jails—Surplus 008	\$ 1,383,000

73 The purpose of this supplemental appropriation bill is to
74 supplement and increase items of appropriation in the aforesaid
75 accounts for the designated spending units for expenditure
76 during the fiscal year two thousand three.

CHAPTER 29

**(H. B. 3212 — By Delegates Warner, Boggs, Border, Browning,
Frederick, R. M. Thompson and Ashley)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the department of military affairs and public safety—West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of one million two hundred thousand dollars from the department of military affairs and public safety—West Virginia state police—surplus transfer account, fund 6519, fiscal year 2003, organization 0612, and making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The Legislature finds that the account in the department of military affairs and public safety—West Virginia state police—surplus transfer account, fund 6519, fiscal year 2003, organization 0612, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, department of military affairs and public safety—West Virginia state police—surplus transfer account, fund 6519, fiscal year 2003, organization 0612, be decreased by expiring the amount of one million two hundred thousand dollars to the balance of the department of military affairs and public safety—West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, during the fiscal year two thousand three, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety—West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, be supplemented and amended by increasing the total appropriation as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 3. Appropriations from other funds.		
3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	<i>139—West Virginia State Police—</i>		
6	<i>Surplus Real Property Proceeds Fund</i>		
7	(WV Code Chapter 15)		
8	Fund <u>6516</u> FY <u>2003</u> Org <u>0612</u>		
9			General
10		Act-	Revenue
11		ivity	Funds
12	1	Unclassified	099 \$ 1,200,000

13 The purpose of this supplementary appropriation bill is to
14 expire the sum of one million two hundred thousand dollars
15 from the department of military affairs and public safety—West
16 Virginia state police—surplus transfer account, fund 6519,
17 fiscal year 2003, organization 0612, to the balance of the
18 department of military affairs and public safety—West Virginia
19 state police—surplus real property proceeds fund, fund 6516,
20 fiscal year 2003, organization 0612, and to supplement the
21 West Virginia state police—surplus real property proceeds
22 fund, fund 6516, fiscal year 2003, organization 0612, in the
23 budget act for the fiscal year ending the thirtieth day of June,
24 two thousand three, by adding one million two hundred
25 thousand dollars to the existing appropriation for unclassified
26 for expenditure during fiscal year two thousand three.

CHAPTER 30

(H. B. 3214 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the secretary of state - state election fund, fund 1614, fiscal year 2003, organization 1600, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of one hundred thousand dollars from the secretary of state - service fees and collections account, fund 1612, fiscal year 2003, organization 1600.

WHEREAS, The Legislature finds that the account balance in the secretary of state - service fees and collections account, fund 1612, fiscal year 2003, organization 1600, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the funds available for expenditure in
2 the fiscal year ending the thirtieth day of June, two thousand
3 three, to the secretary of state - service fees and collections
4 account, fund 1612, fiscal year 2003, organization 1600, be
5 decreased by expiring the amount of one hundred thousand
6 dollars to the balance of the secretary of state - state election
7 fund, fund 1614, fiscal year 2003, organization 1600, during the
8 fiscal year two thousand three.

9 The purpose of this bill is to expire the sum of one hundred
10 thousand dollars from the secretary of state - service fees and
11 collections account, fund 1612, fiscal year 2003, organization
12 1600, to the balance of the secretary of state - state election
13 fund, fund 1614, fiscal year 2003, organization 1600, for the
14 fiscal year ending the thirtieth day of June, two thousand three,
15 to be available for expenditure during the fiscal year two
16 thousand three.

CHAPTER 31

(H. B. 3215 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of ninety-nine thousand six hundred eighty-four dollars from the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 097; in the amount of seventy-two thousand three hundred sixty-nine

dollars from the secretary of state, fund 0155, fiscal year 1998, organization 1600, activity 599; in the amount of fifty-five thousand seven hundred forty-five dollars from the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 099; and in the amount of three hundred thirteen thousand eight hundred sixteen dollars from the secretary of state, fund 0155, fiscal year 2002, organization 1600, activity 099; and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the secretary of state, fund 0155, fiscal year 2003, organization 1600, in the line-item entitled "Help America Vote Act-Transfer" and transferring the balance of the line-item to the secretary of state - state election fund, fund 1614, fiscal year 2003, organization 1600.

WHEREAS, The Legislature finds that the account balance in the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 097; the secretary of state, fund 0155, fiscal year 1998, organization 1600, activity 599; the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 099; and secretary of state, fund 0155, fiscal year 2002, organization 1600, activity 099 exceeds that which is necessary for the purposes for which the accounts were established;

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 097, be decreased by expiring the amount of ninety-nine thousand six hundred eighty-four dollars; in the secretary of state, fund 0155, fiscal year 1998, organization 1600, activity 599, be decreased by expiring the amount of

seventy-two thousand three hundred sixty-nine dollars; in the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 099, be decreased by expiring the amount of fifty-five thousand seven hundred forty-five dollars; and in the secretary of state, fund 0155, fiscal year 2002, organization 1600, activity 099, be decreased by expiring the amount of three hundred thirteen thousand eight hundred sixteen dollars to the unappropriated surplus balance of the state fund, general revenue; and

That the total appropriation for fiscal year ending the thirtieth day of June, two thousand three, to the secretary of state, fund 0155, fiscal year 2003, organization 1600, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 16—Secretary of State

5 (WV Code Chapters 3, 5 and 59)

6 Fund 0155 FY 2003 Org 1600

7			General
8	Act-		Revenue
9	ivity		Fund
10	8a Help America Vote Act - Transfer		
11	8b - Surplus 244	\$	541,614

12 The above appropriation for Help America Vote Act -
 13 Transfer (activity 244) shall be transferred to the State Election
 14 Fund (fund 1614, organization 1600).

5 (WV Code Chapters 3, 5 and 59)

6 Fund 0155 FY 2003 Org 1600

7			General
8		Act-	Revenue
9		ivity	Funds

10	4	Unclassified (R)	099	\$ 158,386
----	---	----------------------------	-----	------------

11 And, that the items of the total appropriations from the state
12 fund, general revenue, to the secretary of state, fund 0155, fiscal
13 year 2003, organization 1600, be amended and increased in the
14 line item as follows:

15 TITLE II—APPROPRIATIONS.

16 **Section 1. Appropriations from general revenue.**

17 **EXECUTIVE**

18 *16—Secretary of State*

19 (WV Code Chapters 3, 5 and 59)

20 Fund 0155 FY 2003 Org 1600

21			General
22		Act-	Revenue
23		ivity	Funds

24	8a	Help America Vote Act - Transfer . .	100	\$ 158,386
----	----	--------------------------------------	-----	------------

25 The above appropriation for Help America Vote Act -
26 Transfer (activity 100) shall be transferred to the State Election
27 Fund (fund 1614, organization 1600).

28 The purpose of this supplementary appropriation bill is to
29 supplement, amend, reduce and increase items of existing
30 appropriations in the aforesaid account for the designated
31 spending unit. The funds are for expenditure during the fiscal
32 year two thousand three with no new money being appropri-
33 ated.

CHAPTER 33

(H. B. 3217 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Amended and Again Passed March 16, 2003, as a Result of the Objections
of the Governor; in Effect From Passage. Approved by the Governor.]

AN ACT amending and supplementing chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, by adding thereto a new fund with an appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, two thousand three, to the new fund, designated secretary of state fund 8854, fiscal year 2003, organization 1600, for fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The Legislature has established the availability of federal funds for programs now available for expenditure in fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, be amended and supplemented by adding to Title II, section six thereof a new fund with an appropriation in the line item therein as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 6. Appropriations of federal funds.

3 EXECUTIVE

4 249a—Secretary of State—

5 (WV Code Chapter 3)

6 Fund 8854 FY 2003 Org 1600

7	8	9	1	Unclassified—Total	Act- ivity	Federal Funds
					096	\$9,000,000

10 The purpose of this supplementary appropriation bill is to
11 create a new fund in the budget act for the fiscal year ending the
12 thirtieth day of June, two thousand three, and to provide for an
13 appropriation therein of federal funds made available under the
14 federal help America vote act in an amount of nine million
15 dollars for expenditure during fiscal year two thousand three.



CHAPTER 34

(H. B. 3218 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of fifty thousand dollars from the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606; in the amount of fifty thousand dollars from the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, organization 0606; in the amount of fifty thousand dollars from the office of emergency services—flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606; in the amount of fifty thousand dollars from the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606; in the amount of thirty-three thousand eight hundred and four dollars from the office of emergency services—flood disaster, March 1997, fund 6263, fiscal year 2003, organization 0606; fifty thousand dollars from the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606; in the amount of eleven thousand six hundred seventy-five dollars from the office of emergency services—flood disaster, February 2000—governor’s civil contingent fund, fund 6266, fiscal year 2003, organization 0606; making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety—office of emergency services, fund 0443, fiscal year 2003, organization 0606.

WHEREAS, The Legislature finds that the account balance in the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, organization 0606; the office of emergency services— flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, March 1997, fund 6263, fiscal year 2003,

organization 0606; the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, February 2000—governor's civil contingent fund, fund 6266, fiscal year 2003, organization 0606; exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, By the provision of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606, be decreased by expiring the amount of fifty thousand dollars; the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, be decreased by expiring fifty thousand dollars; the office of emergency services—flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606, be decreased by expiring the amount of fifty thousand dollars; the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606, be decreased by expiring the amount of fifty thousand dollars; the office of emergency services—flood disaster, March 1997, fund 6263, fiscal year 2003, organization 0606, be decreased by expiring the amount of thirty-three thousand eight hundred and four dollars; the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606, be decreased by expiring the amount of fifty thousand dollars; the office of emergency services—flood disaster, February 2000—governor's civil contingent fund, fund 6266, fiscal year 2003, organization 0606, be decreased by expiring the amount of eleven thousand six hundred seventy-five dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two

thousand three, to fund 0443, fiscal year 2003, organization 0606, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 55—Office of Emergency Services

6 (WV Code Chapter 15)

7 Fund 0443 FY 2003 Org 0606

8 9 10		Act- ivity	General Revenue Fund
11	4 Unclassified - Surplus	097	\$ 78,000
12	5 Federal Emergency Management		
13	6 Agency Match - Surplus (R)		217,479

14 Any unexpended balances remaining in the appropriation
15 for Federal Emergency Management Agency Match - Surplus
16 (fund 0443, activity) at the close of the fiscal year 2003 are
17 hereby reappropriated for expenditure during the fiscal year
18 2004.

19 The purpose of this supplemental appropriation bill is to
20 supplement and increase items of appropriation in the aforesaid
21 accounts for the designated spending units for expenditure
22 during the fiscal year two thousand three.

CHAPTER 35

(S. B. 215 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed February 14, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of health and human resources - West Virginia health care authority, fund 5375, fiscal year 2003, organization 0507, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - West Virginia health care authority, fund 5375, fiscal year 2003, organization 0507, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 5375, fiscal year 2003, organization 0507, be supplemented and amended by increasing the total appropriation as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES

5 128—West Virginia Health Care Authority

6 (WV Code Chapter 16)

7 Fund 5375 FY 2003 Org 0507

8	9		Act-	Other
			ivity	Funds
10	1	Personal Services	001	\$ 127,365
11	3	Employee Benefits	010	33,115
12	4	Unclassified	099	1,089,520

13 The purpose of this supplementary appropriation bill is to
14 supplement and increase items of appropriations in the afore-
15 said account for the designated spending unit for expenditure
16 during the fiscal year two thousand three.



CHAPTER 36

(S. B. 637 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation - division of motor vehicles, fund 9007, fiscal year 2003, organization 0802, supplementing and

amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state road fund to the department of transportation - division of motor vehicles, fund 9007, fiscal year 2003, organization 0802, be amended and reduced in the existing line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 2. Appropriations from state road fund.**

3 **DEPARTMENT OF TRANSPORTATION**

4 *89—Division of Motor Vehicles*

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

6 Fund 9007 FY 2003 Org 0802

7			State
8		Act-	Road
9		ivity	Fund

10	4	Unclassified	099	\$ 257,000
----	---	------------------------	-----	------------

11 And that the items of the total appropriations from the state
12 road fund to the department of transportation - division of
13 motor vehicles, fund 9007, fiscal year 2003, organization 0802,
14 be amended and increased in the line items as follows:

15 TITLE II—APPROPRIATIONS.

16 **Sec. 2. Appropriations from state road fund.**

17 **DEPARTMENT OF TRANSPORTATION**

18 *89—Division of Motor Vehicles*

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

20 Fund 9007 FY 2003 Org 0802

21			State
22			Road
23			Fund
24	1	Personal Services	001 \$ 170,000
25	3	Employee Benefits	010 87,000

26 The purpose of this supplementary appropriation bill is to
 27 supplement, amend, reduce and increase items of existing
 28 appropriations in the aforesaid accounts for the designated
 29 spending unit. The funds are for expenditure during the fiscal
 30 year two thousand three with no new money being appropri-
 31 ated.

CHAPTER 37

(S. B. 638 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety - West Virginia division of corrections - parolee supervision fees, fund 6362, fiscal year

12 The purpose of this supplementary appropriation bill is to
13 supplement and increase items of appropriation in the aforesaid
14 account for the designated spending unit for expenditure during
15 fiscal year two thousand three.

CHAPTER 38

**(S. B. 639 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey,
Boley, Minear, Facemyer, Guills and Sprouse)**

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of transportation - division of motor vehicles - driver's license reinstatement fund, fund 8213, fiscal year 2003, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of transportation - division of motor vehicles - driver's license reinstatement fund, fund 8213, fiscal year 2003, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8213, fiscal year 2003,

organization 0802, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF TRANSPORTATION

4 162—Division of Motor Vehicles—

5 Driver’s License Reinstatement Fund

6 (WV Code Chapter 17B)

7 Fund 8213 FY 2003 Org 0802

8	9		Act- ivity	Other Funds
10	4	Unclassified	099	\$ 500,000

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriation in the aforesaid
13 account for the designated spending unit for expenditure during
14 fiscal year two thousand three.



CHAPTER 39

(S. B. 640 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety - division of veterans' affairs - veterans' home, fund 8728, fiscal year 2003, organization 0618, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8728, fiscal year 2003, organization 0618, be supplemented and amended by increasing the total appropriation as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 6. Appropriations of federal funds.**
- 3 **DEPARTMENT OF MILITARY AFFAIRS**
- 4 **AND PUBLIC SAFETY**
- 5 *270—Division of Veterans' Affairs—*
- 6 *Veterans' Home*
- 7 (WV Code Chapter 9A)
- 8 Fund 8728 FY 2003 Org 0618

9		Act-	Federal
10		ivity	Funds
11	1	096	\$ 100,000
Unclassified—Total			

12 The purpose of this supplementary appropriation bill is to
 13 supplement and increase items of appropriation in the aforesaid
 14 account for the designated spending unit for expenditure during
 15 fiscal year two thousand three.



CHAPTER 40

(S. B. 641 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of administration - children’s health insurance agency, fund 8838, fiscal year 2003, organization 0230, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8838, fiscal year 2003, organization 0230, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF ADMINISTRATION

4 251—*Children’s Health Insurance Agency*

5 (WV Code Chapter 5)

6 Fund 8838 FY 2003 Org 0230

7		Act-	Federal
8		ivity	Funds
9	1 Unclassified—Total	096	\$ 232,698

10 The purpose of this supplementary appropriation bill is to
11 supplement and increase items of appropriation in the aforesaid
12 account for the designated spending unit for expenditure during
13 fiscal year two thousand three.

CHAPTER 41

(S. B. 642 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of health and human resources - division of human services - child support enforcement, fund 5094, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - division of human services - child support enforcement, fund 5094, fiscal year 2003, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 5094, fiscal year 2003, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 **DEPARTMENT OF HEALTH AND**
- 4 **HUMAN RESOURCES**
- 5 *130—Division of Human Services—*
- 6 *Child Support Enforcement*
- 7 (WV Code Chapter 48A)
- 8 Fund 5094 FY 2003 Org 0511

9		Act-	Other
10		ivity	Funds
11	1	Unclassified—Total (R)	096 \$ 2,000,000

12 The purpose of this supplementary appropriation bill is to
 13 supplement and increase items of appropriation in the aforesaid
 14 account for the designated spending unit for expenditure during
 15 fiscal year two thousand three.



CHAPTER 42

**(S. B. 643 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso,
 Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey,
 Boley, Minear, Facemyer, Guills and Sprouse)**

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the bureau of commerce - division of natural resources, fund 3200, fiscal year 2003, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce - division of natural resources, fund 3200, fiscal year 2003, organization 0310, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 3200, fiscal year 2003, organization 0310, be supplemented and amended by increasing the total appropriation in a new line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **BUREAU OF COMMERCE**

4 *179—Division of Natural Resources*

5 (WV Code Chapter 20)

6 Fund 3200 FY 2003 Org 0310

7		Act-	
8		ivity	Other
			Funds

9	6A Point of Sales Licensing		
10	System (R)	043	\$ 2,000,000

11 Any unexpended balances remaining in the appropriation
12 for Point of Sales Licensing System (fund 3200, activity 043)
13 at the close of the fiscal year two thousand three is hereby
14 reappropriated for expenditure during the fiscal year two
15 thousand four.

16 The purpose of this supplementary appropriation bill is to
17 supplement the Budget Bill by adding a new item of appropria-
18 tion in the aforesaid account for the designated spending unit
19 for expenditure during fiscal year two thousand three.

CHAPTER 43

(S. B. 644 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety - division of corrections, fund 8836, fiscal year 2003, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8836, fiscal year 2003, organization 0608, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 268—*Division of Corrections*

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

7 Fund 8836 FY 2003 Org 0608

8	Act-	Federal
9	ivity	Funds
10	1 Unclassified—Total	096 \$ 150,000

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriation in the aforesaid
13 account for the designated spending unit for expenditure during
14 fiscal year two thousand three.



CHAPTER 44

(S. B. 645 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the public service commission - motor carrier division, fund 8743, fiscal year 2003, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8743, fiscal year 2003, organization 0926, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **MISCELLANEOUS BOARDS AND COMMISSIONS**

4 286—*Public Service Commission—*
5 *Motor Carrier Division*

6 (WV Code Chapter 24A)

7 Fund 8743 FY 2003 Org 0926

8		Act-	Federal
9		ivity	Funds
10	1 Unclassified—Total	096	\$ 82,125

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriation in the aforesaid
13 account for the designated spending unit for expenditure during
14 fiscal year two thousand three.

CHAPTER 45

(S. B. 658 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of health and human resources - division of human services - James “Tiger” Morton catastrophic illness fund, fund 5454, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - division of human services - James “Tiger” Morton catastrophic illness fund, fund 5454, fiscal year 2003, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 5454, fiscal year 2003, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF HEALTH AND HUMAN**
4 **RESOURCES**

5 *132—Division of Human Services—*
6 *James “Tiger” Morton Catastrophic Illness Fund*

7 (WV Code Chapter 16)

8 Fund 5454 FY 2003 Org 0511

9 10		Act- ivity	Other Funds
11	1 Unclassified—Total	096	\$ 940,000

12 The purpose of this supplementary appropriation bill is to
13 supplement and increase items of appropriation in the aforesaid
14 account for the designated spending unit for expenditure during
15 fiscal year two thousand three.

CHAPTER 46

**(S. B. 659 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey,
Boley, Minear, Facemyer, Guills and Sprouse)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the West Virginia state board of examiners for licensed practical nurses, fund 8517,

fiscal year 2003, organization 0906, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2003, organization 0906, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8517, fiscal year 2003, organization 0906, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **MISCELLANEOUS BOARDS AND COMMISSIONS**

4 *210—State Board of Examiners for*
5 *Licensed Practical Nurses*

6 (WV Code Chapter 30)

7 Fund 8517 FY 2003 Org 0906

8	Act-	Other
9	ivity	Funds
10	1	Unclassified—Total 096 \$ 15,000

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriation in the aforesaid
13 account for the designated spending unit for expenditure during
14 fiscal year two thousand three.

CHAPTER 47

(S. B. 660 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2003, organization 0803, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state road fund, fund 9017, fiscal year 2003, organization 0803, be amended and reduced in the existing line items as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 2. Appropriations from state road fund.**
- 3 **DEPARTMENT OF TRANSPORTATION**
- 4 *90—Division of Highways*
- 5 (WV Code Chapters 17 and 17C)
- 6 Fund 9017 FY 2003 Org 0803

298		APPROPRIATIONS		[Ch. 47
7				State
8			Act-	Road
9			ivity	Fund
10	5	Bridge Repair and Replacement . . .	273	\$ 3,000,000
11	9	Interstate Construction	278	10,000,000
12	10	Other Federal Aid Programs	279	41,000,000
13	11	Appalachian Programs	280	17,000,000

14 And that the items of the total appropriation from the state
15 road fund, fund 9017, fiscal year 2003, organization 0803, be
16 amended and increased in the existing line items as follows:

17 TITLE II—APPROPRIATIONS.

18 **Sec. 2. Appropriations from state road fund.**

19 **DEPARTMENT OF TRANSPORTATION**

20 *90—Division of Highways*

21 (WV Code Chapters 17 and 17C)

22 Fund 9017 FY 2003 Org 0803

23				State
24			Act-	Road
25			ivity	Fund
26	2	Maintenance	237	\$ 41,500,000
27	3	Maintenance, Contract Paving and		
28	4	Secondary Road Maintenance . . .	272	3,500,000
29	12	Nonfederal Aid Construction	281	2,000,000

30 The purpose of this supplementary appropriation bill is to
31 supplement, amend, reduce and increase items of existing
32 appropriations in the aforesaid account for the designated
33 spending unit for expenditure during the fiscal year two
34 thousand three.

CHAPTER 48

(S. B. 661 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of health and human resources - division of health - maternal and child health, fund 8750, fiscal year 2003, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8750, fiscal year 2003, organization 0506, be supplemented and amended by increasing the total appropriation as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Sec. 7. Appropriations from federal block grants.**

300

APPROPRIATIONS

[Ch. 49

3

292—Division of Health—

4

Maternal and Child Health

5

Fund 8750 FY 2003 Org 0506

6

Act-

Federal

7

ivity

Funds

8

1 Unclassified—Total 096 \$ 2,000,000

9

The purpose of this supplementary appropriation bill is to

10 supplement and increase items of appropriation in the aforesaid

11 account for the designated spending unit for expenditure during

12 fiscal year two thousand three.



CHAPTER 49

(S. B. 662 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)



[Passed March 8, 2003; in effect from passage. Approved by the Governor.]



AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of one hundred fifty thousand dollars from the division of banking - assessment and examination fund, fund 3041, fiscal year 2003, organization 0303, in the amount of one hundred thousand dollars from the insurance commissioner - insurance commission fund, fund 7152, fiscal year 2003, organization 0704, and in the amount of one hundred thousand dollars from the alcohol beverage control administration - general administrative fund, fund 7352, fiscal

year 2003, organization 0708, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of tax and revenue - tax division, fund 0470, fiscal year 2003, organization 0702.

WHEREAS, The Legislature finds that the account balances in the division of banking - assessment and examination fund, fund 3041, fiscal year 2003, organization 0303, the insurance commissioner - insurance commission fund, fund 7152, fiscal year 2003, organization 0704, and the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2003, organization 0708 exceeds that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the division of banking - assessment and examination fund, fund 3041, fiscal year 2003, organization 0303 be decreased by expiring the amount of one hundred fifty thousand dollars, the insurance commissioner - insurance commission fund, fund 7152, fiscal year 2003, organization 0704 be decreased by expiring the amount of one hundred thousand dollars, and the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2003, organization 0708 be decreased by expiring the amount of one hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand three, to fund 0470, fiscal year 2003, organization 0702, be supplemented and amended by increasing the total appropriation by three hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

302 AUTOMATED TAX ADMINISTRATION SYSTEM [Ch. 50

3 DEPARTMENT OF TAX AND REVENUE

4 65—Tax Division

5 (WV Code Chapter 11)

6 Fund 0470 FY 2003 Org 0702

7				General
8			Act-	Revenue
9			ivity	Fund

10 4 Unclassified—Surplus (R) 097 \$ 350,000

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriations in the afore-
13 said account for the designated spending unit for expenditure
14 during the fiscal year two thousand three.



CHAPTER 50

(Com. Sub. for S. B. 450 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]



[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-c, relating to creation, development and funding of an automated tax administration system; setting forth legislative findings and purpose; authorizing contracts to finance and acquire automated tax administration

system and associated products and services; requiring reports to joint committee on government and finance; expiring authority to enter into certain contracts; specifying methods of payment for system; requiring determination of increase in the amount of taxes, interest and penalties collected which is attributable to successful implementation of the automated tax administration system and reports; creating special revenue fund and providing amounts to be deposited into fund; providing purposes for which moneys of the fund are to be expended; excluding from deposit moneys derived for local or municipal subdivisions; requiring annual report; and repeal of article.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-c, to read as follows:

ARTICLE 10C. BENEFITS-FUNDED PURCHASING.

- §11-10C-1. Legislative finding; short title and purpose.
- §11-10C-2. Authorization of benefits-funded automated tax administration system purchasing program; reports; expiration of authority.
- §11-10C-3. Benefits funding.
- §11-10C-4. Monthly determination of increased revenue attributable to automated tax administration system; monthly report; deposit of moneys; creation and operation of automated tax administration system development fund; annual report.
- §11-10C-5. Transfer of funds; repeal of article.

§11-10C-1. Legislative finding; short title and purpose.

- 1 The Legislature hereby finds that creation, development,
- 2 acquisition and maintenance of an automated tax administration
- 3 system by the tax division of the department of tax and revenue
- 4 are crucial to efficient operation of state government and in the
- 5 best interests of the people of West Virginia; that the accuracy,
- 6 efficiency and cost effectiveness of an automated tax adminis-
- 7 tration system will benefit the people of West Virginia through

8 cost savings, more efficient tax administration and more
9 uniform and effective application of the tax laws of the state.

10 This article shall be known as the "Benefits-funded
11 Purchasing Act" and is hereby established by the Legislature
12 for the purpose of creating, developing and maintaining an
13 automated tax administration system by the tax division of the
14 department of tax and revenue.

**§11-10C-2. Authorization of benefits-funded automated tax
administration system purchasing program;
reports; expiration of authority.**

1 (a) The tax commissioner is hereby authorized to enter into
2 contracts to finance and acquire an automated tax administra-
3 tion system and associated computer hardware and software for
4 use in the registration of taxpayers, processing of remittances
5 and returns and collection of delinquent taxes and any interest
6 and penalties thereon and for general tax administration. The
7 tax commissioner is further authorized to acquire the technical
8 services and related services necessary to develop, implement
9 and maintain such system and associated computer hardware
10 and software.

11 (b) Prior to entering into any contract authorized by this
12 article, the tax commissioner shall provide to the joint commit-
13 tee on government and finance a copy of the contract and a
14 report setting forth a detailed summary of the terms of the
15 contract, including the estimated amounts of vendor payments
16 and other terms of financing anticipated under the contract and
17 the date upon which vendor payments will end under the
18 contract, and a description and the cost of the technical services
19 and related services the tax commissioner determines is
20 necessary to develop, implement and maintain the system and
21 associated hardware or software to be acquired under the
22 contract.

23 (c) The authority of the tax commissioner to enter into
24 contracts to finance and acquire an automated tax administra-
25 tion system expires the thirtieth day of June, two thousand five.
26 The expiration of that authority does not affect the authority of
27 the tax commissioner to enter into contracts to maintain an
28 automated tax administration system acquired pursuant to this
29 section, including contracts for the acquisition of associated
30 hardware, software or services after meeting the requirements
31 of subsection (b) of this section.

§11-10C-3. Benefits funding.

1 Notwithstanding any provision of article three, chapter five-
2 a of this code or any other provision of this code to the contrary,
3 payment of costs and compensation for the automated tax
4 administration system, related hardware, software and services
5 may be computed and paid: (1) On the basis of a percentage of
6 the increase in the amount of taxes, interest and penalties
7 collected which is attributable to implementation of the
8 automated tax administration system, as may be described in
9 detail by contract; or (2) on a fixed-fee contract basis, such fees
10 to be paid from the increase in the amount of taxes, interest and
11 penalties collected which is attributable to implementation of
12 the automated tax administration system, as may be described
13 in detail by contract.

§11-10C-4. Monthly determination of increased revenue attribut- able to automated tax administration system; monthly report; deposit of moneys; creation and operation of automated tax administration system development fund; annual report.

1 (a) *Revenue increment, fund created, operation of fund.* —

2 (1) The tax commissioner shall determine monthly the total
3 amount of increased revenue attributable to the successful
4 implementation of the automated tax administration system

5 under this article and the amount shall be paid into the state
6 treasury and deposited to the credit of a special fund known as
7 the “Automated Tax Administration System Development
8 Fund” which is hereby created. The tax commissioner is
9 authorized to use moneys deposited in the automated tax
10 administration system development fund to pay vendors of
11 hardware, software or services pursuant to the terms of con-
12 tracts created in accordance with this article. All moneys in
13 excess of that required to be paid to the vendors, as determined
14 by the tax commissioner, shall be transferred to the general
15 fund: *Provided*, That all moneys in excess of seven hundred
16 fifty thousand dollars remaining in the fund at the end of each
17 fiscal year shall be transferred to the general fund.

18 (2) The total monthly amount of increased revenue attribut-
19 able to the successful implementation of the automated tax
20 administration system as determined by the tax commissioner
21 and the basis for the determination shall be reported to the joint
22 committee on government and finance within ten days follow-
23 ing the determination.

24 (b) *Treatment of local moneys.* —

25 (1) The amount of the local moneys derived from any tax
26 imposed under this code which is directed or dedicated to local
27 or municipal subdivisions shall not be deposited in the auto-
28 mated tax administration system development fund, but shall be
29 paid undiminished, including any increase resulting from
30 implementation of the automated tax administration system, to
31 the local or municipal subdivision to which it is directed or
32 dedicated by law. Local or municipal moneys shall be depos-
33 ited, as directed by law, in those funds designated for orderly
34 distribution of revenues to local or municipal subdivisions.

35 (2) For purposes of this section, the total amount of
36 increased revenue attributable to the successful implementation

37 of an automated tax administration system for purposes of
38 determining the amount to be deposited in the automated tax
39 administration system development fund and the amount of any
40 benefits-funded payments to vendors under this article shall be
41 determined after subtraction of any tax revenues payable to a
42 local or municipal subdivision under this code.

43 (c) *Reports.* — Prior to the fifteenth day of January of each
44 year, the tax commissioner shall submit a report to the gover-
45 nor, the president of the Senate and the speaker of the House of
46 Delegates. The report shall include detailed information on the
47 costs and benefits of implementing the automated tax adminis-
48 tration system pursuant to this article during the fiscal year
49 immediately preceding the submission of the report. The report
50 shall be made until two complete fiscal years have elapsed
51 following payment in full for the acquisition of the automated
52 tax administration system by the tax commissioner.

53 (d) *Other contracts and purchases not prohibited or*
54 *hindered.* — This article shall not be construed to prohibit or
55 hinder the tax commissioner from acquiring any goods or
56 services for any tax division function or program not specifi-
57 cally included in any contract entered into pursuant to this
58 article.

§11-10C-5. Transfer of funds; repeal of article.

1 At the end of fiscal year two thousand thirteen, all moneys
2 in the automated tax administration system development fund
3 shall be transferred to the general fund and the provisions of
4 this article are repealed.

CHAPTER 51

(Com. Sub. for H. B. 2480 — By Delegates R. M. Thompson,
Perry and G. White)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulatory authority of the commissioner of banking over residential mortgage brokers and lenders and the commissioner's authority to assess civil administrative penalties and to expend funds to foster consumer understanding of mortgage laws.

Be it enacted by the Legislature of West Virginia:

That section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, 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.

- 1 (a) Subject to the powers vested in the board by article three
- 2 of this chapter, the commissioner has supervision and jurisdic-
- 3 tion over state banks, regulated consumer lenders, residential
- 4 mortgage lenders and brokers licensed pursuant to article
- 5 seventeen, chapter thirty-one of this code, credit unions and all
- 6 other persons now or hereafter made subject to his or her

7 supervision or jurisdiction. All powers, duties, rights and
8 privileges vested in the division are hereby vested in the
9 commissioner. He or she shall be the chief executive officer of
10 the division of banking and is responsible for the division's
11 organization, services and personnel and for the orderly and
12 efficient administration, enforcement and execution of the
13 provisions of this chapter and all laws vesting authority or
14 powers in or prescribing duties or functions for the division or
15 the commissioner.

16 (b) The commissioner shall:

17 (1) Maintain an office for the division and there keep a
18 complete record of all the division's transactions, of the
19 financial conditions of all financial institutions and records of
20 the activities of other persons as the commissioner considers
21 important. Notwithstanding any other provision of this code,
22 heretofore or hereafter enacted, the records relating to the
23 financial condition of any financial institution and any informa-
24 tion contained in the records shall be confidential for the use of
25 the commissioner and authorized personnel of the division of
26 banking. No person shall divulge any information contained in
27 any records except as authorized in this subdivision in response
28 to a valid subpoena or subpoena duces tecum issued pursuant to
29 law in a criminal proceeding or in a civil enforcement action
30 brought by the state or federal regulatory authorities. Subpoenas
31 shall first be directed to the commissioner, who shall authorize
32 disclosure of relevant records and information from the records
33 for good cause, upon imposing terms and conditions considered
34 necessary to protect the confidential nature of the records, the
35 financial integrity of the financial institution or the person to
36 which the records relate, and the legitimate privacy interests of
37 any individual named in the records. Conformity with federal
38 procedures shall be sought where the institution maintains
39 federal deposit insurance. The commissioner has and may
40 exercise reasonable discretion as to the time, manner and extent

41 the other records in his or her office and the information
42 contained in the records are available for public examination;

43 (2) Require all financial institutions to comply with all the
44 provisions of this chapter and other applicable laws, or any rule
45 promulgated or order issued thereunder;

46 (3) Investigate all alleged violations of this chapter and all
47 other laws which he or she is required to enforce and of any rule
48 promulgated or order issued thereunder; and

49 (4) Require a criminal background investigation, including
50 fingerprint checks, of each: (A) Applicant seeking approval to
51 charter and/or control a state bank, state credit union, or a
52 foreign bank state agency or representative office; (B) applicant
53 seeking a license to engage in the business of money transmis-
54 sion, currency exchange, or other activity regulated under
55 article two, chapter thirty-two-a of this code; (C) applicant
56 subject to the commissioner's supervision seeking a license to
57 engage in the business of regulated consumer lending, mortgage
58 lending or brokering; and (D) division of banking financial
59 institutions regulatory employee applicant, to be made through
60 the West Virginia state police and the federal bureau of
61 investigation: *Provided*, That where the applicant is a company
62 or entity already subject to supervision and regulation by the
63 federal reserve board or other federal bank, thrift or credit union
64 regulator, or is a direct or indirect subsidiary of a company or
65 entity subject to the supervision and regulation, or where the
66 applicant is a company subject to the supervision and regulation
67 of the federal securities and exchange commission whose stock
68 is publicly traded on a registered exchange or through the
69 national association of securities dealers automated quotation
70 system, or the applicant is a direct or indirect subsidiary of such
71 a company, the investigation into criminal background is not
72 required. The provisions of this subdivision are not applicable
73 to applicants seeking interim bank charters organized solely for

74 the purpose of facilitating the acquisition of another bank
75 pursuant to section five, article four of this chapter: *Provided,*
76 *however,* That where a nonexempt applicant under this subdivi-
77 sion is not a natural person, the principals of the applicant are
78 subject to the requirements of this subdivision. As used in this
79 subdivision, the term "principals" means the chief executive
80 officer, regardless of title, managing partner if a partnership,
81 members of the organizing group if no chief executive officer
82 has yet been appointed, trustee or other person controlling the
83 conduct of the affairs of a licensee. A person controlling ten
84 percent or more of the stock of any corporate applicant shall be
85 considered to be a principal under this provision.

86 (c) In addition to all other authority and powers vested in
87 the commissioner by provisions of this chapter and other
88 applicable laws, the commissioner may:

89 (1) Provide for the organization of the division and the
90 procedures and practices of the division and implement the
91 procedures and practices by the promulgation of rules and
92 forms as appropriate and the rules shall be promulgated in
93 accordance with article three, chapter twenty-nine-a of this
94 code;

95 (2) Employ, direct, discipline, discharge and establish
96 qualifications and duties for all personnel for the division,
97 including, but not limited to, examiners, assistant examiners,
98 conservators and receivers, establish the amount and condition
99 of bonds for the personnel he or she considers appropriate and
100 pay the premiums on the bonds and, if he or she elects, have all
101 personnel subject to and under the classified service of the state
102 personnel division;

103 (3) Cooperate with organizations, agencies, committees and
104 other representatives of financial institutions of the state in
105 connection with schools, seminars, conferences and other

106 meetings to improve the responsibilities, services and stability
107 of the financial institutions;

108 (4) In addition to the examinations required by section six
109 of this article, inspect, examine and audit the books, records,
110 accounts and papers of all financial institutions at such times as
111 circumstances in his or her opinion may warrant;

112 (5) Call for and require any data, reports and information
113 from financial institutions under his or her jurisdiction, at such
114 times and in such form, content and detail considered necessary
115 by him or her in the faithful discharge of his or her duties and
116 responsibilities in the supervision of the financial institutions;

117 (6) Subject to the powers vested in the board by article
118 three of this chapter, supervise the location, organization,
119 practices and procedures of financial institutions and, without
120 limitation on the general powers of supervision of financial
121 institutions, require financial institutions to:

122 (A) Maintain their accounts consistent with rules prescribed
123 by the commissioner and in accordance with generally accepted
124 accounting practices;

125 (B) Observe methods and standards which he or she may
126 prescribe for determining the value of various types of assets;

127 (C) Charge off the whole or any part of an asset which at
128 the time of his or her action could not lawfully be acquired;

129 (D) Write down an asset to its market value;

130 (E) Record or file writings creating or evidencing liens or
131 other interests in property;

132 (F) Obtain financial statements from prospective and
133 existing borrowers;

134 (G) Obtain insurance against damage and loss to real estate
135 and personal property taken as security;

136 (H) Maintain adequate insurance against other risks as he
137 or she may determine to be necessary and appropriate for the
138 protection of depositors and the public;

139 (I) Maintain an adequate fidelity bond or bonds on its
140 officers and employees;

141 (J) Take other action that in his or her judgment is required
142 of the institution in order to maintain its stability, integrity and
143 security as required by law and all rules promulgated by him or
144 her; and

145 (K) Verify any or all asset or liability accounts;

146 (7) Subject to the powers vested in the board by article
147 three of this chapter, receive from any person or persons and
148 consider any request, petition or application relating to the
149 organization, location, conduct, services, policies and proce-
150 dures of any financial institution and to act on the request,
151 petition or application in accordance with any provisions of law
152 applicable thereto;

153 (8) In connection with the investigations required by
154 subdivision (3), subsection (b) of this section, issue subpoenas
155 and subpoenas duces tecum, administer oaths, examine persons
156 under oath, and hold and conduct hearings. Any subpoenas or
157 subpoenas duces tecum shall be issued, served and enforced in
158 the manner provided in section one, article five, chapter twenty-
159 nine-a of this code. Any person appearing and testifying at a
160 hearing may be accompanied by an attorney employed by him
161 or her;

162 (9) Issue declaratory rulings in accordance with the
163 provisions of section one, article four, chapter twenty-nine-a of
164 this code;

165 (10) Study and survey the location, size and services of
166 financial institutions, the geographic, industrial, economic and
167 population factors affecting the agricultural, commercial and
168 social life of the state and the needs for reducing, expanding or
169 otherwise modifying the services and facilities of financial
170 institutions in the various parts of the state and compile and
171 keep current data thereon to aid and guide him or her in the
172 administration of the duties of his or her office;

173 (11) Implement all of the provisions of this chapter, except
174 the provisions of article three of this chapter, and all other laws
175 which he or she is empowered to administer and enforce by the
176 promulgation of rules in accordance with the provisions of
177 article three, chapter twenty-nine-a of this code;

178 (12) Implement the provisions of chapter forty-six-a of this
179 code applicable to consumer loans and consumer credit sales by
180 the promulgation of rules in accordance with the provisions of
181 article three, chapter twenty-nine-a of this code as long as the
182 rules do not conflict with any rules promulgated by the state's
183 attorney general;

184 (13) Foster and encourage a working relationship between
185 the division of banking and financial institutions, credit,
186 consumer, mercantile and other commercial and finance groups
187 and interests in the state in order to make current appraisals of
188 the quality, stability and availability of the services and
189 facilities of financial institutions;

190 (14) Provide to financial institutions and the public copies
191 of the West Virginia statutes relating to financial institutions,
192 suggested drafts of bylaws commonly used by financial
193 institutions and any other forms and printed materials found by

194 him or her to be helpful to financial institutions, their share-
195 holders, depositors and patrons and make reasonable charges
196 for the copies;

197 (15) Delegate the powers and duties of his or her office,
198 other than the powers and duties excepted in this subdivision,
199 to qualified division personnel who shall act under the direction
200 and supervision of the commissioner and for whose acts he or
201 she is responsible, but the commissioner may delegate to the
202 deputy commissioner of banking and to no other division
203 personnel the following powers, duties and responsibilities, all
204 of which are hereby granted to and vested in the commissioner
205 and for all of which the commissioner also is responsible. The
206 commissioner shall:

207 (A) Order any person to cease violating any provision or
208 provisions of this chapter or other applicable law or any rule
209 promulgated or order issued thereunder;

210 (B) Order any person to cease engaging in any unsound
211 practice or procedure which may detrimentally affect any
212 financial institution or depositor of the financial institution;

213 (C) Revoke the certificate of authority, permit or license of
214 any financial institution except a banking institution in accor-
215 dance with the provisions of section thirteen of this article; and

216 (D) Accept an assurance in writing that the person will not
217 in the future engage in the conduct alleged by the commissioner
218 to be unlawful, which could be subject to an order under the
219 provisions of this chapter. This assurance of voluntary compli-
220 ance shall not be considered an admission of violation for any
221 purpose, except that if a person giving the assurance fails to
222 comply with its terms, the assurance is prima facie evidence
223 that prior to this assurance the person engaged in conduct
224 described in the assurance;

225 (16) Seek and obtain civil administrative penalties against
226 any person who violates this chapter, the rules issued pursuant
227 to this chapter, or any orders lawfully entered by the commis-
228 sioner or board of banking and financial institutions in an
229 amount not more than five thousand dollars per day for each
230 violation: *Provided*, That all of the pertinent provisions of
231 article five, chapter twenty-nine-a of this code shall apply to
232 any assessment of a penalty under this subsection;

233 (17) Receive from state banking institutions applications to
234 change the locations of their principal offices and to approve or
235 disapprove these applications;

236 (18) Expend funds in order to promote consumer awareness
237 and understanding of issues related to residential mortgage
238 lending; and

239 (19) Take other action as he or she may consider necessary
240 to enforce and administer the provisions of this chapter, except
241 the provisions of article three of this chapter, and all other laws
242 which he or she is empowered to administer and enforce and
243 apply to any court of competent jurisdiction for appropriate
244 orders, writs, processes and remedies.

CHAPTER 52

(S. B. 190 — By Senators Minard, Sharpe, Jenkins,
Rowe and Sprouse)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter thirty-
one-a of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to the bank examination schedule for certain banking institutions.

Be it enacted by the Legislature of West Virginia:

That section six, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal or out-of-state agency in lieu of commissioner's examination.

1 The commissioner shall make, at least once every twelve
2 months, a thorough examination of all the books, accounts,
3 records and papers of every depository financial institution
4 with: (1) Assets of more than two hundred fifty million dollars;
5 or (2) banks with a composite rating of three, four or five under
6 the federal uniform financial institution rating system. For all
7 other depository financial institutions the commissioner of
8 banking shall make, at least once every eighteen months, a
9 thorough examination of all the books, accounts, records and
10 papers. He or she shall carefully examine all of the assets of
11 each such institution, including its notes, drafts, checks,
12 mortgages, securities deposited to assure the payment of debts
13 unto it and all papers, documents and records showing, or in
14 any manner relating to, its business affairs, and shall ascertain
15 the full amount and the nature in detail of all of its assets and
16 liabilities. The commissioner may also, at his or her discretion,
17 make or cause to be made an annual or periodic examination of
18 the books, accounts, records and papers of other financial
19 institutions under his or her supervision for the purposes of
20 determining compliance with applicable consumer and credit

21 lending laws and verifying information provided in any license
22 application or annual report submitted to the commissioner. The
23 commissioner may also make such examination of any subsid-
24 iaries or affiliates of a financial institution as he or she may
25 deem necessary to ascertain the financial condition of the
26 financial institution, the relations between the financial institu-
27 tion and its subsidiaries and affiliates and the effect of the
28 relations upon the affairs of such financial institution. A full
29 report of every examination shall be made and filed and
30 preserved in the office of the commissioner and a copy thereof
31 forthwith mailed to the institution examined. Every institution
32 shall retain all of its records of final entry for the period of time
33 as required in section thirty-five, article four of this chapter for
34 banking institutions. Unless otherwise covered by assessments
35 or a specific provision of this code, the cost of examinations
36 made pursuant to this section shall be borne by the financial
37 institution at a rate of fifty dollars per each examiner hour
38 expended.

39 Every official communication from the commissioner to
40 any institution, or to any officer thereof, relating to an examina-
41 tion or an investigation of the affairs of the institution con-
42 ducted by the commissioner or containing suggestions or
43 recommendations as to the manner of conducting the business
44 of the institution, shall be read by the board of directors at the
45 next meeting after the receipt thereof and the president, or other
46 executive officer, of the institution shall forthwith notify the
47 commissioner in writing of the presentation and reading of the
48 communication and of any action taken thereon by the institu-
49 tion.

50 The commissioner of banking, in his or her discretion, may:
51 (a) Accept a copy of a reasonably current examination of any
52 banking institution made by the federal deposit insurance
53 corporation or the federal reserve system in lieu of an examina-
54 tion of the banking institution required or authorized to be made

55 by the laws of this state and the commissioner may furnish to
56 the federal deposit insurance corporation or the federal reserve
57 system or to any official or examiner thereof any copy or copies
58 of the commissioner's examinations of and reports on the
59 banking institutions; (b) accept a copy of a reasonably current
60 examination of any out-of-state bank or any West Virginia state
61 bank's out-of-state activities made by another state's banking
62 regulatory authority in lieu of an examination of the banking
63 institution required or authorized to be made by the laws of this
64 state and the commissioner may furnish to such other state's
65 banking regulatory authority or to any official or examiner
66 thereof any copy or copies of the commissioner's examinations
67 of and reports on such banking institutions; but nothing herein
68 shall be construed to limit the duty and responsibility of
69 banking institutions to comply with all provisions of law
70 relating to examinations and reports, nor to limit the powers and
71 authority of the commissioner of banking with reference to
72 examinations and reports under existing laws. The provision or
73 exchange of examination reports and other records of financial
74 condition and individuals pursuant to cooperative, coordinating
75 or information-sharing agreements with other bank supervisory
76 agencies and persons as permitted by this chapter under an
77 agreement of confidentiality shall not constitute a violation of
78 section four of this article.

CHAPTER 53

**(Com. Sub. for H. B. 2443 — By Delegates R. M. Thompson,
Perry and G. White)**

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the assessment of banking institutions.

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

1 (a) All moneys collected by the commissioner from
2 financial institutions and bank holding companies for assess-
3 ments, examination fees, investigation fees or other necessary
4 expenses incurred by the commissioner in administering such
5 duties shall be paid to the commissioner and paid by the
6 commissioner to the treasurer of the state to the credit of a
7 special revenue account to be known as the "commissioner's
8 assessment and examination fund" which is hereby established.
9 The assessments and fees paid into this account shall be
10 appropriated by law and used to pay the costs and expenses of
11 the division of banking and all incidental costs and expenses
12 necessary for its operations. At the end of each fiscal year, if the
13 fund contains a sum of money in excess of twenty percent of
14 the appropriated budget of the division of banking, the amount
15 of the excess shall be transferred to the general revenue fund of
16 the state. The Legislature may appropriate money to start the
17 special revenue account.

18 (b) The commissioner of banking shall charge and collect
19 from each state banking institution or other financial institution

20 or bank holding company and pay into a special revenue
 21 account in the state treasury for the division of banking assess-
 22 ments as follows:

23 (1) For each state banking institution, a semiannual
 24 assessment payable on the first day of January and the first day
 25 of July, each year, computed upon the total assets of the
 26 banking institution shown on the report of condition of the
 27 banking institution filed as of the preceding thirtieth day of
 28 June and the thirty-first day of December, respectively, as
 29 follows:

30 **Total Assets**

31		But Not			Of Excess
32	Over	Over	This		Over
33	Million	Million	Amount	Plus	Million
34	\$ 0	\$ 2	\$ 0	.001645020	0
35	2	20	3,290	.000205628	2
36	20	100	6,991	.000164502	20
37	100	200	20,151	.000106926	100
38	200	1,000	30,844	.000090476	200
39	1,000	2,000	103,225	.000074026	1,000
40	2,000	6,000	177,251	.000065801	2,000
41	6,000	20,000	440,454	.000055988	6,000
42	20,000	40,000	1,224,292	.000052670	20,000

43 (2) For each regulated consumer lender, an annual assess-
 44 ment payable on the first day of July, each year, computed upon
 45 the total outstanding gross loan balances and installment sales
 46 contract balances net of unearned interest of the regulated
 47 consumer lender shown on the report of condition of the
 48 regulated consumer lender as of the preceding thirty-first day of
 49 December, respectively, as follows:

50 **Total Outstanding Balances**

51		But Not	This		Of Excess
52	Over	Over	Amount	Plus	Over
53	\$ 0	\$ 1,000,000	800	-	-
54	1,000,000	5,000,000	800	.000400	1,000,000
55	5,000,000	10,000,000	2,400	.000200	5,000,000
56	10,000,000	-	4,200	.000100	10,000,000

57 If a regulated consumer lender's records or documents are
 58 maintained in more than one location in this state, then eight
 59 hundred dollars may be added to the assessment for each
 60 additional location.

61 (3) For each credit union, an annual assessment as provided
 62 for in section eight, article one, chapter thirty-one-c of this code
 63 as follows:

64 **Total Assets**

65		But Not	This		Of Excess
66	Over	Over	Amount	Plus	Over
67	\$ 0	\$ 100,000	100	-	-
68	100,000	500,000	300	-	-
69	500,000	1,000,000	500	-	-
70	1,000,000	5,000,000	500	.000400	1,000,000
71	5,000,000	10,000,000	2,100	.000200	5,000,000
72	10,000,000	-	3,100	.000100	10,000,000

73 (4) For each bank holding company, an annual assessment
 74 as provided for in section eight, article eight-a of this chapter.
 75 The annual assessment may not exceed ten dollars per million
 76 dollars in deposits rounded off to the nearest million dollars.

77 (c) The commissioner shall each December and each June
78 prepare and send to each state banking institution a statement
79 of the amount of the assessment due. The commissioner shall,
80 further, each June, prepare and send to each regulated consumer
81 lender and each state credit union a statement of the amount of
82 the assessment due. The commissioner shall, annually, during
83 the month of January, prepare and send to each bank holding
84 company a statement of the amount of the assessment due.

85 Assessments may be prescribed every six months, not later
86 than the fifteenth day of June and the fifteenth day of Decem-
87 ber, by written order of the commissioner, but shall not exceed
88 the maximums as set forth in subsection (b) of this section. In
89 setting the assessments the primary consideration shall be the
90 amount appropriated by the Legislature for the division of
91 banking for the corresponding annual period. Reasonable notice
92 of the assessments shall be made to all interested parties. All
93 orders of the commissioner for the purpose of setting assess-
94 ments are not subject to the provisions of the West Virginia
95 administrative procedures act, under chapter twenty-nine-a of
96 this code.

97 (d) For making an examination within the state of any other
98 financial institution for which assessments are not provided by
99 this code, the commissioner of banking shall charge and collect
100 from such other financial institution and pay into the special
101 revenue account for the division of banking the actual and
102 necessary costs and expenses incurred in connection therewith,
103 as fixed and determined by the commissioner. Banks that
104 provide only trust or other nondepository services, nonbanking
105 subsidiaries of bank holding companies that provide trust
106 services, nonbanking subsidiaries of banks that provide trust
107 services and any trust entity that is jointly owned by federally
108 insured depository institutions may be assessed for necessary
109 costs and expenses associated with an examination pursuant to
110 this subsection.

111 (e) If the records of an institution are located outside this
112 state, the institution at its option shall make them available to
113 the commissioner at a convenient location within the state, or
114 pay the reasonable and necessary expenses for the commis-
115 sioner or his or her representatives to examine them at the place
116 where they are maintained. The commissioner may designate
117 representatives, including comparable officials of the state in
118 which the records are located, to inspect them on his or her
119 behalf.

120 (f) The commissioner of banking may maintain an action
121 for the recovery of all assessments, costs and expenses in any
122 court of competent jurisdiction.

CHAPTER 54

(H. B. 2514 — By Delegates R. M. Thompson, Perry and G. White)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the board of banking and financial institutions to remove directors, officers or employees of financial institutions and prohibit them from participating in the conduct of affairs of other financial institutions.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.**§31A-3-2. General powers and duties.**

1 (a) In addition to other powers conferred by this chapter,
2 the board has the power to:

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules to implement any provision
5 of this article in accordance with the provisions of article three,
6 chapter twenty-nine-a of this code;

7 (3) Advise the commissioner in all matters within his or her
8 jurisdiction;

9 (4) Study the organization, programs and services of
10 financial institutions and the laws relating thereto in this state
11 and in other jurisdictions, and to report and recommend to the
12 governor and the Legislature all such changes and amendments
13 in laws, policies and procedures relating thereto as it considers
14 proper;

15 (5) Grant permission and authority to a financial institution:

16 (A) To participate in a public agency hereafter created
17 under the laws of this state or of the United States, the purpose
18 of which is to afford advantages or safeguards to financial
19 institutions or to depositors therein, and to comply with all
20 lawful requirements and conditions imposed upon those
21 participants;

22 (B) To engage in any financial institution activity, services,
23 procedures and practices in which financial institutions of the
24 same type subject to the jurisdiction of the federal government
25 may hereafter be authorized by federal laws, rules or regula-
26 tions to engage, notwithstanding any contrary provision of this
27 code; and

28 (C) To pay interest on demand deposits of the United States
29 or any agency thereof, if the payment of interest is permitted
30 under any applicable federal law, rule or regulation.

31 Any permission and authority granted by the board pursuant
32 to this subdivision shall terminate upon the adjournment of the
33 next regular session of the Legislature, unless the Legislature
34 enacts legislation authorizing the financial institution participa-
35 tion, activity, services and procedures or payment of interest
36 with respect to which such permission and authority were
37 granted, in which event the permission and authority shall
38 continue in effect until the effective date of the legislation; and

39 (6) Seek judicial enforcement to compel compliance with
40 any of its orders and to seek and obtain civil penalties as set
41 forth under this chapter.

42 (b) The board also has the power, by entering appropriate
43 orders, to:

44 (1) Restrict the withdrawal of deposits from any financial
45 institution when, in the judgment of the board, extraordinary
46 circumstances make the restrictions necessary for the protection
47 of creditors of and depositors in the affected institution;

48 (2) Compel the holder of shares in any corporate financial
49 institution to refrain from voting the shares on any matter when,
50 in the judgment of the board, the order is necessary to protect
51 the institution against reckless, incompetent or careless man-
52 agement, to safeguard funds of depositors in the institution or
53 to prevent willful violation of any applicable law or of any rule
54 and regulation or order issued thereunder. In such a case the
55 shares of the holder may not be counted in determining the
56 existence of a quorum or a percentage of the outstanding shares
57 necessary to take any corporate action;

58 (3) Approve or disapprove applications to incorporate and
59 organize state banking institutions in accordance with the
60 provisions of sections six and seven, article four of this chapter;

61 (4) Approve or disapprove applications to incorporate and
62 organize state-chartered bankers' banks in accordance with the
63 provisions of sections six and seven, article four of this chapter;

64 (5) Exempt a bankers' bank from any provision of this
65 chapter if the board finds that the provision is inconsistent with
66 the purpose for which a bankers' bank is incorporated and
67 organized and that the welfare of the public or any banking
68 institution or other financial institution would not be jeopard-
69 ized thereby;

70 (6) Revoke the certificate of authority, permit, certificate or
71 license of any state banking institution to engage in business in
72 this state if that institution fails or refuses to comply with any
73 order of the commissioner entered pursuant to the provisions of
74 paragraph (A) or (B), subdivision (15), subsection (c), section
75 four, article two of this chapter, or at the board's election to
76 direct the commissioner to apply to any court having jurisdic-
77 tion for a prohibitory or mandatory injunction or other appropri-
78 ate remedy to compel obedience to such order;

79 (7) Suspend or remove a director, officer or employee of
80 any financial institution who is or becomes ineligible to hold
81 that position under any provision of law or rule and regulation
82 or order, or who willfully disregards or fails to comply with any
83 order of the board or commissioner made and entered in
84 accordance with the provisions of this chapter or who is
85 dishonest or grossly incompetent in the conduct of financial
86 institution business and prohibit that director, officer or
87 employee from participating in the affairs of any other financial
88 institution until further order of the board;

89 (8) To receive from state banking institutions applications
90 to establish branch banks by the purchase of the business and
91 assets and assumption of the liabilities of, or merger or consoli-
92 dation with, another banking institution, or by the construction,
93 lease or acquisition of branch bank facilities in an unbanked
94 area; examine and investigate such applications, to hold
95 hearings thereon, and to approve or disapprove such applica-
96 tions, all in accordance with section twelve, article eight of this
97 chapter;

98 (9) Approve or disapprove the application of any state bank
99 to purchase the business and assets and assume the liabilities of,
100 or merge or consolidate with, another state banking institution
101 in accordance with the provisions of section seven, article seven
102 of this chapter;

103 (10) Approve or disapprove the application of any state
104 bank to purchase the business and assets and assume the
105 liabilities of a national banking association, or merge or
106 consolidate with a national banking association to form a
107 resulting state bank in accordance with the provisions of section
108 seven, article seven of this chapter; and

109 (11) In addition to any authority granted pursuant to section
110 twelve, article eight of this chapter, incident to the approval of
111 an application pursuant to subdivision (7) or (8) of this subsec-
112 tion, permit the bank the application of which is so approved to
113 operate its banking business under its name from the premises
114 of the bank the business and assets of which have been pur-
115 chased and the liabilities of which have been assumed by such
116 applicant bank or with which the applicant bank has merged or
117 consolidated: *Provided*, That this permission may be granted
118 only if the board has made the findings required by subsection
119 (f), section three of this article and such applicant bank has no
120 common directors or officers nor common ownership of stock
121 exceeding ten percent of total outstanding voting stock with the

122 bank whose business and assets are being purchased and
123 liabilities assumed, or with whom the applicant bank is being
124 merged; and

125 (12) To receive an appeal from any party who is adversely
126 affected by an order of the commissioner issued pursuant to
127 section twelve-d, article eight of this chapter, and hold hearings
128 in accordance with the provisions of article five, chapter
129 twenty-nine-a of this code.

130 (c) A provision of this section may not be construed to
131 alter, reduce or modify the rights of shareholders, or obligations
132 of a banking institution in regard to its shareholders, as set forth
133 in section one hundred seventeen, article one, chapter thirty-one
134 of this code and section seven, article seven of this chapter, and
135 other applicable provisions of this code.

136 (d) Any order entered by the West Virginia board of
137 banking and financial institutions pursuant to this section is a
138 matter of public record.

CHAPTER 55

(H. B. 2441 — By Delegates R. M. Thompson, Perry and G. White)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the minimum capital stock; and raising the minimum subscribed capital stock and surplus required for a new bank charter.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.

1 (a) No banking institution may hereafter be incorporated
2 unless it shall have bona fide subscribed capital stock and
3 capital surplus equal to at least four million dollars. The West
4 Virginia board of banking and financial institutions shall
5 require capital in excess of four million dollars if, in its
6 judgment, economic conditions or the operating environment of
7 the proposed banking institution, make such a requirement
8 necessary.

9 (b) Notwithstanding any provision of subsection (a) above,
10 the commissioner or the West Virginia board of banking and
11 financial institutions may approve the incorporation of a bank
12 newly organized solely for the purpose of facilitating the
13 acquisition of another bank if the proposed newly organized
14 bank has a bona fide subscribed capital stock and capital
15 surplus of at least sixty thousand dollars.

16 (c) Banking institutions shall issue but one class of stock
17 and the shares shall have a nominal or par value of not less than
18 one dollar nor more than one hundred dollars each, and as to
19 each banking institution each share shall be equal in all respects
20 with any other share.

21 (d) Any banking institution may change the par value of its
22 shares, when and to the extent that any such action may be
23 authorized in writing by the commissioner.

CHAPTER 56

(S. B. 192 — By Senators Minard, Sharpe, Jenkins,
Rowe, Sprouse and Plymale)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the notice required from bank holding companies that apply for financial holding company status.

Be it enacted by the Legislature of West Virginia:

That section seven, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 8A. ACQUISITION OF BANKS BY BANK HOLDING COMPANIES.

§31A-8A-7. Reports; examinations.

- 1 (a)To the extent specified by the commissioner by rule,
- 2 order or written request, each bank holding company that
- 3 directly or indirectly controls a West Virginia bank, bank
- 4 branch in West Virginia or a West Virginia bank holding
- 5 company shall submit to the commissioner an annual report
- 6 specifying for each bank and branch (excluding automated
- 7 teller machines) in this state controlled by the bank holding
- 8 company:

9 (i) The location of each office, including county and, where
10 applicable, municipality;

11 (ii) The amount of deposits held by each office as of the end
12 of the preceding calendar year; and

13 (iii) The amount of loans outstanding by each office at the
14 end of the preceding calendar year.

15 The foregoing report shall be based upon each bank's
16 allocation of its deposit base and loan portfolio among its main
17 office and branches. The report shall be filed with the commis-
18 sioner on or before the fifteenth day of February of each year on
19 forms prescribed by the commissioner.

20 (b) A parent bank holding company controlling a bank or
21 bank holding company having, or through a subsidiary having,
22 a place of business in this state shall, on or before the thirty-first
23 day of March of each year, register with the commissioner on
24 forms provided or prescribed by said office which shall include
25 such information with respect to the financial condition,
26 operation, management and intercompany relationships of the
27 parent bank holding company and its subsidiaries and related
28 matters as the commissioner may consider necessary or
29 appropriate to carry out the purposes of this article. The
30 information required herein may be supplied by submission of
31 copies of other similar federal or state regulatory filings or
32 forms containing the information unless otherwise required by
33 order or rule.

34 (c) The commissioner may enter into cooperative agree-
35 ments with any other bank supervisory agencies to facilitate the
36 examination of any bank holding company that: (i) Has
37 acquired or has an application pending to acquire a West
38 Virginia bank or West Virginia bank holding company pursuant
39 to this article; or (ii) operates a subsidiary doing business in this
40 state which is subject to the jurisdiction or supervision of the

41 commissioner. The commissioner may accept reports of
42 examinations and other records from other authorities in lieu of
43 conducting his or her own examination of the bank holding
44 companies or their subsidiaries. The commissioner may take
45 any action jointly with other regulatory agencies having
46 concurrent jurisdiction over the bank holding companies or
47 subsidiaries or may take action independently in order to carry
48 out his or her responsibilities under this chapter.

49 (d) When the commissioner considers it necessary, he or
50 she may require any bank holding company that has acquired a
51 West Virginia bank, bank branch in West Virginia or West
52 Virginia bank holding company to submit the reports to the
53 commissioner as he or she determines to be necessary or
54 appropriate for the purpose of carrying out his or her responsi-
55 bilities.

56 (e) When the commissioner of banking considers it
57 necessary or appropriate, he or she may examine any bank
58 holding company that has acquired or has an application
59 pending to acquire a West Virginia bank, bank branch in West
60 Virginia or West Virginia bank holding company. The cost of
61 an examination in connection with an application, if in excess
62 of the initial fee, shall be assessed against and paid by the bank
63 holding company examined. The commissioner may request the
64 bank holding company to be examined pursuant to this subsec-
65 tion to advance the estimated cost of the examination. The cost
66 of an examination for a bank holding company controlling a
67 West Virginia bank or West Virginia bank holding company
68 regarding compliance with the law of this state or safe and
69 sound banking practices shall be assessed against and paid by
70 the bank holding company examined.

71 (f) Any parent bank holding company or bank holding
72 company having, or through a subsidiary having, a place of
73 business in this state, shall provide the commissioner with

74 notice of any filing it makes with the board of governors of the
75 federal reserve to declare its intent to become a financial
76 holding company. The notice required herein may be met by
77 filing copies of the federal filings or forms containing the
78 information filed with the board of governors of the federal
79 reserve and shall be filed with the commissioner no later than
80 two weeks after the date the declaration of intent is filed with
81 the federal reserve.

CHAPTER 57

(S. B. 189 — By Senators Minard, Sharpe and Jenkins)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article eight-e, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the requirement of notice and conditions for approval of out-of-state bank applications to establish bank branches in West Virginia; alternate method of providing notice to the commissioner; and removal of the commissioner's right to object to branch proposals upon grounds purely dealing with the procedures of the out-of-state bank's supervisory agency.

Be it enacted by the Legislature of West Virginia:

That sections five and six, article eight-e, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUISITION OF BRANCHES.

§31A-8E-5. Requirement of notice.

§31A-8E-6. Conditions for approval.

§31A-8E-5. Requirement of notice.

1 An out-of-state bank desiring to establish and maintain a de
2 novo branch or to acquire a branch in this state pursuant to this
3 article shall provide written notice of the proposed transaction
4 to the commissioner not later than the date on which the bank
5 applies to the responsible federal or state bank supervisory
6 agency for approval to establish the branch. The out-of-state
7 bank may comply with this requirement by filing an additional
8 copy of its branch application with its home state regulator and
9 requesting that the home state regulator provide the copy to the
10 commissioner. The commissioner may notify the home state
11 regulator that the out-of-state bank must pay to the West
12 Virginia division of banking a fee of up to two hundred fifty
13 dollars.

§31A-8E-6. Conditions for approval.

1 No branch of an out-of-state bank may be established in
2 this state under this article unless the bank or its home state
3 regulator:

4 (a) Confirms in writing to the commissioner that as long as
5 it maintains a branch in West Virginia, the out-of-state bank
6 will comply with all applicable laws of this state, including
7 consumer protection laws and any acquisition deposit limita-
8 tions, as well as maintenance of deposit insurance and capital
9 requirements in the same manner as required for West Virginia
10 state banks.

11 (b) Provides satisfactory evidence to the commissioner of
12 compliance with the applicable requirements of West Virginia
13 law requiring foreign corporations to qualify to do business in
14 West Virginia.

15 (c) The commissioner, acting within thirty days after
16 receiving notice of an application under section five of this
17 article, or within seven days after a decision if a hearing is held,
18 certifies to the responsible federal bank supervisory agency that
19 the requirements of this article have been met. Unless pre-
20 empted by federal law, the commissioner shall have thirty days
21 from receipt of the written notice to object to the proposed
22 transaction and request a hearing before the board on the basis
23 that the transaction is contrary to applicable West Virginia law.
24 The failure to object within thirty days shall be construed as
25 consent by the commissioner or, in his or her discretion, the
26 commissioner may, at any time, consent in writing.

CHAPTER 58

(Com. Sub. for S. B. 191 — By Senators Minard, Sharpe and Jenkins)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter thirty-one-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the procedure for a state-chartered credit union to convert to a federal charter or a charter of another state; removing the requirement of having a hearing; and increasing the period of required notice to members prior to voting on the issue of conversion.

Be it enacted by the Legislature of West Virginia:

That section three, article ten, chapter thirty-one-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. CHANGE IN CORPORATE STATUS.**§31C-10-3. Conversion.**

1 (a) A credit union incorporated under the laws of this state
2 may be converted to a credit union organized under the laws of
3 any other state or under the laws of the United States by
4 complying with the following requirements:

5 (1) The proposition for the conversion shall first be
6 approved and a date set for a vote thereon by the members
7 (either at a meeting to be held on such date or by written ballot
8 to be filed on or before such date) by a majority of the directors
9 of the West Virginia state credit union. Written notice of the
10 proposition and of the date set for the vote shall then be
11 delivered in person to each member, or mailed to each member
12 at the address for such member appearing on the records of the
13 credit union, not more than sixty or less than fourteen days prior
14 to such date. Approval of the proposition for conversion shall
15 be by the affirmative vote of two thirds of the members voting
16 in person or in writing;

17 (2) A statement of the results of the vote, verified by the
18 affidavits of the president or vice president and the secretary,
19 shall be filed with the commissioner of banking within ten days
20 after the vote is taken; however, no West Virginia state-
21 chartered credit union may convert its charter to that of another
22 state unless: (i) The conversion is approved by the commis-
23 sioner of banking in writing after notice; (ii) the other state
24 allows conversions of its credit unions to a West Virginia state
25 charter on a reciprocal basis; and (iii) the majority, or in the
26 event the credit union operates offices in more than two states,
27 the plurality, of the credit union's members are residents of that
28 other state. To the extent that an out-of-state credit union
29 created by conversion seeks to conduct business through a

30 branch or service facility in West Virginia, the provisions of
31 section six, article two of this chapter shall apply;

32 (3) Promptly after the commissioner of banking has
33 approved the conversion in writing, and in no event later than
34 ninety days thereafter, the credit union shall take such action as
35 may be necessary under the applicable federal or state law to
36 make it a federal credit union or credit union of another state
37 and within ten days after receipt of the federal credit union
38 charter or out-of-state credit union charter there shall be filed
39 with the commissioner of banking a copy of the charter thus
40 issued. Upon such filing, the credit union shall cease to be a
41 West Virginia state-chartered credit union;

42 (4) The successor federal credit union or out-of-state
43 chartered credit union shall be vested with all the assets and
44 shall continue to be responsible for all of the obligations of the
45 West Virginia state credit union to the same extent as though
46 the conversion had not taken place.

47 (b) A credit union organized under the laws of the United
48 States or of any other state may convert to a credit union
49 incorporated under the laws of this state. To effect a conversion,
50 a credit union must comply with all the requirements of the
51 jurisdiction under which it was originally organized and the
52 requirements of the laws and rules of this state and file proof of
53 compliance with the commissioner. The commissioner shall
54 generally treat the conversion to a West Virginia state-chartered
55 credit union as a formation of a new credit union pursuant to
56 article two of this chapter and the procedures and requirements
57 therein shall be followed to the extent applicable.

CHAPTER 59

(H. B. 2794 — By Delegates Stalnaker, Morgan,
Stemple and Shelton)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-nine-e and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to worthless checks; and increasing the allowable service charge for a dishonored check.

Be it enacted by the Legislature of West Virginia:

That sections thirty-nine-e and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39e. Notice of dishonor by payee; service charge.

§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

§61-3-39e. Notice of dishonor by payee; service charge.

- 1 The payee or holder of a check, draft or order which has
- 2 been dishonored because of insufficient funds or credit may
- 3 send notice thereof to the drawer of the check, draft or order.
- 4 The payee or holder of any dishonored check may impose a fee
- 5 of up to twenty-five dollars a worthless check. This fee may not
- 6 be imposed or collected after a complaint for warrant has been

38 matter, including all costs which may have accrued by the time
39 the magistrate court is notified of the payment.

**§61-3-39g. Complaint; notice of complaint; issuance of warrant;
payment procedures; costs.**

1 After receipt of a complaint for warrant for a violation of
2 section thirty-nine or thirty-nine-a of this article the magistrate
3 court shall proceed with the issuance of the warrant as is
4 provided by law: *Provided*, That no warrant may issue for an
5 offense under section thirty-nine or thirty-nine-a of this article
6 which, upon conviction, would be punishable as a misde-
7 meanor, unless the payee or holder of the check, draft or order
8 which has been dishonored has sent notice thereof to the drawer
9 of the check, draft or order in accordance with the provisions of
10 section thirty-nine-e of this article, or unless notice has been
11 sent by the magistrate as hereinafter provided. Proof that the
12 notice was sent by the payee or holder may be evidenced by
13 presentation of a return receipt indicating that the notice was
14 mailed to the drawer by certified mail, or, in the event the
15 mailed notice was not received or was refused by the drawer, by
16 presentation of the mailed notice itself. The magistrate court
17 shall receive and hold the check, draft or order.

18 Upon receipt of a complaint for a misdemeanor warrant
19 unaccompanied by proof that notice was sent by the payee or
20 holder, the magistrate court shall immediately prepare and mail
21 to the drawer of the check, draft or order a notice in form
22 substantially as follows. The magistrate court shall impose any
23 service charge reflected in the complaint as having been
24 imposed on the payee or holder by the payee's or holder's bank
25 or financial institution in connection with the check, draft or
26 order and additional court costs in the amount of twenty-five
27 dollars. This notice shall be mailed to the drawer by United
28 States mail, first class and postpaid, at the address provided at
29 the time of presenting the check, draft or order. Service of this

30 notice is complete upon mailing. The notice shall be in form
31 substantially as follows:

32 "You are hereby notified that a complaint for a warrant for
33 your arrest has been filed with this office to the following effect
34 and purpose by who upon oath complains that on the
35 day of, 20....., you did unlawfully issue and
36 deliver unto him a certain check, draft or order in the amount of
37 drawn on (name of bank or
38 financial institution) where you did not have funds
39 on deposit in or credit with the bank or financial institution with
40 which to pay the check, draft or order upon presentation and
41 pray that a warrant issue and that you be apprehended wherever
42 you may be found by an officer authorized to make an arrest
43 and dealt with in accordance with the laws of the state of West
44 Virginia.

45 "A warrant for arrest will be issued on or after the
46 day of, 20.....

47 "You can nullify the effect of this complaint and avoid
48 arrest by paying to the magistrate court clerk at
49 the amount due on the check, draft or order; service charges
50 imposed on the payee or holder by the payee's or holder's bank
51 or financial institution in connection with the check, draft or
52 order in the amount of; and the costs of this proceeding
53 in the amount of twenty-five dollars on or before the day
54 of, 20....., at which time you will be given a
55 receipt with which you can obtain the check, draft or order from
56 the magistrate court. The complainant is forbidden by law to
57 accept payment after the complaint is filed.

58 Magistrate Court of County

59

60 Date:"

61 This notice shall give the drawer of any such check, draft
62 or order ten days within which to make payment to magistrate
63 court. In the event the drawer pays the total amount set forth in
64 the notice to the magistrate court within the ten-day period, no
65 warrant may issue. The payment may be made to the magistrate
66 court in person or by mail by cash, certified check, bank draft
67 or money order and, in the event the payment is made by mail,
68 the magistrate court clerk shall immediately mail to the maker
69 of the check, draft or order the receipt required by this section.
70 In the event the total amount is not so paid the court shall
71 proceed with the issuance of the warrant as is provided by law.

72 Upon receipt of payment of the total amount the magistrate
73 court clerk shall issue to the drawer a receipt sufficiently
74 describing the check, draft or order with which receipt the
75 drawer is entitled to receive the dishonored check, draft or order
76 from the magistrate court holding it. The magistrate court clerk
77 shall forward the amount of the check, draft or order, together
78 with any service charge reflected on the complaint as having
79 been imposed on the payee or holder by the payee's or holder's
80 bank or financial institution in connection with the check, draft
81 or order, to the payee or holder thereof, along with a description
82 of the check, draft or order sufficient to enable the person filing
83 the complaint to identify it and the transaction involved. Costs
84 collected shall be dealt with as is provided by law for other
85 criminal proceedings.

86 The drawer of a check, draft or order against whom a
87 warrant has been issued may at any time prior to trial pay to the
88 court the amount of the check, draft or order; any service charge
89 reflected in the complaint as having been imposed on the payee
90 or holder by the payee's or holder's bank or financial institution
91 in connection with the check, draft or order; and the court costs
92 which would be assessed if the person were found guilty of the
93 offense charged. These costs shall be imposed in accordance
94 with the provisions of section two, article three, chapter fifty of
95 this code.

CHAPTER 60

(S. B. 657 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the West Virginia capital company act; lowering amount of tax credits available; making a portion of the venture capital company tax credit available to investors in economic development and technology advancement centers generally; declaration of policy; definitions; providing for tax credits for centers; and authorizing promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-2. Declaration of policy.

§5E-1-4. Definitions.

§5E-1-5. Rules.

§5E-1-8. Tax credits.

§5E-1-2. Declaration of policy.

1 (a) The Legislature finds and declares that the West
2 Virginia economy can be strengthened by promoting private
3 investment in West Virginia businesses.

4 (b) The Legislature further finds that:

5 (1) Investment of capital in the West Virginia economy can
6 be promoted by making tax credits available to taxpayers
7 investing in West Virginia capital companies;

8 (2) Economic development in the West Virginia economy
9 can be stimulated and higher education can be promoted by
10 making tax credits available to taxpayers investing in economic
11 development and technology advancement centers organized to
12 partner with institutions of higher education and qualified
13 pursuant to the provisions of article twelve-a, chapter eighteen-
14 b of this code.

15 (3) Demands on state revenues restrict the financial ability
16 of this state to make unlimited tax credits available for invest-
17 ment purposes and require that this state place reasonable limits
18 on the total amount of tax credits to be made available for
19 investment incentives;

20 (4) Establishment of a tax credit program, which gives
21 priority to investments in capital companies in the order in
22 which they are qualified as such, will encourage investment in
23 West Virginia businesses; and

24 (5) The promotion of private investment in West Virginia
25 businesses will tend to reduce unemployment by creating new
26 or maintaining existing employment opportunities for the
27 citizens of this state.

§5E-1-4. Definitions.

1 As used in this article, the following terms have the
2 meanings ascribed to them in this section, unless the context in
3 which the term is used clearly requires another meaning or a
4 specific different definition is provided:

5 (a) "Authority" means the West Virginia economic devel-
6 opment authority, provided for in article fifteen, chapter thirty-
7 one of this code.

8 (b) "Capital base" means equity capital or net worth.

9 (c) "Certified West Virginia capital company" means:

10 (1) A West Virginia business development corporation
11 created pursuant to article fourteen, chapter thirty-one of this
12 code; or

13 (2) A profit or nonprofit entity organized and existing under
14 the laws of this state, created for the purpose of making venture
15 or risk capital available to qualified investments that has been
16 certified by the authority.

17 (d) "Qualified investment" means a debt or equity financing
18 of a West Virginia business, but only if the business is engaged
19 in one or more of the following activities: Manufacturing;
20 agricultural production or processing; forestry production or
21 processing; mineral production or processing, except for
22 conventional oil and gas exploration; service industry; transpor-
23 tation; research and development of products or processes
24 associated with any of the activities previously enumerated
25 above; tourism; computer software development companies
26 engaged in the creation of computer software; and wholesale or
27 retail distribution activities within the state. The investment by
28 a West Virginia capital company in purchases of property to be
29 leased by it, as lessor, through a capital lease to a West Virginia
30 business lessee engaged in one of the above enumerated
31 activities is a qualified investment.

32 (e) “Qualified West Virginia capital company” means a
33 West Virginia capital company that has been designated by the
34 authority as a qualified capital company under the provisions of
35 section six of this article.

36 (f) “Small business investment company” means a small
37 business investment company licensed by the United States
38 small business investment administration under the federal
39 small business investment act of 1958, 15 U. S. C. §661, *et seq.*,
40 as amended.

41 (g) “State” means the state of West Virginia.

42 (h) “Capital lease” means a lease meeting one or more of
43 the following criteria:

44 (1) The lease transfers ownership of the property to the
45 lessee at the end of the lease term by the lessee’s exercise of a
46 purchase option which is de minimis in amount; or

47 (2) The lease term is equal to seventy-five percent or more
48 of the estimated economic life of the leased property. However,
49 if the beginning of the lease term falls within the last twenty-
50 five percent of the total estimated economic life of the leased
51 property, including earlier years of use, this criterion shall not
52 be used; or

53 (3) Under generally accepted accounting principles, the
54 lessee cannot treat payments to the capital company as pay-
55 ments under an operating lease; or

56 (4) For federal income tax purposes, the parties are required
57 to treat payments as amortization of principal and interest.

58 (i) “Economic development and technology advancement
59 center” or “center” means an economic development and
60 technology advancement center organized and operating under
61 the laws of this state which has been designated by the authority

62 as a qualified economic development and technology advance-
63 ment center under the provisions of article twelve-a, chapter
64 eighteen-b of this code.

§5E-1-5. Rules.

1 The authority shall promulgate rules in accordance with
2 article three, chapter twenty-nine-a of this code to carry out the
3 policy and purposes of this article, to provide any necessary
4 clarification of the provisions of this article and to efficiently
5 provide for the general administration of this article. The
6 authority may promulgate additional rules in accordance with
7 article three, chapter twenty-nine-a of this code that it considers
8 necessary to provide for the efficient administration of the
9 credits allowed for investments in economic development and
10 technology advancement centers.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single
2 qualified company may not exceed two million dollars. The
3 total amount of tax credits authorized for a single economic
4 development and technology advancement center may not
5 exceed one million dollars. Capitalization of the company or
6 center may be increased pursuant to rule of the authority.

7 (b) (1) The total credits authorized by the authority for all
8 companies and centers may not exceed a total of ten million
9 dollars each fiscal year: *Provided*, That for the fiscal year
10 beginning on the first day of July, one thousand nine hundred
11 ninety-nine, the total credits authorized for all companies may
12 not exceed a total of six million dollars: *Provided, however*,
13 That for the fiscal year beginning on the first day of July, two
14 thousand, the total credits authorized for all companies may not
15 exceed a total of four million dollars: *Provided further*, That for
16 the fiscal year beginning on the first day of July, two thousand
17 one, the total credits authorized for all companies may not

18 exceed a total of four million dollars: *And provided further,*
19 That for the fiscal year beginning on the first day of July, two
20 thousand two, the total credits authorized for all companies may
21 not exceed a total of three million dollars: *And provided further,*
22 That for the fiscal year beginning on the first day of July, two
23 thousand three, the total credits authorized for all companies
24 may not exceed a total of three million dollars: *And provided*
25 *further,* That the capital base of any qualified company other
26 than an economic development and technology advancement
27 center qualified under the provisions of article twelve-a, chapter
28 eighteen-b of this code shall be invested in accordance with the
29 provisions of this article. The authority shall allocate these
30 credits to qualified companies and centers in the order that the
31 companies are qualified.

32 (2) Not more than two million dollars of the credits allowed
33 under subdivision (1) of this subsection may be allocated by the
34 authority during each fiscal year to one or more small business
35 investment companies described in this subdivision. After a
36 portion of the credits are allocated to small business investment
37 companies as provided in this section, not more than one
38 million dollars of the credits allowed under subdivision (1) of
39 this subsection may be allocated by the authority during each
40 fiscal year to one or more economic development and technol-
41 ogy advancement centers qualified by the authority under
42 article twelve-a, chapter eighteen-b of this code. The remainder
43 of the tax credits allowed during the fiscal year shall be
44 allocated by the authority under the provisions of section four,
45 article two of this chapter. The portion of the tax credits
46 allowed for small business investment companies described in
47 this subdivision shall be allowed only if allocated by the
48 authority during the first ninety days of the fiscal year and may
49 only be allocated to companies that: (A) Were organized on or
50 after the first day of January, one thousand nine hundred ninety-
51 nine; (B) are licensed by the small business administration as a
52 small business investment company under the small business

53 investment act; and (C) have certified in writing to the authority
54 on the application for credits under this act that the company
55 will diligently seek to obtain and thereafter diligently seek to
56 invest leverage available to the small business investment
57 companies under the small business investment act. These
58 credits shall be allocated by the authority in the order that the
59 companies are qualified. The portion of the tax credits allowed
60 for economic development and technology advancement centers
61 described in article twelve-a, chapter eighteen-b of the code
62 shall be similarly allowed only if allocated by the authority
63 during the first ninety days of the fiscal year. Any credits which
64 have not been allocated to qualified companies meeting the
65 requirements of this subdivision relating to small business
66 investment companies or to qualified economic development
67 and technology advancement centers during the first ninety
68 days of the fiscal year shall be made available and allocated by
69 the authority under the provisions of section four, article two of
70 this chapter.

71 (c) Any investor, including an individual, partnership,
72 limited liability company, corporation or other entity who
73 makes a capital investment in a qualified West Virginia capital
74 company is entitled to a tax credit equal to fifty percent of the
75 investment, except as otherwise provided in this section or in
76 this article: *Provided*, That the tax credit available to investors
77 who make a capital investment in an economic development
78 and technology advancement center shall be one hundred
79 percent of the investment. The credit allowed by this article
80 shall be taken after all other credits allowed by chapter eleven
81 of this code. It shall be taken against the same taxes and in the
82 same order as set forth in subsections (c) through (i), inclusive,
83 section five, article thirteen-c, chapter eleven of this code. The
84 credit for investments by a partnership, limited liability
85 company, a corporation electing to be treated as a subchapter S
86 corporation or any other entity which is treated as a pass
87 through entity under federal and state income tax laws may be

88 divided pursuant to election of the entity's partners, members,
89 shareholders or owners.

90 (d) The tax credit allowed under this section is to be
91 credited against the taxpayer's tax liability for the taxable year
92 in which the investment in a qualified West Virginia capital
93 company or economic development and technology advance-
94 ment center is made. If the amount of the tax credit exceeds the
95 taxpayer's tax liability for the taxable year, the amount of the
96 credit which exceeds the tax liability for the taxable year may
97 be carried to succeeding taxable years until used in full, or until
98 forfeited: *Provided*, That: (i) Tax credits may not be carried
99 forward beyond fifteen years; and (ii) tax credits may not be
100 carried back to prior taxable years. Any tax credit remaining
101 after the fifteenth taxable year is forfeited.

102 (e) The tax credit provided for in this section is available
103 only to those taxpayers whose investment in a qualified West
104 Virginia capital company or economic development and
105 technology advancement center occurs after the first day of
106 July, one thousand nine hundred eighty-six.

107 (f) The tax credit allowed under this section may not be
108 used against any liability the taxpayer may have for interest,
109 penalties or additions to tax.

110 (g) Notwithstanding any provision in this code to the
111 contrary, the tax commissioner shall publish in the state register
112 the name and address of every taxpayer and the amount, by
113 category, of any credit asserted under this article. The catego-
114 ries by dollar amount of credit received are as follows:

115 (1) More than \$1.00, but not more than \$50,000;

116 (2) More than \$50,000, but not more than \$100,000;

117 (3) More than \$100,000, but not more than \$250,000;

- 118 (4) More than \$250,000, but not more than \$500,000;
- 119 (5) More than \$500,000, but not more than \$1,000,000; and
- 120 (6) More than \$1,000,000.

CHAPTER 61

(S. B. 182 — By Senators Rowe, McCabe, Hunter and White)

[Passed February 25, 2003; in effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact section forty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child passenger safety seats, booster seats and safety devices; requiring every driver transporting children less than nine years of age in certain motor vehicles to maintain and secure the child in a child passenger safety seat or booster seat or other safety device meeting federal motor vehicle safety standards; and providing that a seat belt meets this requirement for children at least four years of age or over forty pounds in weight.

Be it enacted by the Legislature of West Virginia:

That section forty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-46. Child passenger safety devices required; child safety seats and booster seats.

1 Every driver who transports a child under the age of nine
2 years in a passenger automobile, van or pickup truck other than
3 one operated for hire shall, while such motor vehicle is in
4 motion and operated on a street or highway of this state,
5 provide for the protection of such child by properly placing,
6 maintaining and securing such child in a child passenger safety
7 device system meeting applicable federal motor vehicle safety
8 standards: *Provided*, That if a child is at least four years of age
9 or at least forty pounds in weight, a safety belt shall be suffi-
10 cient to meet the requirements of this section.

11 Any person who violates any provision of this section is
12 guilty of a misdemeanor and, upon conviction thereof, shall be
13 fined not less than ten dollars nor more than twenty dollars.

14 A violation of this section shall not be deemed by virtue of
15 such violation to constitute evidence of negligence or contribu-
16 tory negligence or comparative negligence in any civil action or
17 proceeding for damages.

18 If any provision of this section or the application thereof to
19 any person or circumstance is held invalid, such invalidity shall
20 not affect other provisions or applications of this section and to
21 this end the subsections of this section are declared to be
22 severable.

23 If all seat belts in a vehicle are being used at the time of
24 examination by a law officer and the vehicle contains more
25 passengers than the total number of seat belts or other safety
26 devices as installed in compliance with federal motor vehicle
27 safety standards, the driver shall not be considered as violating
28 this section.

CHAPTER 62

(H. B. 3084 — By Delegates Staton, Mahan, Brown and Amores)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one hundred ten and one hundred eleven, article seventeen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred one, one hundred two, one hundred seven and one hundred nine, article seventeen of said chapter; and to amend and reenact section one hundred five, article eighteen of said chapter, all relating to child support enforcement; providing for the membership, duties and powers of the support enforcement commission; and providing for the general duties and powers of the bureau for child support enforcement.

Be it enacted by the Legislature of West Virginia:

That sections one hundred ten and one hundred eleven, article seventeen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one hundred one, one hundred two, one hundred seven and one hundred nine, article seventeen of said chapter, be amended and reenacted; and that section one hundred five, article eighteen of said chapter be amended and reenacted, all to read as follows:

Article

17. West Virginia Support Enforcement Commission.
18. Bureau for Child Support Enforcement.

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.

§48-17-101. Creation of support enforcement commission; number of members.

§48-17-102. Appointment of members of support enforcement commission; qualifications and eligibility.

§48-17-107. Meeting requirements.

§48-17-109. General duties of support enforcement commission.

§48-17-101. Creation of support enforcement commission; number of members.

1 The West Virginia support enforcement commission,
2 consisting of eight members, is hereby created in the depart-
3 ment of health and human resources and may use the adminis-
4 trative support and services of that department. The commission
5 is not subject to control, supervision or direction by the
6 department of health and human resources, but is an independ-
7 ent, self-sustaining commission that shall have the powers and
8 duties specified in this chapter.

9 The commission is a part-time commission whose members
10 perform such duties as specified in this chapter. The ministerial
11 duties of the commission shall be administered and carried out
12 by the commissioner of the bureau for child support enforce-
13 ment, with the assistance of such staff of the department of
14 health and human resources as the secretary may assign.

15 Each member of the commission shall devote the time
16 necessary to carry out the duties and obligations of the office
17 and the six members appointed by the governor may pursue and
18 engage in another business, occupation or gainful employment
19 that is not in conflict with the duties of the commission.

20 While the commission is self-sustaining and independent,
21 it, its members, its employees and the commissioner are subject
22 to article nine-a of chapter six, chapter six-b, chapter twenty-
23 nine-a and chapter twenty-nine-b [§§ 6-9A-1 et seq., §§ 6B-1-1
24 et seq., §§ 29A-1-1 et seq. and §§ 29B-1-1 et seq.] of this code.

§48-17-102. Appointment of members of support enforcement commission; qualifications and eligibility.

1 (a) Of the eight members of the commission, seven
2 members are to be appointed by the governor: *Provided*, That
3 no more than five members of the commission may belong to
4 the same political party.

5 (1) One member is to be a lawyer licensed by, and in good
6 standing with, the West Virginia state bar, with at least five
7 years of professional experience in domestic relations law and
8 the establishment and enforcement of support obligations;

9 (2) One member is to be a person experienced as a public
10 administrator in the supervision and regulation of a governmen-
11 tal agency;

12 (3) One member is to be an employer experienced in
13 withholding support payments from the earnings of obligors;

14 (4) One member is to be a practicing family court judge, as
15 an ex-officio member, who will serve in an advisory capacity,
16 without compensation or voting rights; and

17 (5) Three members are to be representatives of the public
18 at large, with at least one being an obligor and one being an
19 obligee.

20 (b) One member is to be the commissioner of the bureau
21 for children and families, department of health and human
22 resources, or his or her designee.

23 (c) Each member of the commission is to be a citizen of the
24 United States, a resident of the state of West Virginia and at
25 least twenty-one years of age.

§48-17-107. Meeting requirements.

1 (a) The commission shall meet within the state at least
2 twice per calendar year and at such other times as the chairman
3 may decide. The commission shall also meet upon a call of four

4 or more members upon seventy-two hours written notice to
5 each member.

6 (b) Four members of the commission are a quorum for the
7 transaction of any business and for the performance of any
8 duty.

9 (c) A majority vote of the members present is required for
10 any final determination by the commission.

11 (d) The commission may elect to meet in executive session
12 after an affirmative vote of a majority of its members present
13 according to section four [§ 6-9A-4], article nine-a, chapter six
14 of this code;

15 (e) The commission shall keep a complete and accurate
16 record of all its meetings according to section five [§ 6-9A-5],
17 article nine-a, chapter six of this code.

§48-17-109. General duties of support enforcement commission.

1 The support enforcement commission shall have general
2 responsibility to review and provide comment to the bureau for
3 child support enforcement on its policies and procedures for
4 obtaining and enforcing support orders and establishing
5 paternity according to this chapter, as hereinafter provided,
6 including, without limitation, the responsibility for the follow-
7 ing:

8 (a) To serve as a clearinghouse for information;

9 (b) To keep a record of all commission proceedings
10 available for public inspection;

11 (c) To file a written annual report to the governor, the
12 president of the Senate and the speaker of the House of Dele-
13 gates on or before the thirtieth day of January of each year, and

14 such additional reports as the governor or Legislature may
15 request;

16 (d) To apply for grants;

17 (e) To form partnerships with state institutions of higher
18 learning;

19 (f) The commission shall conduct the federally required
20 review [45 C.F.R. 302.56(C)(3)(e)] of the child support formula
21 every four years and make a report to the Legislature of their
22 findings.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-105. General duties and powers of the bureau for child support enforcement.

1 In carrying out the policies and procedures for enforcing the
2 provisions of this chapter, the bureau shall have the following
3 power and authority:

4 (1) To establish policies and procedures for obtaining and
5 enforcing support orders and establishing paternity according
6 to this chapter;

7 (2) To undertake directly, or by contract, activities to obtain
8 and enforce support orders and establish paternity;

9 (3) To undertake directly, or by contract, activities to
10 establish paternity for minors for whom paternity has not been
11 acknowledged by the father or otherwise established by law;

12 (4) To undertake directly, or by contract, activities to
13 collect and disburse support payments;

14 (5) To contract for professional services with any person,
15 firm, partnership, professional corporation, association or other

16 legal entity to provide representation for the bureau and the
17 state in administrative or judicial proceedings brought to obtain
18 and enforce support orders and establish paternity;

19 (6) To ensure that activities of a contractor under a contract
20 for professional services are carried out in a manner consistent
21 with attorneys' professional responsibilities as established in
22 the rules of professional conduct as promulgated by the
23 supreme court of appeals;

24 (7) To contract for collection services with any person,
25 firm, partnership, corporation, association or other legal entity
26 to collect and disburse amounts payable as support;

27 (8) To ensure the compliance of contractors and their
28 employees with the provisions of this chapter, and to terminate,
29 after notice and hearing, the contractual relationship between
30 the bureau and a contractor who fails to comply;

31 (9) To require a contractor to take appropriate remedial or
32 disciplinary action against any employee who has violated or
33 caused the contractor to violate the provisions of this chapter,
34 in accordance with procedures prescribed in legislative rules
35 promulgated by the commission;

36 (10) To locate parents who owe a duty to pay child
37 support;

38 (11) To cooperate with other agencies of this state and other
39 states to search their records to help locate parents;

40 (12) To cooperate with other states in establishing and
41 enforcing support obligations;

42 (13) To exercise such other powers as may be necessary to
43 effectuate the provisions of this chapter;

44 (14) To establish and maintain procedures under which
45 expedited processes, administrative or judicial are in effect for
46 obtaining and enforcing support orders and establishing
47 paternity according to this chapter;

48 (15) To promulgate all emergency and legislative rules
49 pursuant to chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this
50 code as are required by this chapter: *Provided*, That all rules
51 which are in effect at the time of the implementation of this
52 section shall continue in full force and effect until the commis-
53 sioner of the bureau for child support enforcement promulgates
54 a rule or rules regarding the same subject matter;

55 (16) To adopt standards for staffing, record-keeping,
56 reporting, intergovernmental cooperation, training, physical
57 structures and time frames for case processing;

58 (17) To review the state plan for child and spousal
59 support to determine its conformance or nonconformance with
60 the provisions of 42 U.S.C. § 654;

61 (18) To cooperate with judicial organizations and the
62 private bar to provide training to persons involved in the
63 establishment and enforcement of child support orders; and

64 (19) To promulgate legislative rules pursuant to chapter
65 twenty-nine-a [§§29A-1-1] of this code which may aid the
66 bureau for child support enforcement in the establishment and
67 enforcement of child support orders. In addition to the specific
68 designation of such rules that constitute emergency rules within
69 the meaning of section fifteen [§29A-3-15], article three,
70 chapter twenty-nine-a of this code, the commissioner may
71 promulgate other rules as emergency rules when such rule is
72 necessary to ensure that the state is awarded federal funds for
73 the actions described in the rule or when the promulgation of
74 such rule is necessary to prevent substantial harm to the public

- 75 interest by ensuring that child support is timely collected and
76 disbursed.

CHAPTER 63

**(Com. Sub. for S. B. 364 — By Senators Prezioso, Unger, Rowe,
Kessler, Helmick, Caldwell, Plymale, Sharpe, Ross, Dempsey,
Love, Hunter, Sprouse, Minard, Jenkins, Fanning, White,
McCabe, Bowman, Minear and Tomblin, Mr. President)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and twenty-one, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section sixteen-b; to amend and reenact section three, article five-d of said chapter; and to further amend said article by adding thereto two new sections, designated sections three-a and eight, all relating to child welfare and juvenile justice generally; requiring notice of certain proceedings to the department of health and human resources and the division of juvenile services for purposes of multidisciplinary hearings; providing for greater involvement of multidisciplinary teams in juvenile and abuse and neglect proceedings; providing that quarterly judicial reviews be continued while child remains in custody; exceptions to meeting requirement; providing for when offenses are committed while in custody; providing for recommended court orders; requiring that recommended service plans be considered; requiring written findings when order deviates from treatment team's recommended plan; and affording multidisciplinary treatment team notice and opportunity to present evidence.

Be it enacted by the Legislature of West Virginia:

That sections seven and twenty-one, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section sixteen-b; that section three, article five-d of said chapter be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections three-a and eight, all to read as follows:

Article

5. Juvenile Proceedings.

5D. Multidisciplinary Teams.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.

§49-5-16b. Conviction for offense while in custody.

§49-5-21. Quarterly judicial review of juvenile proceedings.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.

1 (a)(1) A petition alleging that a juvenile is a status offender
 2 or a juvenile delinquent may be filed by a person who has
 3 knowledge of or information concerning the facts alleged. The
 4 petition shall be verified by the petitioner, shall set forth the
 5 name and address of the juvenile's parents, guardians or
 6 custodians, if known to the petitioner, and shall be filed in the
 7 circuit court in the county where the alleged status offense or
 8 act of delinquency occurred: *Provided*, That any proceeding
 9 under this chapter may be removed, for good cause shown, in
 10 accordance with the provisions of section one, article nine,
 11 chapter fifty-six of this code. The petition shall contain specific
 12 allegations of the conduct and facts upon which the petition is
 13 based, including the approximate time and place of the alleged

14 conduct; a statement of the right to have counsel appointed and
15 consult with counsel at every stage of the proceedings; and the
16 relief sought.

17 (2) Upon the filing of the petition, the court shall set a time
18 and place for a preliminary hearing as provided in section nine
19 of this article and may appoint counsel. A copy of the petition
20 and summons may be served upon the respondent juvenile by
21 first class mail or personal service of process. If a juvenile does
22 not appear in response to a summons served by mail, no further
23 proceeding may be held until the juvenile is served a copy of
24 the petition and summons by personal service of process. If a
25 juvenile fails to appear in response to a summons served in
26 person upon him or her, an order of arrest may be issued by the
27 court for that reason alone.

28 (b) The parents, guardians or custodians shall be named in
29 the petition as respondents and shall be served with notice of
30 the proceedings in the same manner as provided in subsection
31 (a) of this section for service upon the juvenile and required to
32 appear with the juvenile at the time and place set for the
33 proceedings unless such respondent cannot be found after
34 diligent search. If any such respondent cannot be found after
35 diligent search, the court may proceed without further require-
36 ment of notice: *Provided*, That the court may order service by
37 first class mail to the last known address of such respondent.
38 The respondent shall be afforded fifteen days after the date of
39 mailing to appear or answer.

40 (c) The court or referee may order the issuance of a
41 subpoena against the person having custody and control of the
42 juvenile ordering him or her to bring the juvenile before the
43 court or referee.

44 (d) When any case of a juvenile charged with the commis-
45 sion of a crime is certified or transferred to the circuit court, the

46 court or referee shall forthwith cause the juvenile and his or her
47 parents, guardians or custodians to be served with a petition as
48 provided in subsections (a) and (b) of this section. In the event
49 the juvenile is in custody, the petition shall be served upon the
50 juvenile within ninety-six hours of the time custody began and
51 if the petition is not served within that time, the juvenile shall
52 be released forthwith.

53 (e) The clerk of the court shall promptly notify the local
54 office of the department of health and human resources of all
55 proceedings under this article, which shall then be responsible
56 for convening and directing the multidisciplinary treatment
57 planning process in accordance with the provisions of section
58 three, article five-d of this chapter: *Provided*, That in status
59 offense or delinquency cases where a case manager has not
60 been assigned, the juvenile probation officer shall be responsi-
61 ble for notifying the local office of the department of health and
62 human services which will assign a case manager who will
63 initiate assessment and be responsible for convening and
64 directing the multidisciplinary treatment planning process.

§49-5-16b. Conviction for offense while in custody.

1 Notwithstanding any other provision of law to the contrary,
2 any person who is eighteen years of age or older who is
3 convicted as an adult of an offense that he or she committed
4 while in the custody of the division of juvenile services and
5 who is therefor sentenced to a regional jail or state correctional
6 facility for said offense may not be returned to the custody of
7 the division upon the completion of his or her adult sentence
8 until a hearing is held before the court which committed the
9 person to the custody of the division of juvenile services at
10 which hearing the division may present any objections it may
11 have to return the person to its custody. If the division does
12 object and the court overrules the division's objections, it shall
13 make specific written findings as to its rationale for overruling

14 the objections: *Provided*, That no person who is eighteen years
15 of age or older who is convicted as an adult of a felony crime of
16 violence against the person while in the custody of the division
17 of juvenile services be returned to the custody of the division of
18 juvenile services upon completion of his or her adult sentence.

§49-5-21. Quarterly judicial review of juvenile proceedings.

1 For cases under this article in which the provisions of
2 section three, article five-d of this chapter apply, the court
3 wherein the juvenile proceeding is pending shall conduct
4 regular judicial review of the case with the multidisciplinary
5 treatment team and a juvenile probation officer in attendance.
6 Such judicial review may be conducted as often as is considered
7 necessary by the court, but shall be conducted at least once
8 every three calendar months as long as the child remains in the
9 legal or physical custody of the state.

10 In conducting the judicial review required by this section,
11 the court shall address the extent of progress in the case,
12 treatment and service needs, permanent placement planning for
13 the juvenile, any uncontested issues and any other matters that
14 the court considers pertinent. An order reflecting the matters
15 considered, any uncontested rulings and the scheduling of an
16 evidentiary hearing on any contested issue shall be issued by
17 the court within ten judicial days of the judicial review.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-3. Multidisciplinary treatment planning process.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

§49-5D-8. Exemption from multidisciplinary team review for emergency out-of-home placements.

§49-5D-3. Multidisciplinary treatment planning process.

1 (a) (1) On or before the first day of January, one thousand
2 nine hundred ninety-five, a multidisciplinary treatment planning
3 process shall be established within each county of the state,
4 either separately or in conjunction with a contiguous county by
5 the secretary of the department with advice and assistance from
6 the prosecutor's advisory council as set forth in section four,
7 article four, chapter seven of this code.

8 (2) Treatment teams shall assess, plan and implement a
9 comprehensive, individualized service plan for children who are
10 victims of abuse or neglect and their families when a judicial
11 proceeding has been initiated involving the child or children for
12 juveniles and their families involved in status offense or
13 delinquency proceedings when, in a status offense proceeding,
14 the court refers the juvenile for services pursuant to sections
15 eleven and eleven-a, article five of this chapter and when, in a
16 delinquency proceeding, the court is considering placing the
17 juvenile in the department's custody or placing the juvenile out-
18 of-home at the department's expense pursuant to the provisions
19 of section thirteen of said article. In any such status offense or
20 delinquency case, the juvenile probation officer shall notify the
21 local office of the department of health and human resources
22 and the division of juvenile services at least five working days
23 before the court proceeding in order to allow the
24 multidisciplinary treatment team to convene and develop a
25 comprehensive individualized service plan for the child:
26 *Provided*, That such notice is not required in cases where the
27 child is already in state custody or there exist exigent circum-
28 stances which justify taking the child immediately into custody
29 without a judicial proceeding.

30 (3) Prior to disposition, in each case in which a treatment
31 planning team has been convened, the team shall advise the
32 court as to the types of services the team has determined are
33 needed and the type of placement, if any, which will best serve
34 the needs of the child.

35 (b) Each treatment team shall be convened and directed by
36 the child's or family's case manager. The treatment team shall
37 consist of the child's custodial parent or parents, guardian or
38 guardians, other immediate family members, the attorney or
39 attorneys representing the parent or parents of the child, the
40 guardian ad litem, if any, the prosecuting attorney or his or her
41 designee and any other person or an agency representative who
42 may assist in providing recommendations for the particular
43 needs of the child and family. The child may participate in
44 multidisciplinary treatment team meetings if such is deemed
45 appropriate by the multidisciplinary treatment team. For
46 purposes of delinquency proceedings, the juvenile probation
47 officer shall be a member of the treatment team.

48 (c) The treatment team shall coordinate its activities and
49 membership with local family resource networks and coordi-
50 nate with other local and regional child and family service
51 planning committees to assure the efficient planning and
52 delivery of child and family services on a local and regional
53 level.

54 (d) State, county and local agencies shall provide the
55 multidisciplinary treatment teams with any information
56 requested in writing by the team as allowable by law or upon
57 receipt of a certified copy of the circuit court's order directing
58 said agencies to release information in its possession relating to
59 the child. The team shall assure that all information received
60 and developed in connection with the provisions of this article
61 remain confidential. For purposes of this section, the term
62 "confidential" shall be construed in accordance with the
63 provisions of section one, article seven of this chapter.

**§49-5D-3a. Recommendation of team to the court; hearing re-
quirement; required findings.**

1 In any case in which a multidisciplinary treatment team
2 develops an individualized service plan for a child pursuant to

3 the provisions of section three of this article, the court shall
4 review the proposed service plan to determine if implementa-
5 tion of the plan is in the child's best interests. If the court
6 determines not to adopt the team's recommendations, it shall,
7 sua sponte, schedule and hold within ten days of such determi-
8 nation, and prior to the entry of an order placing the child in the
9 custody of the department or in an out-of-home setting, a
10 hearing to consider evidence from the team as to its rationale
11 for the proposed service plan. If, after a hearing held pursuant
12 to the provisions of this section, the court does not adopt the
13 team's recommended service plan, it shall make specific written
14 findings as to why the team's recommended service plan was
15 not adopted.

**§49-5D-8. Exemption from multidisciplinary team review for
emergency out-of-home placements.**

1 Notwithstanding any provisions of this article to the
2 contrary, a multidisciplinary team recommendation shall not be
3 required for temporary out-of-home placement of a child in an
4 emergency circumstance or for purposes of assessment as
5 provided for by the provisions of this article.

CHAPTER 64

(H. B. 3018 — By Delegates Beane, G. White, Paxton,
Mezzatesta and Stalnaker)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six-a, chapter
forty-nine of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to changing the amount of time that department of health and human resources must retain child protective services' records from six years to thirty years.

Be it enacted by the Legislature of West Virginia:

That section five, article six-a, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR
NEGLECTED.**

§49-6A-5. Reporting procedures.

1 Reports of child abuse and neglect pursuant to this article
2 shall be made immediately by telephone to the local state
3 department child protective service agency and shall be
4 followed by a written report within forty-eight hours if so
5 requested by the receiving agency. The state department shall
6 establish and maintain a twenty-four hour, seven-day-a-week
7 telephone number to receive such calls reporting suspected or
8 known child abuse or neglect.

9 A copy of any report of serious physical abuse, sexual
10 abuse or assault shall be forwarded by the department to the
11 appropriate law-enforcement agency, the prosecuting attorney
12 or the coroner or medical examiner's office. All reports under
13 this article shall be confidential and unless there are pending
14 proceedings with regard thereto shall be destroyed thirty years
15 following their preparation. Reports of known or suspected
16 institutional child abuse or neglect shall be made and received
17 as all other reports made pursuant to this article.

CHAPTER 65

(S. B. 635 — By Senators Kessler, Snyder, Fanning, Rowe, Ross, Deem, McKenzie, Smith, White, Harrison, Weeks and Hunter)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-nine and thirty, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to clarifying that foster care services do not constitute behavioral health care services; and directing the West Virginia supreme court of appeals and department of health and human resources to promulgate court orders for out-of-home placements.

Be it enacted by the Legislature of West Virginia:

That sections twenty-nine and thirty, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. GENERAL PROVISIONS.

§49-7-29. General provisions relating to court orders regarding custody; promulgation of rules.

§49-7-30. Certificate of need not required.

§49-7-29. General provisions relating to court orders regarding custody; promulgation of rules.

- 1 The supreme court of appeals, in consultation with the
- 2 department of health and human resources and the division of
- 3 juvenile services in order to eliminate unnecessary state funding
- 4 of out-of-home placements where federal funding is available,
- 5 shall develop and cause to be disseminated no later than the

6 first day of July, two thousand three, form court orders to
7 effectuate provisions of chapter forty-nine of this code which
8 authorize disclosure and transfer of juvenile records between
9 agencies while requiring maintenance of confidentiality, the
10 provisions of Title 142 U. S. C. Section 620, *et seq.*, and Title
11 42 U. S. C. Section 670, *et seq.*, relating to the promulgation of
12 uniform court orders for placement of minor children and the
13 regulations promulgated thereunder, for use in the magistrate
14 and circuit courts of the state.

15 Circuit judges and magistrates, upon being supplied the
16 form orders required by the provision of this section, shall act
17 to ensure the proper form order is entered in such case so as to
18 allow federal funding of eligible out-of-home placements.

§49-7-30. Certificate of need not required.

1 (a) A certificate of need, as provided for in article two-d,
2 chapter sixteen of this code, is not required by an entity
3 proposing behavioral health care facilities or behavioral health
4 care services for children who are placed out of their home, or
5 who are at imminent risk of being placed out of their home, if
6 a summary review is performed in accordance with the provi-
7 sions of this section.

8 (b) A summary review of proposed health care facilities or
9 health care services for children who are placed out of their
10 home, or who are at imminent risk of being placed out of their
11 home, is initiated when the proposal is recommended to the
12 health care cost review authority by the secretary of the
13 department of health and human resources and the secretary has
14 made the following findings:

15 (1) That the proposed facility or service is consistent with
16 the state health plan;

17 (2) That the proposed facility or service is consistent with
18 the department's programmatic and fiscal plan for behavioral
19 health services for children with mental health and addiction
20 disorders;

21 (3) That the proposed facility or service contributes to
22 providing services that are child and family driven, with
23 priority given to keeping children in their own homes;

24 (4) That the proposed facility or service will contribute to
25 reducing the number of child placements in out-of-state
26 facilities by making placements available in in-state facilities;

27 (5) That the proposed facility or service contributes to
28 reducing the number of child placements in in-state or out-of-
29 state facilities by returning children to their families, placing
30 them in foster care programs or making available school-based
31 and out-patient services; and

32 (6) If applicable, that the proposed services will be
33 community-based, locally accessible and provided in an
34 appropriate setting consistent with the unique needs and
35 potential of each child and his or her family.

36 (c) The secretary's findings required by subsection (b) of
37 this section shall be filed with the secretary's recommendation
38 and appropriate documentation. If the secretary's findings are
39 supported by the accompanying documentation, the proposal
40 shall not require a certificate of need.

41 (d) Any entity that does not qualify for summary review
42 shall be subject to certificate of need review.

43 (e) Notwithstanding any other provision of law to the
44 contrary, the provision of regular or therapeutic foster care
45 services does not constitute a behavioral health care facility or
46 a behavioral health care service that would subject it to the

47 summary review procedure established in this section or to the
48 certificate of need requirements provided in article two-d,
49 chapter sixteen of this code.

CHAPTER 66

**(H. B. 3019 — By Delegates Campbell, Cann, Susman,
Proudfoot, Evans, Hall and Stalnaker)**

[Passed March 5, 2003; in effect from passage. Approved by the Governor.]

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 §1. Finding and declaring certain claims against the
2 adjutant general; alcohol beverage control administration;
3 auditor's office; bureau of employment programs; department
4 of administration; department of administration - surplus
5 property; department of agriculture - donated foods; department
6 of agriculture - rural development council; department of
7 agriculture - soil conservation committee; department of
8 education; department of education and the arts; department of
9 health and human resources; department of health and human
10 resources - division of health; department of health and human
11 resources - division of human services; department of tax and
12 revenue; development office; division of corrections; division
13 of criminal justice services; division of culture and history;
14 division of environmental protection; division of highways;
15 division of information services and communications; division

16 of juvenile services; division of labor; division of miners’
 17 health, safety and training; division of motor vehicles; division
 18 of natural resources; division of tourism; educational broadcast-
 19 ing authority; geological and economic survey; governor’s
 20 office; higher education policy commission; library commis-
 21 sion; public service commission; regional jail and correctional
 22 facility authority; state fire marshal; state of West Virginia;
 23 supreme court; treasurer’s office; water development authority;
 24 West Virginia Development Office; West Virginia education
 25 and state employees grievance board; West Virginia Senate;
 26 West Virginia state police; and workers’ compensation to be
 27 moral obligations of the state and directing payment thereof.

28 The Legislature has considered the findings of fact and
 29 recommendations reported to it by the court of claims concern-
 30 ing various claims against the state and agencies thereof, and in
 31 respect to each of the following claims the Legislature adopts
 32 those findings of fact as its own, and in respect of certain claims
 33 herein, the Legislature has independently made findings of fact
 34 and determinations of award and hereby declares it to be the
 35 moral obligation of the state to pay each such claim in the
 36 amount specified below and directs the auditor to issue warrants
 37 for the payment thereof out of any fund appropriated and
 38 available for the purpose.

39 (a) *Claim against the Adjutant General:*

40 (TO BE PAID FROM GENERAL REVENUE FUND)

41 (1) Verizon West Virginia, Inc. \$ 1,108.35

42 (b) *Claim against the Alcohol Beverage Control Administra-*
 43 *tion:*

44 (TO BE PAID FROM SPECIAL REVENUE FUND)

45 (1) Xerox Corporation \$ 1,408.68

46 (c) *Claim against the Auditor’s Office:*

47 (TO BE PAID FROM GENERAL REVENUE FUND)

48 (1) Verizon West Virginia, Inc. \$ 6,055.23

49 (d) *Claim against the Bureau of Employment Programs:*

50 (TO BE PAID FROM SPECIAL REVENUE FUND)

51 (1) Advizex Technologies, LLC \$ 46,420.00

52 (2) Verizon West Virginia, Inc. \$ 240,678.21

53 (e) *Claim against the Department of Administration:*

54 (TO BE PAID FROM GENERAL REVENUE FUND)

55 (1) Verizon West Virginia, Inc. \$ 1,388.91

56 (f) *Claim against the Department of Administration - Sur-*
57 *plus Property:*

58 (TO BE PAID FROM GENERAL REVENUE FUND)

59 (1) Verizon West Virginia, Inc. \$ 2,211.15

60 (g) *Claim against the Department of Agriculture - Donated*
61 *Foods:*

62 (TO BE PAID FROM GENERAL REVENUE FUND)

63 (1) Verizon West Virginia, Inc. \$ 1,061.76

64 (h) *Claim against the Department of Agriculture - Rural*
65 *Development Council:*

66 (TO BE PAID FROM GENERAL REVENUE FUND)

67 (1) Verizon West Virginia, Inc. \$ 1,403.26

68 (i) *Claim against the Department of Agriculture - Soil Conser-*
69 *vation Committee:*

70 (TO BE PAID FROM GENERAL REVENUE FUND)

71 (1) Verizon West Virginia, Inc. \$ 764.38

72 (j) *Claim against the Department of Education:*

73 (TO BE PAID FROM GENERAL REVENUE FUND)

74 (1) Verizon West Virginia, Inc. \$ 1,452.66

75 (k) *Claim against the Department of Education and the Arts:*

76 (TO BE PAID FROM GENERAL REVENUE FUND)

77 (1) Verizon West Virginia, Inc. \$ 747.00

78 (l) *Claims against the Department of Health and Human*
79 *Resources:*

80 (TO BE PAID FROM SPECIAL REVENUE FUND)

81 (1) Special Services Bureau, Inc. \$ 3,550.00

82 (TO BE PAID FROM GENERAL REVENUE FUND)

83 (2) Verizon West Virginia, Inc. \$ 132,823.96

84 (m) *Claim against the Department of Health and Human*
85 *Resources - Division of Health:*

86 (TO BE PAID FROM GENERAL REVENUE FUND)

87 (1) Verizon West Virginia, Inc. \$ 77,314.63

88 (n) *Claim against the Department of Health and Human*
89 *Resources - Division of Human Services:*

90 (TO BE PAID FROM GENERAL REVENUE FUND)

91 (1) Verizon West Virginia, Inc. \$ 264.00

92 (o) *Claims against the Department of Tax and Revenue:*

93 (TO BE PAID FROM SPECIAL REVENUE FUND)

94	(1) Verizon West Virginia, Inc.	\$ 155,871.20
95	(TO BE PAID FROM GENERAL REVENUE FUND)	
96	(2) Xerox Capital Services, LLC	\$ 818.00
97	<i>(p) Claims against the Division of Corrections:</i>	
98	(TO BE PAID FROM GENERAL REVENUE FUND)	
99	(1) Aramark Uniform Services	\$ 207.83
100	(2) Bureau of Employment Programs	\$ 1,031.39
101	(3) Cabell County Commission	\$ 341.31
102	(4) William Mahood	\$ 71.47
103	(5) Peerless Foodservice	\$ 929.18
104	(6) Peerless Handcuff Company	\$ 30.00
105	(7) Scott Rodes	\$ 246.74
106	(8) United Parcel Service, Inc.	\$ 111.26
107	(9) WV Regional Jail and	
108	Correctional Facility Authority	\$ 4,224,565.50
109	(10) West Publishing Corporation	\$ 232.68
110	(11) West Virginia Network for Educ.	
111	Telecomputing	\$ 24.00
112	(12) West Virginia Uniforms	\$ 934.80
113	<i>(q) Claim against the Division of Criminal Justice Services:</i>	
114	(TO BE PAID FROM GENERAL REVENUE FUND)	
115	(1) Verizon West Virginia, Inc.	\$ 1,371.55
116	<i>(r) Claim against the Division of Culture and History:</i>	
117	(TO BE PAID FROM FEDERAL REVENUE FUND)	
118	(1) Joy L. Stalnaker	\$ 4,147.61
119	<i>(s) Claim against the Division of Environmental Protection:</i>	

378

CLAIMS

[Ch. 66

120

(TO BE PAID FROM GENERAL REVENUE FUND)

121

(1) Verizon West Virginia, Inc. \$ 18,535.34

122

(t) *Claims against the Division of Highways:*

123

(TO BE PAID FROM STATE ROAD FUND)

124

(1) Catherine Branicky \$ 1,035.00

125

(2) Martin L. Brown and

126

Roberta J. Brown \$ 100.00

127

(3) Rockson Butcher \$ 233.00

128

(4) C.I. Caperton \$ 316.52

129

(5) Christi Chapman

130

and Larry Chapman \$ 444.00

131

(6) Michael Cogley \$ 100.00

132

(7) Robert W. Coleman \$ 200.00

133

(8) Gino Critilli \$ 819.39

134

(9) James F. Cusick \$ 1,360.09

135

(10) Richard Dillon and Patty Dillon \$ 1,000.00

136

(11) Joyce E.C. Edgell and

137

Robert N. Edgell \$ 12,812.00

138

(12) Ina F. Elkins \$ 78.00

139

(13) Craig W. Evans \$ 900.00

140

(14) Kelly Fletcher \$ 268.16

141

(15) Robert W. Gallentine \$ 500.00

142

(16) Emily Jo Ghiz \$ 135.33

143

(17) Goldie Goodrich \$ 1,715.08

144

(18) Linda C. Gregory \$ 124.02

145

(19) Denzil P. Gump \$ 2,000.00

146

(20) Anna P. Haddal, M.D. \$ 200.00

147

(21) Allen Hall \$ 432.81

148

(22) Mary Alice Hamby \$ 1,100.00

149

(23) Timothy Wayne Hart

150

and Violet Hart \$ 249.00

151

(24) Clinton R. Holcomb

152

and Patsy Holcomb \$ 111.30

153	(25) Roy L. Holstein		
154	and Sheila Holstein	\$	250.00
155	(26) Mary J. Hutchison	\$	195.00
156	(27) Ronald R. Jaworski		
157	and Joann Jaworski	\$	312.78
158	(28) Jackie Jewell	\$	500.00
159	(29) Regina S. Jurkovich		
160	and Daniel W. Jurkovich	\$	500.00
161	(30) Joyce Litton	\$	1,000.00
162	(31) Mary Frances Mazzie	\$	166.37
163	(32) Juanita M. McQuain	\$	919.68
164	(33) Frances C. Messner	\$	250.00
165	(34) Stacie D. Miller and		
166	Daniel J. Miller	\$	250.00
167	(35) Rebecca Moore and Kenny Moore ...	\$	500.00
168	(36) Helen O'Dell	\$	7,000.00
169	(37) James Pierce and Lora Pierce	\$	531.19
170	(38) Linda Plumley	\$	124.60
171	(39) Margaret S. Polk	\$	250.00
172	(40) Paula S. Powell	\$	238.50
173	(41) Beulah Reed	\$	500.00
174	(42) Macel E. Rhodes	\$	105,000.00
175	(43) Macel E. Rhodes as the Legal		
176	Guardian of Roman A. Tarantini,		
177	an infant	\$	5,000.00
178	(44) Raymond Scott	\$	1,000.00
179	(45) Lee B. Sipple	\$	3,000.00
180	(46) Randy L. Sisler, Jr.,		
181	and Lillian D. Sisler	\$	689.70
182	(47) Carolyn Rose Smith	\$	809.79
183	(48) Jeffrey L. Smith and		
184	Carolyn Smith	\$	651.04
185	(49) Betty J. Strickland	\$	250.00
186	(50) Nancy C. Tyree and		
187	Jackie L. Tyree	\$	244.97
188	(51) Dawn L. Urchasko	\$	107.68

380	CLAIMS	[Ch. 66
189	(52) Richard VanGilder and	
190	Crystal VanGilder	\$ 2,800.00
191	(53) Verizon West Virginia, Inc.	\$ 398,778.41
192	(54) Margaret Louise Walsh-Ellison	\$ 238.53
193	(55) Walter H. Warren, Jr.	
194	and Lola B. Warren	\$ 250.00
195	(56) James E. Willis	\$ 2,200.00
196	(u) <i>Claim against the Division of Information Services and</i>	
197	<i>Communications:</i>	
198	(TO BE PAID FROM SPECIAL REVENUE FUND)	
199	(1) Verizon West Virginia, Inc.	\$ 1,444.54
200	(v) <i>Claims against the Division of Juvenile Services:</i>	
201	(TO BE PAID FROM GENERAL REVENUE FUND)	
202	(1) Ear, Nose and Throat Associates	\$ 218.00
203	(2) Telepage Communication Systems	\$ 105.30
204	(w) <i>Claim against the Division of Labor:</i>	
205	(TO BE PAID FROM GENERAL REVENUE FUND)	
206	(1) Verizon West Virginia, Inc.	\$ 2,991.28
207	(x) <i>Claim against the Division of Miners' Health, Safety and</i>	
208	<i>Training:</i>	
209	(TO BE PAID FROM GENERAL REVENUE FUND)	
210	(1) Verizon West Virginia, Inc.	\$ 13,427.14
211	(y) <i>Claims against the Division of Motor Vehicles:</i>	
212	(TO BE PAID FROM STATE ROAD FUND)	
213	(1) Jared B. Casdorff and	
214	Bernard G. Casdorff	\$ 70.00

215	(2) Bryant M. Hatfield, Jr.	\$	5,000.00
216	(3) Tasha Nicole Ross	\$	150.00
217	(4) Verizon West Virginia, Inc.	\$	134,295.07

218 (z) *Claims against the Division of Natural Resources:*

219 (TO BE PAID FROM SPECIAL REVENUE FUND)

220	(1) Jason R. Brown	\$	12,518.00
221	(2) Nathan G. Hanshaw	\$	9,525.00

222 (aa) *Claim against the Division of Tourism:*

223 (TO BE PAID FROM GENERAL REVENUE FUND)

224	(1) Verizon West Virginia, Inc.	\$	1,040.00
-----	--------------------------------------	----	----------

225 (bb) *Claim against the Educational Broadcasting Authority:*

226 (TO BE PAID FROM SPECIAL REVENUE FUND)

227	(1) Verizon West Virginia, Inc.	\$	3,302.81
-----	--------------------------------------	----	----------

228 (cc) *Claim against Geological and Economic Survey:*

229 (TO BE PAID FROM GENERAL REVENUE FUND)

230	(1) Verizon West Virginia, Inc.	\$	1,495.60
-----	--------------------------------------	----	----------

231 (dd) *Claim against the Governor's Office:*

232 (TO BE PAID FROM GENERAL REVENUE FUND)

233	(1) Verizon West Virginia, Inc.	\$	810.32
-----	--------------------------------------	----	--------

234 (ee) *Claims against the Higher Education Policy Commission:*

235 (TO BE PAID FROM SPECIAL REVENUE FUND)

236	(1) Tmaro Corporation	\$	90,648.51
237	(2) Verizon West Virginia, Inc.	\$	144,675.56

382	CLAIMS	[Ch. 66
238	(3) Liang Wei	\$ 150.00
239	(ff) <i>Claim against the Library Commission:</i>	
240	(TO BE PAID FROM SPECIAL REVENUE FUND)	
241	(1) Verizon West Virginia, Inc.	\$ 55,181.44
242	(gg) <i>Claims against the Public Service Commission:</i>	
243	(TO BE PAID FROM SPECIAL REVENUE FUND)	
244	(1) Commercial Vehicle Safety Alliance ..	\$ 39,291.28
245	(2) Fayette County Board of Education ...	\$ 83.87
246	(3) C. Scott Pauley	\$ 288.03
247	(hh) <i>Claims against the Regional Jail and Correctional Facility</i>	
248	<i>Authority:</i>	
249	(TO BE PAID FROM SPECIAL REVENUE FUND)	
250	(1) Edward Collins	\$ 1,070.00
251	(2) Denzil Grant	\$ 92.00
252	(3) Brenda K. Mitchell	\$ 3,000.00
253	(4) Matthew Jay Newman, Sr.	\$ 75.00
254	(5) Randall Kevin Sarrett	\$ 85.00
255	(6) Michael Shan Slevin	\$ 100.00
256	(7) Verizon West Virginia, Inc.	\$ 5,990.00
257	(8) Thomas E. Wyatt	\$ 450.00
258	(ii) <i>Claims against the State Fire Marshal:</i>	
259	(TO BE PAID FROM GENERAL REVENUE FUND)	
260	(1) Ridge Runner Industries	\$ 2,136.00
261	(2) Verizon West Virginia, Inc.	\$ 3,523.68
262	(jj) <i>Claim against the State of West Virginia:</i>	
263	(TO BE PAID FROM GENERAL REVENUE FUND)	

264 (1) Larry David Holdren \$ 1,650,000.00

265 (kk) *Claim against the Supreme Court:*

266 (TO BE PAID FROM GENERAL REVENUE FUND)

267 (1) Verizon West Virginia, Inc. \$ 937.34

268 (ll) *Claim against the Treasurer's Office:*

269 (TO BE PAID FROM GENERAL REVENUE FUND)

270 (1) Verizon West Virginia, Inc. \$ 5,346.00

271 (mm) *Claim against the Water Development Authority:*

272 (TO BE PAID FROM SPECIAL REVENUE FUND)

273 (1) Verizon West Virginia, Inc. \$ 2,119.23

274 (nn) *Claim against the West Virginia Development Office:*

275 (TO BE PAID FROM GENERAL REVENUE)

276 (1) Verizon West Virginia, Inc. \$ 689.50

277 (oo) *Claim against the West Virginia Education and State*
278 *Employees Grievance Board:*

279 (TO BE PAID FROM GENERAL REVENUE FUND)

280 (1) The Water Shop \$ 410.00

281 (pp) *Claim against the West Virginia Senate:*

282 (TO BE PAID FROM GENERAL REVENUE FUND)

283 (1) Verizon West Virginia, Inc. \$ 1,250.00

284 (qq) *Claims against the West Virginia State Police:*

384	CLAIMS	[Ch. 67
285	(TO BE PAID FROM GENERAL REVENUE FUND)	
286	(1) Anthony W. Shackelford	\$ 205.79
287	(2) Verizon West Virginia, Inc.	\$ 36,040.63
288	<i>(rr) Claim against Workers' Compensation:</i>	
289	(TO BE PAID FROM SPECIAL REVENUE FUND)	
290	(1) Verizon West Virginia, Inc.	\$ 84,846.65
291	The Legislature finds that the above moral obligations and	
292	the appropriations made in satisfaction thereof shall be the full	
293	compensation for all claimants, and that prior to the payments	
294	to any claimant provided for in this bill, the court of claims	
295	shall receive a release from said claimant releasing any and all	
296	claims for moral obligations arising from the matters consid-	
297	ered by the Legislature in the finding of the moral obligations	
298	and the making of the appropriations for said claimant. The	
299	court of claims shall deliver all releases obtained from claim-	
300	ants to the department against which the claim was allowed.	



CHAPTER 67

(S. B. 428 — By Senators Love, Sharpe, Edgell and Minear)



[Passed March 7, 2003; in effect from passage. Approved by the Governor.]



AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of administration and the division of corrections to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact that
 2 the state has received the benefit of the commodities received
 3 and/or services rendered by certain claimants herein and has
 4 considered these claims against the state, and agencies thereof,
 5 which have arisen due to overexpenditures of the departmental
 6 appropriations by officers of the state spending units, the claims
 7 having been previously considered by the court of claims which
 8 also found that the state has received the benefit of the com-
 9 modities received and/or services rendered by the claimants, but
 10 were denied by the court of claims on the purely statutory
 11 grounds that to allow the claims would be condoning illegal
 12 acts contrary to the laws of the state. The Legislature, pursuant
 13 to its findings of fact and also by the adoption of the findings of
 14 fact by the court of claims as its own, while not condoning such
 15 illegal acts, hereby declares it to be the moral obligation of the
 16 state to pay these claims in the amounts specified below and
 17 directs the auditor to issue warrants upon receipt of properly
 18 executed requisitions supported by itemized invoices, state-
 19 ments or other satisfactory documents as required by section
 20 ten, article three, chapter twelve of the code of West Virginia,
 21 one thousand nine hundred thirty-one as amended, for the
 22 payments thereof out of any fund appropriated and available for
 23 the purpose.

24 (a) *Claim against the Department of Administration:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26 (1) West Virginia Association of
 27 Rehabilitation Facilities \$ 639.84

28 (b) *Claims against the Division of Corrections:*

29 (TO BE PAID FROM GENERAL REVENUE FUND)

30	(1) Anthony Creek Rescue Squad	\$ 4,226.50
31	(2) Associated Emergency	
32	Physicians, Inc.	\$ 758.00
33	(3) Associated Radiologists, Inc.	\$ 1,091.00
34	(4) Sammar Atassi, M. D.	\$ 1,540.00
35	(5) Ravin Bhirud, M. D.	\$ 9,991.65
36	(6) John Byers, D. D. S.	\$ 85.00
37	(7) Charleston Cardiology Group	\$ 275.00
38	(8) Charleston Heart Specialists	\$ 3,995.00
39	(9) Charleston Psychiatric Group, Inc.	\$ 1,766.78
40	(10) Charleston Radiation Therapy	\$ 8,339.00
41	(11) Clarksburg Anesthesia	
42	Associates, Inc.	\$ 4,550.00
43	(12) Nancy A. Collins, O. D.	\$ 135.00
44	(13) Correctional Medical	
45	Services, Inc.	\$ 314,106.25
46	(14) Cottrill's Cars, Inc.	\$ 522.65
47	(15) G. Y. Dagher, M. D.	\$ 1,275.00
48	(16) Davis Memorial Hospital	\$ 47,600.69
49	(17) Dr. Bhirud, Inc.	\$ 4,015.36

50	(18) Fairmont General Hospital	\$ 2,348.25
51	(19) Frederick A. Gall, Jr., M. D.	\$ 1,310.00
52	(20) General Ambulance, Inc.	\$ 1,067.50
53	(21) General Anesthesia Services	\$ 1,050.00
54	(22) Grafton City Hospital	\$ 19,897.80
55	(23) Greenbrier Valley Medical Center ...	\$ 380.40
56	(24) Haven N. Wall, Jr., M. D., Inc.	\$ 1,200.00
57	(25) Healthnet Aeromedical Services	\$ 17,666.10
58	(26) John P. Henderson, M. D.	\$ 559.00
59	(27) Carl S. High, M. D.	\$ 816.00
60	(28) Jan Care Ambulance	\$ 2,025.00
61	(29) Joseph Noronha, M. D., P. C., Inc. ...	\$ 1,467.74
62	(30) Ziad Kahwash, M. D.	\$ 739.00
63	(31) A. K. Katrib, M. D.	\$ 7,995.05
64	(32) Randy Raissa Lagoc, M. D.	\$ 93.00
65	(33) Stephen C. Lau, M. D.	\$ 50.00
66	(34) McDowell County Ambulance	
67	Serv. Authority, Inc.	\$ 2,042.50
68	(35) Medical Park Anesthesiologists	\$ 3,280.56
69	(36) Stephen K. Milroy, M. D.	\$ 60.00

388		CLAIMS	[Ch. 67
70	(37)	Montgomery General Hospital	\$ 7,321.91
71	(38)	Montgomery Radiologists, Inc.	\$ 1,229.90
72	(39)	Morgantown Internal	
73		Medicine Group, Inc.	\$ 4,260.00
74	(40)	Neurological Associates, Inc.	\$ 1,185.00
75	(41)	Pharmacy Associates,	
76		dba Option Care	\$ 16,871.59
77	(42)	Pocahontas Memorial Hospital	\$ 4,032.12
78	(43)	Radiological Physicians	
79		Associates, Inc.	\$ 380.00
80	(44)	Raleigh General Hospital	\$ 6,046.20
81	(45)	San Pablo Medical Clinic	\$ 445.00
82	(46)	Luis E. Soriano, M. D.	\$ 310.79
83	(47)	United Hospital Center	\$ 2,747.38
84	(48)	University Health Associates	\$ 154,411.00
85	(49)	University Medical Laboratories	\$ 132.00
86	(50)	Vision Health Care, Inc.	\$ 19.00
87	(51)	West Virginia University	
88		Hospitals, Inc.	\$ 217,463.81
89	(52)	Wheeling Hospital, Inc.	\$ 13,545.29

CHAPTER 68

(Com. Sub. for S. B. 583 — By Senators Chafin, Love, Edgell, Snyder, Bailey, Tomblin, Mr. President, Minear, Guills, Weeks, Sprouse, Helmick, Ross, Sharpe and Fanning)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section ten; to amend and reenact sections ten and eleven, article seventeen of said chapter; to further amend said article by adding thereto a new section, designated section eleven-d; to further amend said chapter by adding thereto two new articles, designated articles seventeen-a and seventeen-b; to amend and reenact section three, article one, chapter seventeen-e of said code; to amend chapter twenty-four-a of said code by adding thereto a new article, designated article one-a; and to amend article seven of said chapter by adding thereto a new section, designated section seven, all relating to the regulation of commercial vehicles; increasing speeding fines for certain commercial vehicles transporting coal; authorizing public service commission to enforce laws of the road for commercial vehicles; authorizing public service commission to issue special permits; authorizing weight enforcement for commercial vehicles moving or parked on or within one hundred feet of a public highway or right-of-way; establishing administrative enforcement process and penalties for vehicles transporting coal; issuance of special permits for designated roads; setting maximum highway weights; providing legislative findings for special regulation of coal transportation on the coal resource

transportation road system; defining terms; designating eligible counties; directing public service commission to administer commercial vehicle weights and measures; providing that division of highways and public service commission administer all aspects of weight and safety requirements; providing that division of highways coordinate establishment of coal resource transportation roads with the public service commission; establishing a permitting program for vehicles transporting coal which allows higher weight limits upon meeting certain requirements; authorizing public service commission to promulgate emergency and legislative rules; providing special operator and vehicle permit and safety requirements; providing for fees to be assessed for permits; providing reporting requirements for vehicle owners, coal shippers and coal receivers; authorizing commission employees to inspect certain weight transportation records; establishing administrative sanctions for coal vehicle weight violations; establishing new penalties for weight violations; establishing procedure and criteria for commissioner of division of highways to designate special coal resource transportation roads; setting an effective date; authorizing commissioner of division of highways to enter into agreements with persons responsible for coal transport to undertake road and bridge improvements; exclusion of off-road vehicles and interstate highways; providing penalties for spotting; providing for transfer of certain duties, authority and employees of the division of highways to the public service commission; providing dates for transfer of these duties; providing that state road funds for these costs be transferred to public service commission; providing that transfer of these duties does not alter other law-enforcement agencies' authority; costs of enforcement; removing weight from the list of nonserious traffic violations; creating commercial motor vehicle weight and safety enforcement advisory committee; providing for its membership, organization, compensation, expense reimbursements, duties and termination of committee; and providing that certain employees of the public service

commission are authorized to enforce certain traffic offenses and use radar.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten; that sections ten and eleven, article seventeen of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven-d; that said chapter be further amended by adding thereto two new articles, designated articles seventeen-a and seventeen-b; that section three, article one, chapter seventeen-e of said code be amended and reenacted; that chapter twenty-four-a of said code be amended by adding thereto a new article, designated article one-a; and that article seven of said chapter be amended by adding thereto a new section, designated section seven, all to read as follows:

Chapter

- 17C. Traffic Regulations and Laws of the Road.**
- 17E. Uniform Commercial Driver's License Act.**
- 24A. Commercial Motor Carriers.**

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.**

Article

- 6. Speed Restrictions.**
- 17. Size, Weight and Load.**
- 17A. Regulation of the Commercial Transportation of Coal.**
- 17B. Transfer of Certain Jurisdiction and Employees to Public Service Commission.**

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

§17C-6-10. Enforcement of article with respect to operations of commercial motor vehicles.

§17C-6-1. Speed limitations generally; penalty.

1 (a) No person may drive a vehicle on a highway at a speed
2 greater than is reasonable and prudent under the existing
3 conditions and the actual and potential hazards. In every event
4 speed shall be so controlled as may be necessary to avoid
5 colliding with any person, vehicle or other conveyance on or
6 entering the highways in compliance with legal requirements
7 and the duty of all persons to use due care.

8 (b) Where no special hazard exists that requires lower speed
9 for compliance with subsection (a) of this section, the speed of
10 any vehicle not in excess of the limits specified in this section
11 or established as authorized in this section is lawful, but any
12 speed in excess of the limits specified in this subsection or
13 established as authorized in this section is unlawful. The
14 following speed limits apply:

15 (1) Fifteen miles per hour in a school zone during school
16 recess or while children are going to or leaving school during
17 opening or closing hours. A school zone is all school property,
18 including school grounds and any street or highway abutting the
19 school grounds and extending one hundred twenty-five feet
20 along the street or highway from the school grounds. The speed
21 restriction does not apply to vehicles traveling on a controlled-
22 access highway which is separated from the school or school
23 grounds by a fence or barrier approved by the division of
24 highways;

25 (2) Twenty-five miles per hour in any business or residence
26 district; and

27 (3) Fifty-five miles per hour on open country highways,
28 except as otherwise provided by this chapter.

29 The speeds set forth in this section may be altered as
30 authorized in sections two and three of this article.

31 (c) The driver of every vehicle shall, consistent with the
32 requirements of subsection (a) of this section, drive at an
33 appropriate reduced speed when approaching and crossing an
34 intersection or railway grade crossing, when approaching and
35 going around a curve, when approaching a hill crest, when
36 traveling upon any narrow or winding roadway and when a
37 special hazard exists with respect to pedestrians or other traffic
38 or by reason of weather or highway conditions.

39 (d) The speed limit on controlled access highways and
40 interstate highways, where no special hazard exists that requires
41 a lower speed, shall be not less than fifty-five miles per hour
42 and the speed limits specified in subsection (b) of this section
43 do not apply.

44 (e) Unless otherwise provided in this section, any person
45 who violates the provisions of this section is guilty of a
46 misdemeanor and, upon conviction thereof, shall be fined not
47 more than one hundred dollars; upon a second conviction within
48 one year thereafter, shall be fined not more than two hundred
49 dollars; and, upon a third or subsequent conviction within two
50 years thereafter, shall be fined not more than five hundred
51 dollars: *Provided*, That if the third or subsequent conviction is
52 based upon a violation of the provisions of this section where
53 the offender exceeded the speed limit by fifteen miles per hour
54 or more, then upon conviction, shall be fined not more than five
55 hundred dollars or confined in the county or regional jail for not
56 more than six months, or both.

57 (f) Any person who violates the provisions of subdivision
58 (1), subsection (b) of this section is guilty of a misdemeanor
59 and, upon conviction thereof, shall be fined not less than one
60 hundred dollars nor more than five hundred dollars: *Provided*,
61 That if the conviction is based upon a violation of the provi-
62 sions of subdivision (1), subsection (b) of this section where the
63 offender exceeded the speed limit by fifteen miles per hour or

64 more in the presence of one or more children, then upon
65 conviction, shall be fined not less than one hundred dollars nor
66 more than five hundred dollars or confined in the regional or
67 county jail for not more than six months, or both.

68 (g) If an owner or driver is arrested under the provisions of
69 this section for the offense of driving above the posted speed
70 limit on a controlled access highway or interstate highway and
71 if the evidence shows that the motor vehicle was being operated
72 at ten miles per hour or less above the speed limit, then, upon
73 conviction thereof, that person shall be fined not more than five
74 dollars, plus court costs.

75 (h) Any person operating a commercial motor vehicle
76 engaged in the transportation of coal on the coal resource
77 transportation road system who violates subsection (a), (b) or
78 (c) of this section shall, upon conviction, be subject to fines in
79 triple the amount otherwise provided in subsection (e) of this
80 section.

81 (i) If an owner or driver is convicted under the provisions
82 of this section for the offense of driving above the speed limit
83 on a controlled-access highway or interstate highway of this
84 state and if the evidence shows that the motor vehicle was being
85 operated at ten miles per hour or less above the speed limit,
86 then notwithstanding the provisions of section four, article
87 three, chapter seventeen-b of this code, a certified abstract of
88 the judgment on the conviction shall not be transmitted to the
89 division of motor vehicles: *Provided*, That the provisions of this
90 subsection do not apply to conviction of owners or drivers who
91 have been issued a commercial driver's license as defined in
92 chapter seventeen-e of this code, if the offense was committed
93 while operating a commercial vehicle.

94 (j) If an owner or driver is convicted in another state for the
95 offense of driving above the maximum speed limit on a

96 controlled-access highway or interstate highway and if the
97 maximum speed limit in the other state is less than the maxi-
98 mum speed limit for a comparable controlled-access highway
99 or interstate highway in this state, and if the evidence shows
100 that the motor vehicle was being operated at ten miles per hour
101 or less above what would be the maximum speed limit for a
102 comparable controlled-access highway or interstate highway in
103 this state, then notwithstanding the provisions of section four,
104 article three, chapter seventeen-b of this code, a certified
105 abstract of the judgment on the conviction shall not be transmit-
106 ted to the division of motor vehicles or, if transmitted, shall not
107 be recorded by the division, unless within a reasonable time
108 after conviction, the person convicted has failed to pay all fines
109 and costs imposed by the other state: *Provided*, That the
110 provisions of this subsection do not apply to conviction of
111 owners or drivers who have been issued a commercial driver's
112 license as defined in chapter seventeen-e of this code, if the
113 offense was committed while operating a commercial vehicle.

§17C-6-10. Enforcement of article with respect to operations of commercial motor vehicles.

1 In addition to enforcement by officers and other persons
2 authorized by law, designated employees of the public service
3 commission of West Virginia may enforce the provisions of this
4 article as they relate to the operation of commercial motor
5 vehicles.

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-10. Officers may weigh, measure or examine vehicles and require removal or rearrangement of excess loads.

§17C-17-11. Permits for excess size and weight.

§17C-17-11d. Establishing maximum road highway weights.

§17C-17-10. Officers may weigh, measure or examine vehicles and require removal or rearrangement of excess loads.

1 (a) Any police officer or employee of the division of
2 highways or the public service commission designated as a
3 member of an official weighing crew by his or her representa-
4 tive agency may require the driver of any vehicle or combina-
5 tion of vehicles located on or within one hundred feet of any
6 public highway or right-of-way, and whether moving or
7 stopped, to submit the vehicle or combination of vehicles to a
8 weighing with portable or stationary weighing devices or
9 submit the vehicle or combination of vehicles to a measuring or
10 to any other examination necessary to determine if the vehicle
11 or combination of vehicles is in violation of any of the provi-
12 sions of this article or article seventeen-a of this chapter, and
13 may require that the vehicle or combination of vehicles be
14 driven to the nearest weighing device.

15 No vehicle or combination of vehicles may be detained for
16 weighing unless a portable or stationary weighing device is
17 actually present at the location where, and at the time, the
18 vehicle or combination of vehicles is stopped or unless the
19 vehicle or combination of vehicles is escorted immediately after
20 being stopped to the nearest portable or stationary weighing
21 device. In no case may a vehicle or combination of vehicles be
22 detained more than one hour from the time it is stopped for
23 weighing unless the vehicle or combination of vehicles is
24 impounded for another violation or placed out of service for a
25 safety violation.

26 (b) Whenever a police officer or a member of an official
27 weighing crew determines that a vehicle or combination of
28 vehicles is in violation of any of the provisions of this article or
29 article seventeen-a of this chapter, he or she may require the
30 driver to remain in place or be moved to a suitable location
31 until the vehicle or combination of vehicles is brought into
32 conformity with the provisions violated.

33 In the case of a weight violation all material unloaded shall
34 be cared for by the owner, lessee or borrower of the vehicle or
35 combination of vehicles at the risk of the owner, lessee or
36 borrower: *Provided*, That no criminal charge shall be preferred
37 against any driver, operator or owner of a vehicle when a
38 rearrangement of the load upon the vehicle, without removal of
39 the load from the vehicle, reduces the axle loads of the vehicle
40 to the limit permitted under this chapter.

41 (c) Any driver of a vehicle or combination of vehicles who
42 fails or refuses to comply with any requirement or provision of
43 this section shall be guilty of a misdemeanor, or in the case of
44 any driver of a vehicle engaged in the transportation of coal,
45 any other additional penalties that may be applicable under the
46 provisions of article seventeen-a of this chapter.

§17C-17-11. Permits for excess size and weight.

1 (a) The public service commission may, in its discretion,
2 upon application in writing and good cause shown issue a
3 special permit in writing authorizing: (1) The applicant, in
4 crossing any highway of this state, to operate or move a vehicle
5 or combination of vehicles of a size or weight or load exceeding
6 the maximum specified in this chapter or otherwise not in
7 conformity with the provisions of this chapter, whether the
8 operation is continuous or not, provided the applicant agrees to
9 compensate the commissioner of highways for all damages or
10 expenses incurred in connection with the crossing; (2) the
11 applicant to operate or move a vehicle or combination of
12 vehicles of a size or weight of vehicles or nondivisible load
13 exceeding the maximum specified in this chapter or otherwise
14 not in conformity with the provisions of this chapter; and (3)
15 the applicant to move or operate, for limited or continuous
16 operation, a vehicle hauling containerized cargo in a sealed,
17 seagoing container to or from a seaport or inland waterway port
18 that has or will be transported by marine shipment where the

19 vehicle is not, as a result of hauling the container, in conformity
20 with the provisions of this article relating to weight limitations,
21 upon the conditions that: (A) The container be hauled only on
22 the roadways and highways designated by the commissioner of
23 highways; (B) the contents of the container are not changed
24 from the time it is loaded by the consignor or the consignor's
25 agent to the time it is delivered to the consignee or the con-
26 signee's agent; and (C) any additional conditions as the
27 commissioner of highways or the public service commission
28 may impose to otherwise ensure compliance with the provisions
29 of this chapter.

30 (b) (1) The commissioner of highways may issue a special
31 permit to operate or move a vehicle or combination of vehicles
32 of a size or weight of vehicles or nondivisible load exceeding
33 the maximum specified in this chapter or otherwise not in
34 conformity with the provisions of this chapter over routes
35 designated by the commissioner of highways upon terms and
36 restrictions prescribed by the public service commission,
37 together with the commissioner of highways.

38 (2) For purposes of this section, nondivisible load means
39 any load exceeding applicable length or weight limits which, if
40 separated into smaller loads or vehicles, would: (A) Compro-
41 mise the intended use of the vehicle, to the extent that the
42 separation would make it unable to perform the function for
43 which it was intended; (B) destroy the value of the load or
44 vehicle, to the extent that the separation would make it unusable
45 for its intended purpose; or (C) require more than eight
46 workhours to dismantle using appropriate equipment: *Provided,*
47 That the applicant for a nondivisible load permit has the burden
48 of proof as to the number of workhours required to dismantle
49 the load.

50 (c) The application for any permit other than a special
51 annual permit shall specifically describe the vehicle or vehicles

52 and load to be operated or moved along or across the highway
53 and the particular highway or crossing of the highway for which
54 the permit to operate is requested, and whether the permit is
55 requested for a single trip or for a continuous operation.

56 (d) The public service commission is authorized to issue or
57 withhold a permit at his or her discretion; or, if the permit is
58 issued, to limit the number of trips, or to establish seasonal or
59 other time limitations within which the vehicles described may
60 be operated on or across the highways indicated, or otherwise
61 to limit or prescribe conditions of operation of the vehicle or
62 vehicles, when necessary to assure against undue damage to the
63 road foundations, surface, or structures, and may require the
64 undertaking, bond or other security considered necessary to
65 compensate for any injury to any roadway structure and to
66 specify the type, number and the location for escort vehicles for
67 any vehicle: *Provided*, That in establishing limitations on
68 permits issued under this section, the public service commission
69 shall consult with the commissioner of highways, and may not
70 issue, limit or condition a permit in a manner inconsistent with
71 the authority of the commissioner of highways.

72 The public service commission may charge a fee for the
73 issuance of a permit for a mobile home and a reasonable fee for
74 the issuance of a permit for any other vehicle under the provi-
75 sions of this section to pay the administrative costs thereof.

76 (e) Every permit shall be carried in the vehicle or combina-
77 tion of vehicles to which it refers and shall be open to inspec-
78 tion by any police officer or authorized agent of the commis-
79 sioner of highways or the public service commission and no
80 person shall violate any of the terms or conditions of the special
81 permit.

§17C-17-11d. Establishing maximum road highway weights.

1 Effective the first day of July, two thousand three, the
 2 maximum gross vehicle weight on existing state-maintained
 3 roads and public highways designated for gross weight vehicle
 4 load of eighty thousand pounds shall have a tolerance of ten
 5 percent. All requirements for vehicle design and axle weights
 6 otherwise established under this code remain applicable. In no
 7 case may the commissioner authorize weight limits on any state
 8 maintained road or public highway that would jeopardize or
 9 otherwise limit federal highway fund appropriations to this
 10 state. The commissioner of highways shall, by the thirty-first
 11 day of December, two thousand three, review and revise, as the
 12 commissioner deems appropriate, weight limits for all state
 13 maintained roads and public highways and provide to the joint
 14 committee of government and finance a report denoting all
 15 weight limits as they have been designated on state maintained
 16 roads and public highways.

**ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTA-
 TION OF COAL.**

- §17C-17A-1. Legislative findings and creation of program.
- §17C-17A-2. Definitions.
- §17C-17A-3. Authority of the division of highways and public service commission generally.
- §17C-17A-4. Special permit issuance; and promulgation of rules.
- §17C-17A-5. Operation of coal trucks under special permits; weight limitations; payment of permit fees.
- §17C-17A-6. Reporting requirements for shippers, vehicle owners and receivers of coal transported on public highways.
- §17C-17A-7. Permit application procedure.
- §17C-17A-8. Powers and duties of the commission.
- §17C-17A-9. Administrative sanctions.
- §17C-17A-10. Penalties for violation of weight laws; impounding vehicles.
- §17C-17A-11. Effective date.
- §17C-17A-12. Designating special coal resource transportation roads, highways and bridges.
- §17C-17A-13. Authority of the commissioner of the division of highways relating to road and bridge repair on designated coal resource transportation roads.
- §17C-17A-14. Exclusion of off-road vehicles.
- §17C-17A-15. Exclusion of interstate highways.
- §17C-17A-16. Spotting unlawful; penalties.

§17C-17A-1. Legislative findings and creation of program.

1 (a) The Legislature finds and declares that:

2 (1) No other economic undertaking in the history of West
3 Virginia has had a greater impact upon the citizens of this state,
4 providing such an economic force and affecting the social
5 construct and day-to-day life and environment of the people and
6 communities of this state, than the activities associated with the
7 extraction, transportation and consumption of coal or its
8 byproducts. In areas of this state where the coal industry exists,
9 the economic benefits of coal production are an indispensable
10 part of the local community's vitality.

11 (2) The historic progression of the coal industry has
12 resulted in an increasing use of the public highways of this state
13 for the transportation of coal to river ports, power generators or
14 rail loading facilities. Roads where coal is transported are
15 mainly two-lane rural roads and highways of varying grades
16 and conditions. The daily presence of large commercial motor
17 vehicles on these roads and highways causes significant impact
18 to local communities and the local transportation infrastructure.
19 Local residents are exposed on a daily basis to the dangers
20 associated with sharing the road with a large number of these
21 vehicles.

22 (3) The increased capacity and ability of coal hauling
23 vehicles, tied with increased economic pressures to reduce
24 industry transportation costs, have created economic incentives
25 for transporting coal at higher than legal limits, and for drivers
26 to drive long hours and operate these vehicles at higher rates of
27 speed. Consequently, average vehicle weights have increased
28 and many coal transport vehicles regularly exceed the lawful
29 limit by more than one hundred percent. The excessive weights
30 of these vehicles have also resulted in the rapid deterioration of

31 state roads and bridges, creating significant costs to the state of
32 millions of dollars in lost road and bridge use and life.

33 (4) Advances in truck stability, braking and safety technol-
34 ogy have made modern coal transporters much safer convey-
35 ances than those used by the industry when the state's current
36 weight laws were enacted. Further advances in technology have
37 made tracking and recording individual vehicles, their operators
38 and load significantly more efficient.

39 (5) Enforcement of truck safety and driver safety laws has
40 been divided between various jurisdictions such as local and
41 state law enforcement, the division of highways and the public
42 service commission. As a result, local and state enforcement of
43 those comprehensive laws has not been uniform, with the result
44 that many of these laws have not been enforced.

45 (6) The resulting need for a remedy for hauling these
46 additional amounts of coal is most severe in a limited and
47 discrete geographic area of the state where the limited access to
48 rail and river transportation options and economic conditions
49 require a regulatory program that allows a greater weight
50 allowance for coal hauling vehicles to address the unique
51 economic circumstances of that region.

52 (7) That this limited highway system must include addi-
53 tional safety protections for the public sharing the roads with a
54 large coal hauling vehicle fleet and specialized training for
55 operators of these vehicles, requiring the program be designed
56 to assure that state weight and safety requirements be effec-
57 tively administered and enforced.

58 (b) A special regulatory program with administrative
59 enforcement authority over all vehicles hauling coal in West
60 Virginia is created. This program is designed to address the
61 economic needs of the state coal industry within the confines of
62 the ability of the transportation infrastructure to accommodate

63 these needs and in careful consideration for road safety and
64 maintenance requirements of these vehicles, by providing for
65 statewide coal truck weight reporting requirements and allow-
66 ing a limited statewide increase in weights for commercial
67 vehicles and an additional, limited increase for vehicles hauling
68 coal where the greater increase is required.

§17C-17A-2. Definitions.

1 For purposes of this article:

2 (a) A “coal resource transportation road” means a road
3 designated by the department of transportation as safe and
4 sufficient to allow vehicles hauling coal to carry a greater gross
5 and axle weight of up to one hundred and twenty thousand
6 pounds, with a five percent variance.

7 (b) “Coal” or “coal by-products” means the mineral in raw
8 or clean state and includes synthetic fuel manufactured or
9 produced for which credit is allowable under 26 U. S. C. §29 of
10 the Internal Revenue Code (1996).

11 (c) “Commission” means the public service commission of
12 West Virginia.

13 (d) “Division” means the division of highways within the
14 department of transportation.

15 (e) “Mining operation” means any activity related to
16 extraction of coal regulated under the provisions of this code.

17 (f) “Operator” means the person driving a commercial
18 motor vehicle transporting coal on any public highway of this
19 state.

20 (g) “Person” means any individual, partnership, firm,
21 society, association, trust, corporation, other business entity or

22 any agency, unit or instrumentality of federal, state or local
23 government.

24 (h) "Shipper" means the person who loads coal or causes
25 coal to be loaded into any commercial motor vehicle that will
26 operate on any public highway in this state.

27 (i) "Receiver" means the person who accepts for unloading
28 coal from any vehicle that has operated on any public highway
29 in this state.

30 (j) "Vehicle owner" means the person who as owner of a
31 commercial motor vehicle employs, contracts or otherwise
32 directs a driver to operate that vehicle on a public highway of
33 this state for the purpose of transporting coal.

**§17C-17A-3. Authority of the division of highways and public
service commission generally.**

1 (a) The division of highways shall establish all legal vehicle
2 weight limits for all public highways including roads within the
3 coal resource transportation road system. Public highways shall
4 be designated as coal resource transportation roads by the
5 commissioner of the division of highways pursuant to this
6 article. Only state-maintained roads and public highways found
7 in the following areas: Boone; Fayette; Lincoln; Logan;
8 McDowell; Mercer; Mingo; Raleigh; Wayne and Wyoming
9 counties; in Greenbrier County, routes west of Sam Black
10 Church and southwest to the Summers County line; in Clay
11 County, routes 4 and 16; in Nicholas County, routes 19, 20, 39,
12 41 and 55; in Webster County, routes 9, 20 and 82; and all
13 state-maintained roads and public highways found in Washing-
14 ton, Malden, Loudon and Cabin Creek districts, Kanawha
15 County, are eligible to qualify as part of the coal resource
16 transportation road system. The division shall post signs on
17 roads informing the public of the designation and shall also list
18 a toll free telephone line for public reporting of poor driving or

19 law violations by special permit operators. The division shall
20 provide periodic reports to the commercial motor vehicle
21 weight and safety enforcement advisory committee as estab-
22 lished in section two, article one-a, chapter twenty-four-a of this
23 code relating to the study of coal resource transportation roads.
24 The periodic reports shall include the following at a minimum:
25 (1) Citations issued for violations of this chapter; (2) disposition
26 of the violations; (3) road conditions and maintenance; and (4)
27 the amount of undue road damage attributable to coal resource
28 transportation road system permit use.

29 (b) The public service commission shall administer the coal
30 resource transportation road permitting program and otherwise
31 enforce the provisions of this article. The commission shall
32 establish requirements for vehicle operators holding coal
33 resource transportation road permits pursuant to section five of
34 this article consistent with federal statutory and regulatory
35 requirements.

36 (1) The commission may, during normal business hours,
37 conduct inspections of all trucking related records of shippers,
38 vehicle operators, vehicle owners and receivers engaged in the
39 transportation of coal. Copies of records shall be provided to
40 commission employees upon request. This provision may not
41 be construed to authorize the commission to reveal trade secrets
42 or other confidential financial information of those persons
43 inspected; however the commission may use any weight
44 measurement records as evidence of a violation of this article.

45 (2) The commission shall establish and maintain a toll free
46 telephone line for public reporting of poor driving or law
47 violations by special permit operators. In addition, the commis-
48 sion shall require all vehicles operating under a permit issued
49 pursuant to the provisions of this article to clearly display on
50 the vehicle the toll free telephone number.

51 (3) The commission shall implement a study of commercial
52 vehicle safety-related issues, including using higher education
53 institutions and other research organizations. The commission
54 shall provide periodic reports to the commercial motor vehicle
55 weight and safety enforcement advisory committee as estab-
56 lished in section two, article one-a, chapter twenty-four-a of this
57 code relating to the study of motor vehicle weight and safety
58 enforcement.

59 (4) The commission shall establish procedures to use
60 electronic real time reporting of coal vehicle weights by
61 shippers and receivers. The commission may require daily
62 certified reports from shippers or receivers if electronic
63 reporting methods are not used. The commission may authorize
64 alternative measures of reporting that require same-day
65 reporting of weight measurements by shippers and receivers.

66 (5) The commission shall impose and collect from shippers
67 of coal on the coal resource transportation road system through
68 the use of the special permit, issued pursuant to section five of
69 this article, for the privilege of loading coal in excess of eighty-
70 eight thousand pounds for transport on a coal resource transpor-
71 tation road. The fee shall be assessed in the amount of five
72 cents per ton of coal hauled over the road. Revenue from the
73 fees shall be deposited in the coal resource transportation fund
74 created in section five of this article.

75 (c) Notwithstanding the provisions of section three, article
76 one, chapter twenty-nine-a of this code, the commission and the
77 division shall each propose legislative rules for promulgation in
78 accordance with the provisions of article three of said chapter
79 to carry out their duties and responsibilities pursuant to the
80 provisions of this article.

§17C-17A-4. Special permit issuance; and promulgation of rules.

1 (a) The commission may issue permits to authorize the
2 hauling of coal of a greater gross and axle weight than other-
3 wise authorized by state law on roads designated by the
4 commissioner of highways as coal resource transportation
5 roads.

6 (b) Notwithstanding the provisions of section three, article
7 one, chapter twenty-nine-a of this code, the commission shall
8 promulgate emergency and legislative rules to effectuate
9 purposes of this section, which shall provide, at a minimum, the
10 following:

11 (1) Twenty-four hours' mandatory specialized training
12 requirements for commercial vehicles operators with less than
13 two years of commercial driving experience;

14 (2) Requirements for random drug and alcohol testing; and

15 (3) Requirements for daily records consistent with the
16 provisions of any applicable federal statutory or regulatory
17 requirements.

**§17C-17A-5. Operation of coal trucks under special permits;
weight limitations; payment of permit fees.**

1 (a) Any vehicle, when transporting coal over certain public
2 highways, designated as coal resource transportation roads by
3 the commissioner of the department of highways, may be
4 operated at the weights as set forth in this section in excess of
5 the maximum gross weight prescribed in section nine, article
6 seventeen of this chapter and any other maximum weight
7 limitations on any public highway by paying the corresponding
8 special permit fee and otherwise complying with the provisions
9 of this article.

10 (b) Special permits shall be issued subject to the following
11 requirements:

12 (1) A single unit truck having one steering axle and two
13 axles in tandem shall be limited to a maximum gross weight of
14 eighty thousand pounds with a tolerance of five percent and pay
15 a special permit fee annually of one hundred dollars;

16 (2) A single unit truck having one steering axle and three
17 axles in tridem arrangement shall be limited to a maximum
18 gross weight of ninety thousand pounds with a tolerance of five
19 percent and pay a special permit fee annually of one hundred
20 sixty dollars;

21 (3) A tractor-semitrailer combination with five axles shall
22 be limited to a maximum gross weight of one hundred ten
23 thousand pounds with a tolerance of five percent and pay a
24 special permit fee annually of three hundred dollars;

25 (4) A tractor-semitrailer combination with six or more axles
26 shall be limited to a maximum gross weight of one hundred
27 twenty thousand pounds with a tolerance of five percent and
28 pay a special permit fee annually of five hundred dollars.

29 (c) The axle loads set forth in subsection (b) of this section
30 may in no event exceed the maximum axle load allowable
31 based upon the minimum axle spacings as determined by the
32 division of highways in accordance with generally accepted
33 industry standards and bridge loading analysis.

34 (d) In order to qualify for issuance of a special permit, the
35 applicant shall provide information that demonstrates that the
36 vehicle, as configured, has a total combined axle rating capacity
37 equal to or greater than the maximum amount of weight for
38 which a special permit is sought. The information may include,
39 but not be limited to, the manufacturer's rated capacity. In the
40 event that manufacturer's rated capacity is not available, any
41 other information reasonably determined by the secretary of the
42 department of transportation to give evidence of adequate
43 combined axle rating capacity may be submitted.

44 (e) Special permits authorized by this section shall be
45 issued by the commission on forms prescribed and furnished by
46 it. The special permit indicium shall be permanently affixed
47 immediately below the window glass on the top of the door on
48 the driver's side of the vehicle. Lost, destroyed, stolen or
49 otherwise unusable special permits indicia shall be replaced in
50 accordance with legislative rules to be promulgated by the
51 commission. The special permit indicium shall be issued to a
52 particular vehicle and shall remain with the vehicle upon
53 transfer of possession or ownership of the vehicle.

54 (f) Special permits issued pursuant to the provisions of this
55 article are valid for a period of one year from the date of
56 purchase: *Provided*, That no renewal permits shall be issued to
57 any permittee who, at the time of the renewal, has any adminis-
58 trative or criminal actions pending relating to the operation of
59 commercial motor vehicles in this or other states.

60 (g) For purposes of this section, the dimensional require-
61 ments of motor vehicles shall conform to all applicable federal
62 laws and regulations. Nothing in this section may be construed
63 or administered to jeopardize the receipt of federal funds for
64 highway purposes.

65 (h) Any operator of a vehicle with a special permit issued
66 under the provisions of this article shall submit the vehicle or
67 combination of vehicles to weighing with portable or stationary
68 weighing devices as required by section ten, article seventeen
69 of this chapter. Any driver or owner of a vehicle or combination
70 of vehicles operating under the provisions of this section who
71 fails or refuses to comply with any requirement of section ten,
72 article seventeen of this chapter forfeits all privileges granted
73 by the special permits.

74 (i) Any vehicle or combination of vehicles transporting coal
75 pursuant to the provisions of this article shall be securely

76 covered to prevent the escape of the load on any trip exceeding
77 a total distance of one mile on any public highway.

78 (j) As a condition of receipt of a special permit, vehicle
79 owners and operators shall submit permitted vehicles to safety
80 checks and other vehicle inspection requirements as required by
81 legislative rules of the commission. The commission may
82 impose additional vehicle operation and maintenance require-
83 ments by rule as the commission deems appropriate to assure
84 the safe operation of vehicles issued a special permit.

85 (k) The commission shall propose rules in accordance with
86 the provisions of article three, chapter twenty-nine-a of this
87 code regarding the implementation of the requirements of this
88 section. The rules shall be initially promulgated as emergency
89 rules pursuant to the provisions of said article by no later than
90 the first day of October, two thousand three.

91 (l) The payment of the special permit fee is in addition to
92 any state registration fee, user fee or other decal fee.

93 (m) All revenues generated pursuant to this section shall be
94 credited to a special account within the road fund which is
95 created and shall be designated as the "coal resource transporta-
96 tion road fund". Moneys of the fund shall be used by the
97 division of highways for construction, maintenance and repair
98 of public highways and bridges over which substantial quanti-
99 ties of coal are transported.

100 (n) For periods of less than one year, the permit fee
101 imposed by subsection (b) of this section shall be prorated to
102 the nearest month.

**§17C-17A-6. Reporting requirements for shippers, vehicle owners
and receivers of coal transported on public
highways.**

1 (a) Every shipper of coal for transport on a public highway
2 in this state that loads vehicles to a gross weight in excess of
3 eighty thousand gross pounds shall be required to report to the
4 commission weight and other transport-related data as required
5 in this article. The commission shall by rule establish special
6 recording and reporting methods for timely and accurate
7 disclosure of all shipments of coal made upon any public
8 highway of this state. The rules shall provide for administrative
9 penalties to be imposed for failure to timely or accurately report
10 weight or other required data.

11 (b) Every vehicle owner who transports coal on a public
12 highway of this state is subject to the provisions of this article
13 and any rules established by the commission requiring report-
14 ing, monitoring or removal from service of any unsafe vehicle
15 or driver.

16 (c) Every receiver of coal transported on a public highway
17 in this state that unloads or causes to be unloaded any shipment
18 of coal shall report to the commission the weight of the
19 shipment and other data related to the shipment as required by
20 rules promulgated by the commission. The rules shall provide
21 for administrative penalties to be imposed for failure to timely
22 or accurately report the weight or other data. Compliance with
23 the reporting requirements shall cause the receiver to be
24 immune from any and all criminal, civil and administrative
25 liability, damages, costs, fines and penalties based on, arising
26 out of or resulting from the receiver's receipt or acceptance of
27 the shipment.

28 (d) The commission shall by rule establish special record-
29 ing and reporting methods for timely and accurate disclosure of
30 all shipments of coal made by commercial motor vehicles upon
31 a public highway of this state.

§17C-17A-7. Permit application procedure.

1 The commission shall propose in accordance with provi-
2 sions of article three, chapter twenty-nine-a of this code by
3 emergency and legislative rules, filed no later than the first day
4 of October, two thousand three, a permit application procedure
5 for the issuance of permits pursuant to the authority contained
6 within this article.

§17C-17A-8. Powers and duties of the commission.

1 In addition to all other powers, duties, responsibilities and
2 authority granted and assigned to the commission in this code
3 and elsewhere prescribed by law, notwithstanding any provision
4 of the code to the contrary:

5 (1) The commission shall promulgate rules in accordance
6 with the provisions of article three, chapter twenty-nine-a of
7 this code to carry out the provisions of this article including
8 modifying any existing rules and establishing permit applica-
9 tion fees up to an amount sufficient to defray the costs of permit
10 review;

11 (2) The commission or any authorized representative,
12 employee or agent may, at reasonable times, enter onto any coal
13 shipping or receiving facility in the state for the purpose of
14 making an inspection or investigation;

15 (3) The commission may also perform or require a person,
16 by order, to perform any and all acts necessary to carry out the
17 provisions of this article or the rules promulgated under this
18 article;

19 (4) The commission, its authorized representative, em-
20 ployee or agent shall make periodic inspections at coal shipping
21 or receiving facilities to effectively implement and enforce the
22 requirements of this article or its rules and may conduct at
23 weigh stations or any other adequate site or facility inspections
24 of coal in transit.

§17C-17A-9. Administrative sanctions.

1 (a) This section imposes administrative sanctions for
2 violations occurring on the coal resource transportation road
3 system. It is the intent of the Legislature to impose administra-
4 tive sanctions in addition and separate from any criminal or
5 civil penalties upon any person violating or assisting in the
6 violation of the provisions of this article.

7 (b) For a particular violation, the commission may take
8 administrative notice of criminal convictions, or a plea of nolo
9 contendere, for a violation for purposes of imposing the
10 administrative sanctions in this section in lieu of the procedure
11 provided in subsection (f) of this section. After providing notice
12 and an opportunity to show cause why penalties should not be
13 imposed for the violation of provisions of this article, the
14 commission shall impose sanctions upon an operator, shipper,
15 receiver or truck owner when a violation is found to have
16 occurred. Lack of intent is not a defense to a violation except as
17 it applies to receivers.

18 (c) Administrative sanctions for violations shall be imposed
19 as follows:

20 (1) Every shipper of coal for transport on the public roads
21 or highways of this state which loads coal in an amount which
22 results in gross vehicle weight to be in excess of the weight
23 limits established in this article shall be subject to an adminis-
24 trative penalty per pound in excess of the lawful weight
25 pursuant to the penalty schedule established in section ten of
26 this article;

27 (2) It is unlawful for any person to operate a commercial
28 motor vehicle engaged in the transportation of coal with a gross
29 vehicle weight for nonpermitted vehicles in excess of the lawful
30 maximum weight on a coal resource transportation road without
31 a permit required by section five of this article. Any person

32 violating this subsection shall have his or her driver's license
33 suspended by the commissioner of the division of motor
34 vehicles for a period of ninety days for the first offense, six
35 months for the second offense, and one year for the third
36 offense: *Provided*, That in the case of a permit, expired for less
37 than thirty days, the operator may present a valid permit to the
38 commission within five days of the date of the offense in order
39 to avoid the penalty;

40 (3) Any owner of a commercial motor vehicle engaged in
41 the transportation of coal operating without an excess weight
42 hauling permit and bearing a gross vehicle weight in excess of
43 the lawful maximum weight for the public highway for
44 nonpermitted vehicles who allows the operation of that vehicle
45 upon a coal resource transportation road of this state shall have
46 any state-issued hauling permit then in force suspended by the
47 commission for a period of ninety days for the first offense, six
48 months for the second offense, and revoked for the third
49 offense: *Provided*, That in the case of a permit, expired for less
50 than thirty days, the operator may present a valid permit to the
51 commission of motor vehicles within five days of the date of
52 the offense in order to avoid the penalty: *Provided, however*,
53 That should there be no state-issued hauling permit then in
54 force, the owner shall have his or her vehicle registration
55 suspended by the commission of motor vehicles for a period of
56 ninety days for the first offense, six months for the second
57 offense and revoked for the third offense;

58 (4) Any operator who operates a vehicle engaged in the
59 transportation of coal that has been issued a special permit by
60 the division upon the coal resource transportation road system
61 and who operates the vehicle with a gross vehicle weight that
62 is in excess of the lawful maximum weight allowed pursuant to
63 the permit shall have his or her driver's license suspended by
64 the commissioner of the division of motor vehicles for a period

65 of three days for the first offense, thirty days for the second
66 offense and six months for the third offense;

67 (5) Any owner of a vehicle engaged in the transportation of
68 coal that has been issued a special permit by the commission
69 who allows the operation of that vehicle upon the coal resource
70 transportation road system with a gross vehicle weight that is in
71 excess of the lawful maximum weight allowed pursuant to the
72 permit shall have the special permit suspended by the commis-
73 sion for a period of three days for the first offense, thirty days
74 for the second offense and revoked for the third offense;

75 (6) Any operator who operates a vehicle engaged in the
76 transportation of coal with a suspended excess weight hauling
77 permit at a weight in excess of the limits imposed by article
78 seventeen of this chapter upon the coal resource transportation
79 system shall have his or her driver's license suspended by the
80 commissioner of the division of motor vehicles for a period of
81 six months for the first offense, twelve months for the second
82 offense, and two years for the third offense: *Provided*, That if
83 the operator is also the owner of the vehicle, the owner penal-
84 ties set forth in subdivision (5) of this subsection also apply;

85 (7) Any owner of a vehicle engaged in the transportation of
86 coal with a suspended excess weight hauling permit who allows
87 the operation of that vehicle upon the roads or highways of this
88 state during a period of permit suspension at a weight in excess
89 of the limits imposed by article seventeen of this chapter shall
90 have all state-issued hauling permits then in force suspended by
91 the commission or, if applicable, the commissioner of highways
92 for a period of twelve months for the first offense, two years for
93 the second offense and revoked for the third offense;

94 (8) Any operator who operates a vehicle engaged in the
95 transportation of coal that has been issued a special permit by
96 the commission under the provisions of section five of this

97 article and who is charged with a violation of section one,
98 article six, chapter seventeen-c of this code upon a road or
99 highway of this state designated by the commissioner of
100 division of highways as a part of the coal resource transporta-
101 tion road system shall have his or her driver's license suspended
102 by the commissioner of the division of motor vehicles for a
103 period of three days for the first offense, thirty days for the
104 second offense and revoked for the third offense;

105 (9) Any person who falsifies information relating to the
106 acquisition of a hauling permit shall have his or her driver's
107 license suspended by the commissioner of the division of motor
108 vehicles for a period of sixty days for the first offense, one
109 hundred twenty days for the second offense and six months for
110 the third offense;

111 (10) Any person regulated pursuant to this article that
112 falsifies information relating to the acquisition of a hauling
113 permit shall have its state-issued business license suspended by
114 the commissioner of the state tax division for a period of six
115 months for the first offense, one year for the second offense and
116 two years for the third offense;

117 (11) Any person who fabricates or displays an altered,
118 forged or counterfeited permit shall have his or her driver's
119 license suspended by the commissioner of the division of motor
120 vehicles for a period of sixty days for the first offense, one
121 hundred twenty days for the second offense and revoked for the
122 third offense;

123 (12) Any person that bribes or attempts to bribe an em-
124 ployee of the state of West Virginia or who gives an employee
125 of the state of West Virginia a gift, gratuity, entertainment,
126 loan, favor or other thing of monetary value for the purpose of
127 avoiding any penalties permitted under this article shall have
128 his or her state-issued hauling permit then in force suspended

129 by the commission for a period of sixty days for the first
130 offense, one hundred twenty days for the second offense and
131 revoked for the third offense; and

132 (13) In the case of multiple violations by a permittee,
133 shipper, operator or receiver, the commission may direct that
134 the imposed suspension be served concurrently or consecu-
135 tively, taking into account the frequency of violations commit-
136 ted during the inclusive time periods, or in the same course of
137 misconduct if the commission determines that sufficient
138 mitigating or aggravating circumstances are present.

139 (14) Any person who aids or abets another person's attempt
140 to avoid suspension shall have his or her driver's license
141 suspended by the commissioner of the division of motor
142 vehicles for a period of sixty days for the first offense, one
143 hundred twenty days for the second offense and six months for
144 the third offense.

145 (15) Any person that aids or abets a person's attempt to
146 avoid suspension shall have its state-issued business license
147 suspended by the tax commissioner for a period of three months
148 for the first offense, six months for the second offense and one
149 year for the third offense.

150 (d) Without providing a hearing, the commission may
151 immediately suspend a person from obtaining permits or
152 operating under permit authority for failure to pay a fee
153 required under this article until proper payment is received.
154 Upon the completion of all administrative appeals of any
155 violation that results in a license suspension, the commission
156 shall notify the division of motor vehicles which shall act
157 accordingly.

158 (e) Without providing a hearing, the commission and law-
159 enforcement personnel may immediately confiscate an altered,
160 forged or counterfeited permit, or a permit used in violation of

161 its terms and conditions. Upon issuance of a citation alleging a
162 violation of this subsection, the vehicle and its load shall be
163 impounded by law-enforcement personnel until such time as a
164 hearing on the matter is conducted by the division.

165 (f) Administrative sanctions may be imposed pursuant to
166 the following procedures:

167 (1) No administrative sanction may be imposed until after
168 the person has been notified by certified mail or personal
169 service. The notice shall include: A reference to the section of
170 statute, rule, order, or permit violated; a concise statement of
171 the facts alleged to constitute a violation; a statement of the
172 administrative penalties to be imposed; and a statement of the
173 person's right to a hearing. The person has twenty days from
174 receipt of the notice within which to deliver to the commission
175 a written request for a hearing.

176 (2) Subsequent to the hearing and upon finding that a
177 violation has occurred, the commission shall issue a final order.
178 If no hearing is requested, the notice shall become a final order
179 upon the expiration of the twenty-day period.

180 (3) For purposes of the enhanced penalty provisions of this
181 section, the second and subsequent offenses shall be calculated
182 on a per-year basis.

183 (4) In addition to the imposition of an administrative
184 sanction, the commission or division may, by administrative
185 order and upon an appropriate finding, assess a violator for the
186 reasonable costs, as established by rules of any investigation,
187 inspection or monitoring survey which led to the establishment
188 of the violation.

**§17C-17A-10. Penalties for violation of weight laws; impounding
vehicles.**

1 (a) Any owner, lessee or borrower of a commercial motor
 2 vehicle or combination of vehicles transporting coal who
 3 operates or permits to be operated on any highway the vehicle
 4 or combination of vehicles with a total gross weight load
 5 imposed upon the highway by any one group of two or more
 6 consecutive axles in excess of that permitted by section five of
 7 this article is guilty of a misdemeanor and, upon conviction
 8 thereof, shall be punished by a fine based on the number of
 9 pounds in excess of the registered weight, or in excess of
 10 allowable weights for single axle, or in excess of allowable
 11 weights for groups of two or more consecutive axles, in
 12 accordance with the following schedule:

13 Excess Weight	Amount of Fine
14 1 to 4,000 pounds	1 cent per overweight pound
15 4,001 to 8,000 pounds.	3 cents per overweight pound
16 8,001 to 12,000 pounds.	7 cents per overweight pound
17 12,001 to 16,000 pounds . . .	10 cents per overweight pound
18 16,001 to 20,000 pounds . . .	15 cents per overweight pound
19 20,001 to 40,000 pounds . . .	30 cents per overweight pound
20 40,001 pounds or more	45 cents per overweight pound

21 (b) Upon a second or subsequent conviction within two
 22 years thereafter, the owner, lessee or borrower shall be pun-
 23 ished by a fine according to the following schedule:

24 Excess Weight	Amount of Fine
25 1 to 4,000 pounds	1 cent per overweight pound
26 4,001 to 8,000 pounds	5 cents per overweight pound

27	8,001 to 12,000 pounds	10 cents per overweight pound
28	12,001 to 16,000 pounds . . .	15 cents per overweight pound
29	16,001 to 20,000 pounds . . .	20 cents per overweight pound
30	20,001 to 40,000 pounds . . .	40 cents per overweight pound
31	40,001 pounds or more	80 cents per overweight pound

32 (c) The fines specified in subsections (a) and (b) of this
33 section are mandatory and may not be waived or reduced by
34 any judicial officer.

35 (d) In the event any owner, lessee or borrower of a vehicle
36 is charged with violating this section, the vehicle charged to
37 have been overloaded shall be impounded by the arresting
38 officer. The vehicle shall not be released to the alleged offender
39 or the owner unless and until he or she either has: (1) Been
40 acquitted of the charge; (2) been found guilty of the charge and
41 paid any fine assessed under subsection (a) or (b) of this
42 section; or (3) furnished cash or surety bond in at least double
43 the amount of the fine which may be assessed the offender
44 under subsection (a) or (b) of this section conditioned upon the
45 payment of any fine and costs assessed for the violation. The
46 offender is liable for any reasonable storage costs incurred in
47 storing impounded vehicles: *Provided*, That if the owner of the
48 vehicle is a resident of or has a principal place of business
49 located in this state and the vehicle has been duly licensed in
50 the state, then the vehicle may not be impounded by the
51 arresting officer who shall deliver to the operator a written
52 notice of the violation; the place, date and time of violation; the
53 license number of the vehicle; the title number and name and
54 address of the owner; the driver's name, address and the
55 number of his or her commercial driver's license; and the court,
56 place, date and time for hearing, which shall be within ten days
57 of the violation, Saturdays, Sundays and holidays excluded. A

58 copy of the notice shall be mailed to the owner of the vehicle
59 within forty-eight hours. If the owner or his, her or its agent
60 fails to appear at the designated place and time or, if convicted,
61 fails to pay the fine and costs assessed for the violation, the
62 court shall order the owner to post a bond or the impounding of
63 the vehicle as provided in this section.

64 (e) Any shipper or receiver who directs or knowingly
65 permits a commercial motor vehicle to be loaded in excess of
66 registered weight, allowable weights for single axle or allow-
67 able weights for groups of two or more consecutive axles is also
68 guilty of a misdemeanor and, upon conviction, shall be pun-
69 ished by a fine equal to that which may be imposed on the
70 owner, lessee or borrower of a commercial motor vehicle under
71 subsection (a) of this section.

72 (f) The penalties and fees specified in this section are in
73 addition to any other liability that may be legally fixed against
74 the owner, operator or other person charged with a weight
75 violation.

§17C-17A-11. Effective date.

1 Criminal and administrative penalties imposed by this
2 article take effect on the first day of October, two thousand
3 three.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

1 (a) From those counties and districts described in subdivi-
2 sion (a), section two of this article, the commissioner of the
3 division of highways shall identify those public roads, high-
4 ways and bridges used during the previous twelve month period
5 for transportation of quantities of coal in excess of fifty
6 thousand tons or projected to be used for transporting quantities
7 of coal in excess of fifty thousand tons during the ensuing year.

8 The identification process shall include the following as to each
9 discretely identifiable section of the public highway:

10 (1) The current condition of the public roads, highways and
11 bridges;

12 (2) The estimated quantities of coal transported;

13 (3) Any planned or necessary maintenance or improvement;

14 (4) The number of truck loads of coal transported in an
15 average day;

16 (5) Any anticipated increase or decrease in the quantity of
17 coal being transported; and

18 (6) Other information determined by the commissioner to
19 be relevant.

20 (b) Upon completion of the identification process, but in no
21 event later than the first day of July, two thousand three, the
22 commissioner shall designate by order an interim coal resource
23 transportation road system consisting of those public roads,
24 highways, bridges or segments thereof which may be used as
25 special coal haulage roads consistent with the authority con-
26 tained in this article. The commissioner shall establish a process
27 for the receipt and evaluation of public comment on the
28 designations contained within the interim coal resource
29 transportation road system, and designate weight limits and
30 other conditions for use of the coal resource transportation road
31 system as public interest so provides. The commissioner shall
32 publish a directory, including supporting maps and other
33 documents, of the interim coal resource transportation road
34 system.

35 (c) By no later than the first day of January, two thousand
36 four, the commissioner shall designate by order the coal

37 resource transportation road system and shall publish a direc-
38 tory, including supporting maps and other documents, of that
39 road system.

40 (d) The commissioner shall establish a process for periodic
41 evaluation of the designations contained in the coal resource
42 transportation road system in order to add to or delete from the
43 road system certain additional sections of public highways:
44 *Provided*, That the evaluations and modifications of the road
45 system shall be completed at a minimum on an annual basis.

**§17C-17A-13. Authority of the commissioner of the division of
highways relating to road and bridge repair on
designated coal resource transportation roads.**

1 (a) In addition to all other powers provided by law to the
2 commissioner of highways, he or she may enter into agreements
3 with coal shippers, motor vehicle operators or owners holding
4 or applying for permits issued pursuant to this article, or with
5 any other persons, for the purpose of replacing, repairing,
6 widening, reconstructing, altering, improving or maintaining
7 public highways used for coal resource transportation. These
8 agreements shall contain necessary criteria to assure any
9 damages associated with the transport of coal upon the respec-
10 tive public highways are ameliorated.

11 (b) All moneys collected by the commissioner shall be
12 deposited in a special account created within the state road
13 fund, known as the coal resource transportation fund, to be
14 expended for the purposes set forth in subsection (a) of this
15 section.

§17C-17A-14. Exclusion of off-road vehicles.

1 Notwithstanding any other provisions of state law to the
2 contrary, the provisions of this article shall not apply to coal

3 hauling vehicles operating off-road or vehicles designed for off-road.

§17C-17A-15. Exclusion of interstate highways.

1 Notwithstanding any other provisions of this code to the
2 contrary, the provisions of this article shall not apply to the
3 interstate highways in this state.

§17C-17A-16. Spotting unlawful; penalties.

1 It is unlawful for any person to intentionally assist an owner
2 or operator of a commercial motor vehicle engaged in the
3 transportation of coal to avoid a road, safety or other lawful
4 inspection or enforcement activity by any law or weight
5 enforcement officer through electronic communications or
6 other means intended to give the commercial vehicle driver
7 knowledge of the location of the officers. Any person who
8 violates this section is guilty of a misdemeanor and shall, upon
9 conviction, be fined not less than one thousand dollars and upon
10 a second or subsequent conviction, fined not less than two
11 thousand dollars.

ARTICLE 17B. TRANSFER OF CERTAIN JURISDICTION AND EMPLOYEES TO PUBLIC SERVICE COMMISSION.

§17C-17B-1. Legislative findings and purposes.

§17C-17B-2. Transfer of jurisdiction over vehicle weight enforcement and excess weight permit issuances to public service commission.

§17C-17B-3. Transfer of certain employees from department of transportation to public service commission.

§17C-17B-4. Costs of enforcement to be funded from revenues in state road fund.

§17C-17B-5. Exceptions.

§17C-17B-1. Legislative findings and purposes.

1 (a) The Legislature finds that:

2 (1) Enforcement officers of the public service commission
3 of West Virginia are, as part of their enforcement of chapters

4 twenty-four and twenty-four-a of this code with respect to
5 common and contract carriers by motor vehicle, other for-hire
6 carriers and private commercial carriers, currently inspecting
7 for safety many of the same vehicles and loads that are in-
8 spected for size and weight by employees of the department of
9 transportation;

10 (2) To effectuate the legislative findings and declarations
11 set forth in section one, article one, chapter five-f of this code,
12 the jurisdiction over the administration and enforcement of state
13 statutes and rules relating to vehicular weight and the jurisdic-
14 tion over the issuance of permits for excess vehicular weight
15 should be transferred to the public service commission;

16 (3) To preserve continuity and to maximize efficiency,
17 those employees of the department of transportation who are
18 employed primarily in the performance of the governmental
19 duties described in this section should be transferred to the
20 public service commission; and

21 (4) The enforcement of state statutes and rules relating to
22 coal truck weight, including costs of inspections of the vehicles
23 and loads, training of enforcement officers, program oversight,
24 administrative proceedings, personal services, employee
25 benefits and all other costs associated with enforcement
26 matters, falls within the scope of maintenance of state roads and
27 public highways as described in section fifty-two, article six of
28 the constitution of this state and in section one, article three,
29 chapter seventeen of this code.

30 (b) The purposes of this article are to transfer:

31 (1) Jurisdiction over the enforcement of state statutes and
32 rules, including, but not limited to, the provisions of article
33 seventeen-a of this chapter, relating to coal truck weight, from
34 the department of transportation to the public service commis-
35 sion of West Virginia;

36 (2) Jurisdiction over the issuance of permits for excess
37 vehicular weight under section eleven, article seventeen of this
38 chapter, from the department of transportation to the public
39 service commission of West Virginia; and

40 (3) To the public service commission of West Virginia
41 those employees of the department of transportation whose
42 primary governmental duties include the administration and
43 enforcement of statutes and rules relating to vehicular weight.

§17C-17B-2. Transfer of jurisdiction over vehicle weight enforcement and excess weight permit issuances to public service commission.

1 (a) Effective the first day of July, two thousand three, the
2 jurisdiction over the enforcement of state statutes and rules,
3 including, but not limited to, applicable provisions of article
4 seventeen of this chapter relating to vehicular weight, shall be
5 transferred from the department of transportation to the public
6 service commission of West Virginia.

7 (b) Effective the first day of July, two thousand three, the
8 jurisdiction over the issuance of permits for excess vehicular
9 weight shall be transferred from the department of transporta-
10 tion to the public service commission of West Virginia.

§17C-17B-3. Transfer of certain employees from department of transportation to public service commission.

1 (a) Effective the first day of July, two thousand three,
2 employees of the department of transportation whose primary
3 governmental duties as of the thirtieth day of June, two thou-
4 sand three, included the administration and enforcement of this
5 code and rules promulgated under this code relating to vehicu-
6 lar weight or the issuance of permits for excess vehicular
7 weight shall be transferred from the department of transporta-
8 tion to the public service commission of West Virginia.

9 (b) Upon the transfer of employees as provided in subsec-
10 tion (a) of this section, the department of transportation shall
11 pay to the public service commission the costs of personal
12 services, employees benefits and other associated costs of the
13 transferred employees.

§17C-17B-4. Costs of enforcement to be funded from revenues in state road fund.

1 (a) On and after the first day of July, two thousand three,
2 the cost of enforcement of this code and rules promulgated
3 under this code, relating to vehicular weight, including inspec-
4 tions of vehicles and loads, training of enforcement officers,
5 administrative proceedings, personal services, employees
6 benefits and all other costs associated with enforcement
7 matters, shall be funded by revenues in the state road fund,
8 established pursuant to the provisions of section one, article
9 three, chapter seventeen of this code.

10 (b) The secretary of transportation and the treasurer shall
11 take all actions necessary to implement the transfer of funding
12 to effectuate the purposes of this article.

13 (c) For fiscal years beginning on and after the first day of
14 July, two thousand four, the commission shall include in its
15 budget to the Legislature the costs of implementation and
16 continuing enforcement of this article for payment and appro-
17 priation from the state road fund, or other sources as deemed
18 appropriated, into the public service commission fund.

§17C-17B-5. Exceptions.

1 (a) Nothing in this article reduces or eliminates the author-
2 ity of any police officer to enforce the provisions of article
3 seventeen of this chapter.

4 (b) Nothing in this article reduces or eliminates the jurisdic-
5 tion of the department of transportation to administer and
6 enforce sections eleven-a, eleven-b, eleven-c and twelve, article
7 seventeen of this chapter.

8 (c) Nothing in this article expands, reduces or eliminates
9 any remedies otherwise available by law.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:

3 "Alcohol" means:

4 (a) Any substance containing any form of alcohol, includ-
5 ing, but not limited to, ethanol, methanol, propanol and
6 isopropanol;

7 (b) Beer, ale, port or stout and other similar fermented
8 beverages (including sake or similar products) of any name or
9 description containing one half of one percent or more of
10 alcohol by volume, brewed or produced from malt, wholly or in
11 part, or from any substitute for malt;

12 (c) Distilled spirits or that substance known as ethyl
13 alcohol, ethanol or spirits of wine in any form (including all
14 dilutions and mixtures thereof from whatever source or by
15 whatever process produced); or

16 (d) Wine of not less than one half of one percent of alcohol
17 by volume.

18 “Alcohol concentration” means:

19 (a) The number of grams of alcohol per one hundred
20 milliliters of blood;

21 (b) The number of grams of alcohol per two hundred ten
22 liters of breath; or

23 (c) The number of grams of alcohol per sixty-seven
24 milliliters of urine.

25 “Commercial driver’s license” means a license issued in
26 accordance with the requirements of this article to an individual
27 which authorizes the individual to drive a class of commercial
28 motor vehicle.

29 “Commercial driver’s license information system” is the
30 information system established pursuant to the federal commer-
31 cial motor vehicle safety act to serve as a clearinghouse for
32 locating information related to the licensing and identification
33 of commercial motor vehicle drivers.

34 “Commercial driver instruction permit” means a permit
35 issued pursuant to subsection (d), section nine of this article.

36 “Commercial motor vehicle” means a motor vehicle
37 designed or used to transport passengers or property:

38 (a) If the vehicle has a gross vehicle weight rating as
39 determined by federal regulation;

40 (b) If the vehicle is designed to transport sixteen or more
41 passengers, including the driver; or

42 (c) If the vehicle is transporting hazardous materials and is
43 required to be placarded in accordance with 49 C. F. R. part
44 172, subpart F.

45 “Commissioner” means the commissioner of motor
46 vehicles of this state.

47 “Controlled substance” means any substance classified
48 under the provisions of chapter sixty-a of this code (uniform
49 controlled substances act) and includes all substances listed on
50 Schedules I through V, inclusive, article two of said chapter
51 sixty-a, as they are revised.

52 “Conviction” means the final judgment in a judicial or
53 administrative proceeding or a verdict or finding of guilty, a
54 plea of guilty, a plea of nolo contendere or a forfeiture of bond
55 or collateral upon a charge of a disqualifying offense, as a result
56 of proceedings upon any violation of the requirement of this
57 article.

58 “Division” means the division of motor vehicles.

59 “Disqualification” means a prohibition against driving a
60 commercial motor vehicle.

61 “Drive” means to drive, operate or be in physical control of
62 a motor vehicle in any place open to the general public for
63 purposes of vehicular traffic. For the purposes of sections
64 twelve, thirteen and fourteen of this article, “drive” includes
65 operation or physical control of a motor vehicle anywhere in
66 this state.

67 “Driver” means any person who drives, operates or is in
68 physical control of a commercial motor vehicle, in any place
69 open to the general public for purposes of vehicular traffic, or
70 who is required to hold a commercial driver’s license.

71 “Driver’s license” means a license issued by a state to an
72 individual which authorizes the individual to drive a motor
73 vehicle of a specific class.

74 “Employee” means a person who is employed by an
75 employer to drive a commercial motor vehicle, including
76 independent contractors. An employee who is self-employed as
77 a commercial motor vehicle driver shall comply with the
78 requirements of this article pertaining to both employees and
79 employers.

80 “Employer” means any person, including the United States,
81 a state or a political subdivision of a state, who owns or leases
82 a commercial motor vehicle or assigns a person to drive a
83 commercial motor vehicle.

84 “Farm vehicle” includes a motor vehicle or combination
85 vehicle registered to the farm owner or entity operating the
86 farm and used exclusively in the transportation of agricultural
87 or horticultural products, livestock, poultry and dairy products
88 from the farm or orchard on which they are raised or produced
89 to markets, processing plants, packing houses, canneries,
90 railway shipping points and cold storage plants and in the
91 transportation of agricultural or horticultural supplies and
92 machinery to the farms or orchards to be used on the farms or
93 orchards.

94 “Farmer” includes an owner, tenant, lessee, occupant or
95 person in control of the premises used substantially for agricul-
96 tural or horticultural pursuits who is at least eighteen years of
97 age with two years’ licensed driving experience.

98 “Farmer vehicle driver” means the person employed and
99 designated by the “farmer” to drive a “farm vehicle” as long as
100 driving is not his or her sole or principal function on the farm
101 who is at least eighteen years of age with two years’ licensed
102 driving experience.

103 “Gross combination weight rating (GCWR)” means the
104 value specified by the manufacturer as the loaded weight of a
105 combination (articulated) vehicle. In the absence of a value

106 specified by the manufacturer, GCWR will be determined by
107 adding the GVWR of the power unit and the total weight of the
108 towed unit and any load thereon.

109 “Gross vehicle weight rating (GVWR)” means the value
110 specified by the manufacturer as the loaded weight of a single
111 vehicle. In the absence of a value specified by the manufacturer
112 the GVWR will be determined by the total weight of the vehicle
113 and any load thereon.

114 “Hazardous materials” has the meaning as that found in the
115 Hazardous Materials Transportation Act (§49 U. S. C. 5101, *et*
116 *seq.*, (1998)).

117 “Motor vehicle” means every vehicle which is self-pro-
118 pelled and every vehicle which is propelled by electric power
119 obtained from overhead trolley wires but not operated upon
120 rails.

121 “Out-of-service order” means a temporary prohibition
122 against driving a commercial motor vehicle as a result of a
123 determination by a federal agency or the public service com-
124 mission, pursuant to chapter twenty-four-a of this code, that: (a)
125 The continued use of a commercial motor vehicle may result in
126 death, serious injury or severe personal injury; or (b) the
127 continued actions by the driver of a commercial motor vehicle
128 poses an imminent hazard to public safety.

129 “Violation of an out-of-service order” means: (a) The
130 operation of a commercial motor vehicle during the period the
131 driver was placed out of service; or (b) the operation of a
132 commercial motor vehicle by a driver after the vehicle was
133 placed out of service and before the required repairs are made.

134 “Serious traffic violation” means:

135 (a) Excessive speeding which is defined as fifteen miles per
136 hour in excess of all posted limits;

137 (b) Reckless driving as defined in section three, article five,
138 chapter seventeen-c of this code, including erratic lane changes
139 and following the vehicle ahead too closely;

140 (c) A violation of state or local law relating to motor
141 vehicle traffic control, other than a parking violation, arising in
142 connection with a fatal traffic accident. Vehicle defects are
143 excluded as serious traffic violations, except as to violations
144 committed by a special permittee on the coal resource transpor-
145 tation road system; or

146 (d) Any other serious violations determined by the United
147 States secretary of transportation.

148 "State" means a state of the United States and the District
149 of Columbia.

150 "Tank vehicle" means any commercial motor vehicle that
151 is designed to transport any liquid or gaseous materials within
152 a tank that is either permanently or temporarily attached to the
153 vehicle or the chassis. These vehicles include, but are not
154 limited to, cargo tanks and portable tanks, as defined in 49 C.
155 F. R. Part 171 (1998). However, this definition does not include
156 portable tanks having a rated capacity under one thousand
157 gallons.

158 "At fault traffic accident" means for the purposes of
159 waiving the road test, a determination, by the official filing the
160 accident report, of fault as evidenced by an indication of
161 contributing circumstances in the accident report.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

§24A-1A-1. Regulation of commercial vehicle weights.

§24A-1A-2. Creation of advisory committee; purpose; members; terms.

§24A-1A-1. Regulation of commercial vehicle weights.

1 (a) Effective the first day of July, two thousand three, the
2 commission has jurisdiction over the enforcement of this code
3 and rules promulgated under this code, including, but not
4 limited to, applicable provisions of article seventeen-a, chapter
5 seventeen-c of this code relating to vehicular weight.

6 (b) Effective the first day of January, two thousand three,
7 the commission has jurisdiction over the issuance of permits for
8 excess vehicular weight.

9 (c) Effective the first day of January, two thousand three,
10 employees of the division of highways, department of transpor-
11 tation, whose primary governmental duties as of the thirtieth
12 day of June, two thousand two, included the administration and
13 enforcement of state statutes and rules relating to vehicular
14 weight or the issuance of permits for excess vehicular weight
15 shall be transferred from the division of highways and depart-
16 ment of transportation to the commission.

17 (d) The commission shall implement and administer the
18 provisions of this section and of articles six, six-a and six-b of
19 this chapter.

**§24A-1A-2. Creation of advisory committee; purpose; members;
terms.**

1 (a) There is created the commercial motor vehicle weight
2 and safety enforcement advisory committee, the purpose of
3 which is to study the implementation of the commercial motor
4 vehicle weight and safety enforcement program set forth in this
5 article.

6 (b) The committee consists of the following members:

7 (1) One member who is an employee of the division of
8 highways, to be appointed by the commissioner of highways;

9 (2) One member who is an employee of the public service
10 commission, to be appointed by the chairman of the public
11 service commission;

12 (3) One member who is a state police officer, to be ap-
13 pointed by the superintendent of the state police;

14 (4) One member who is an employee of the division of
15 motor vehicles, to be appointed by the commissioner of motor
16 vehicles;

17 (5) One member who is an employee of the development
18 office, to be appointed by the governor;

19 (6) One member who is representative of the coal industry,
20 to be appointed by the governor;

21 (7) One member of the Senate, to be appointed by the
22 president of the Senate;

23 (8) One member of the House of Delegates, to be appointed
24 by the speaker of the House of Delegates;

25 (9) One citizen member, to be appointed by the governor;
26 and

27 (10) One member of the largest organization representing
28 coal miners, to be appointed by the governor.

29 (c) Members shall serve for terms of three years. No
30 member may be appointed to serve more than two consecutive
31 terms.

32 (d) The committee shall annually nominate from its
33 members a chair, who shall hold office for one year.

34 (e) The committee shall hold at least four meetings each
35 year or more often as may, in the discretion of the chair, be
36 necessary to effectuate the purposes of this article.

37 (f) The public members of the committee may receive
38 compensation for attendance at official meetings, not to exceed
39 the amount paid to members of the Legislature for their interim
40 duties as recommended by the citizens legislative compensation
41 commission and authorized by law.

42 (g) Committee members may be reimbursed for actual and
43 necessary expenses incurred for each day or portion of a day
44 engaged in the discharge of committee duties in a manner
45 consistent with guidelines of the travel management office of
46 the department of administration.

47 (h) On or before the first day of January, two thousand four,
48 and each subsequent year thereafter, the committee shall submit
49 to the governor and to the Legislature a report of its recommen-
50 dations for improving the effectiveness of the commercial
51 vehicle weight and safety enforcement program.

52 (i) The commercial vehicle weight and safety enforcement
53 advisory committee shall continue to exist until the first day of
54 July, two thousand seven, pursuant to the provisions of article
55 ten, chapter four of this code, unless sooner terminated,
56 continued or reestablished pursuant to the provisions of that
57 article.

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-7. Authority of motor carrier inspectors to enforce all traffic rules as to commercial vehicles; use of radar as evidence.

1 (a) The employees of the commission designated as motor
2 carrier inspectors have the same authority as law-enforcement
3 officers generally to enforce the provisions of chapter

4 seventeen-c of this code with respect to commercial motor
5 vehicles owned or operated by motor carriers, exempt carriers
6 or private commercial carriers where vehicles have a gross
7 vehicle weight rating of ten thousand pounds or more.

8 (b) The speed of a commercial motor vehicle owned or
9 operated by a motor carrier, exempt carrier or private commer-
10 cial carrier may be proved by evidence obtained by use of any
11 device designed to measure and indicate or record the speed of
12 a moving object by means of microwaves when the evidence is
13 obtained by employees of the commission designated as motor
14 carrier inspectors. The evidence so obtained is prima facie
15 evidence of the speed of the vehicle.

16 (c) Motor carrier inspectors shall also perform a north
17 American standard safety inspection of each commercial motor
18 vehicle stopped for enforcement purposes pursuant to this
19 section.

20 (d) Before exercising the provisions of this section, the
21 motor carrier inspectors shall receive adequate training.

22 (e) Nothing in this section affects the existing authority of
23 law-enforcement officers not employed by the commission to
24 enforce the provisions of chapter seventeen-c of this code.

CHAPTER 69

(S. B. 384 — By Senators Bailey and Bowman)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ten, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the location of the offices of the alcohol beverage control administration.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§1. Repeal of section relating to the location of the offices of the alcohol beverage control administration.

1 Section ten, article two, chapter sixty of the code of West
2 Virginia, one thousand nine hundred thirty-one, as amended, is
3 hereby repealed.

CHAPTER 70

**(S. B. 390 — By Senators Ross, Weeks, Dempsey, Rowe,
Unger and Caldwell)**

[Passed March 4, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that a person's social security number appear on a commercial driver's license.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.**§17E-1-11. Commercial driver's license.**

1 The commercial driver's license must be marked "commer-
2 cial driver's license" or "CDL" and must be, to the maximum
3 extent practicable, tamper proof. It must include, but not be
4 limited to, the following information:

5 (a) The name and residential address of the person;

6 (b) The person's color photograph;

7 (c) A physical description of the person including sex,
8 height, weight, eye and hair color;

9 (d) Date of birth;

10 (e) The person's signature;

11 (f) The class or type of commercial motor vehicle or
12 vehicles which the person is authorized to drive, together with
13 any endorsement(s) or restriction(s);

14 (g) The name of this state; and

15 (h) The dates between which the license is valid.

CHAPTER 71

(S. B. 589 — By Senator Snyder)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred three, article two, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to common interest communities; and providing that the provisions of said section relating to common interest communities and condominiums have no application to restrictive covenants which contain provisions allowing amendment when the provisions for amendment are duly followed.

Be it enacted by the Legislature of West Virginia:

That section one hundred three, article two, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CREATION, ALTERATION AND TERMINATION OF COMMON INTEREST COMMUNITIES.

§36B-2-103. Construction and validity of declaration and bylaws.

1 (a) All provisions of the declaration and bylaws are
2 severable.

3 (b) The rule against perpetuities does not apply to defeat
4 any provision of the declaration, bylaws, rules or regulations
5 adopted pursuant to section 3-102(a)(1).

6 (c) In the event of a conflict between the provisions of the
7 declaration and the bylaws, the declaration prevails except to
8 the extent the declaration is inconsistent with this chapter.

9 (d) Title to a unit and common elements is not rendered
10 unmarketable or otherwise affected by reason of an insubstan-
11 tial failure of the declaration to comply with this chapter.
12 Whether a substantial failure impairs marketability is not
13 affected by this chapter.

14 (e) A declaration or the bylaws may not change or alter a
15 restrictive covenant in a deed to any real estate that is or that

16 becomes subject to the provisions of this chapter. The restric-
17 tive covenants that are in effect at the time real estate is
18 purchased that is or that becomes subject to the provisions of
19 this chapter may not be changed or altered as to the purchaser
20 of that real estate or as to any assign, heir or beneficiary of the
21 original purchaser unless that original purchaser, assign, heir or
22 beneficiary agrees in writing to a change of a restrictive
23 covenant. This subdivision does not apply to the change of
24 restrictive covenants of homeowner fees if the fees do not
25 exceed the sum of one hundred dollars a year. The provisions
26 of this section have no application to restrictive covenants
27 which contain provisions authorizing amendment when those
28 provisions for amendment are duly followed.

CHAPTER 72

(Com. Sub. for H. B. 2948 — By Delegates H. White,
R. M. Thompson, Perry and Hrutkay)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred fifteen, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expenses of realizing on security interests; allowing recovery of certain expenses when a consumer requests discontinuation of efforts to realize on security interests, and providing notification to consumer of certain charges within a twelve-month period.

Be it enacted by the Legislature of West Virginia:

That section one hundred fifteen, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-115. Limitation on default charges.

1 (a) Except for reasonable expenses including costs and fees
2 authorized by statute incurred in realizing on a security interest,
3 the agreement with respect to a consumer credit sale or a
4 consumer loan may not provide for charges as a result of
5 default by the consumer other than those authorized by this
6 chapter.

7 (b) A consumer loan secured by real property: (1) Origin-
8 nated by a bank or savings and loan association, or an affiliate,
9 and not solicited by an unaffiliated broker; (2) held by a federal
10 home loan bank, the federal national mortgage association, the
11 federal home loan mortgage corporation, the government
12 national mortgage association, the West Virginia housing
13 development fund; or (3) insured or guaranteed by the farmers
14 home administration, the veteran's administration, department
15 of housing and urban development, which includes in the loan
16 agreement a reinstatement period beginning with the trustee
17 notice of foreclosure and ending prior to foreclosure sale, may,
18 in addition to those authorized by this chapter, permit the
19 recovery of the following actual reasonable reinstatement
20 period expenses paid or owed to third parties: (i) Publication
21 costs paid to the publisher of the notice; (ii) appraisal fee when
22 required by the circumstances or by a regulatory authority and
23 only after the loan has been referred to a trustee for foreclosure;
24 (iii) title check and lienholder notification fee not to exceed two
25 hundred dollars, as adjusted from time to time by the increase
26 in the consumer price index for all consumers published by the
27 United States Department of Labor; and (iv) certified mailing
28 costs.

29 (c) All amounts paid to a creditor arising out of any
30 consumer credit sale or consumer loan shall be credited upon
31 receipt against payments due: *Provided*, That amounts received
32 and applied during a cure period will not result in a duty to
33 provide a new notice of right to cure; and provided further that
34 partial amounts received during the reinstatement period set
35 forth in subsection (b) of this section do not create an automatic
36 duty to reinstate and may be returned by the creditor. Default
37 charges shall be accounted for separately; those set forth in
38 subsection (b) arising during such a reinstatement period may
39 be added to principal.

40 (d) At least once every twelve months, the holder or
41 servicer of each consumer loan secured by real property against
42 which the creditor assesses any default charge, and: (1) Not
43 serviced by the originating lender or its affiliate or their
44 successors by merger; (2) not held by a federal home loan bank,
45 the federal national mortgage association, the federal home loan
46 mortgage corporation, the government national mortgage
47 association, the West Virginia housing development fund; or
48 (3) not insured or guaranteed by the farmers home administra-
49 tion, the veteran's administration, department of housing and
50 urban development, shall transmit to the consumer an account-
51 ing of every default charge assessed within the previous twelve
52 months, including the date, amount and nature of the cost.

53 For purposes of this subsection, this notice requirement
54 does not apply to delinquency charges permitted under sections
55 one hundred twelve and one hundred thirteen, article three of
56 this chapter; credit line over-the-limit fees; deferral charges
57 permitted under section one hundred fourteen, article three of
58 this chapter; collateral protection insurance permitted under
59 section one hundred nine-a, article three of this chapter; and
60 advances to pay taxes.

61 (e) A provision in violation of this section is unenforceable.
62 The amendments to this section by acts of the Legislature in the
63 regular session of two thousand three are a clarification of

64 existing law and shall be retroactively applied to all agreements
65 in effect on the date of passage of the amendments, except
66 where controversies arising under those agreements are pending
67 prior to the date of passage of the amendments.

CHAPTER 73

(Com. Sub. for S. B. 440 — By Senators Rowe, White,
Chafin and Guills)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, relating to establishing the contractors notice and opportunity to cure act.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-a, to read as follows:

ARTICLE 11A. NOTICE AND OPPORTUNITY TO CURE CONSTRUCTION DEFECTS.

- §21-11A-1. Purpose.
- §21-11A-2. Applicability of article.
- §21-11A-3. Suit by contractor; perfecting mechanic's lien.
- §21-11A-4. Applicability of definitions; definitions.
- §21-11A-5. Contract for residential improvements; notice.
- §21-11A-6. Contractor notification requirements for a new residential dwelling constructed for sale.
- §21-11A-7. Prerequisites to commencing an action.
- §21-11A-8. Notice of claim of construction defect.
- §21-11A-9. Service on additional parties.
- §21-11A-10. Request for voluntary disclosure of additional information.

- §21-11A-11. Duty to negotiate.
- §21-11A-12. Timetable.
- §21-11A-13. Conduct of negotiation.
- §21-11A-14. Settlement agreement.
- §21-11A-15. Costs of negotiation.
- §21-11A-16. Commencement of action.
- §21-11A-17. Additional construction defects; additional notice of claim.

§21-11A-1. Purpose.

1 This article is intended to establish procedures for the
2 negotiation of a claim of a construction defect asserted by a
3 claimant against a contractor. The parties to a contract are
4 encouraged to resolve any disagreement concerning the contract
5 short of litigation.

§21-11A-2. Applicability of article.

1 This article does not apply to an action:

2 (1) Against a contractor for which a claimant, as a con-
3 sumer, is entitled to a specific remedy pursuant to chapter forty-
4 six-a of this code;

5 (2) Against a contractor who is not licensed under the
6 provisions of article eleven of this chapter;

7 (3) Demanding damages of five thousand dollars or less;

8 (4) Alleging a construction defect that poses an imminent
9 threat of injury to person or property;

10 (5) Alleging a construction defect that causes property not
11 to be habitable;

12 (6) Against a contractor who failed to provide the notice
13 required by section five or six of this article;

14 (7) Against a contractor if the parties to the contract agreed
15 to submit claims to mediation, arbitration or another type of
16 alternative dispute resolution; or

17 (8) Alleging claims for personal injury or death.

§21-11A-3. Suit by contractor; perfecting mechanic’s lien.

1 (a) If a contractor, subcontractor, supplier or design
2 professional files suit against a property owner upon whose
3 property they provided goods or services, this article is not
4 applicable, and a claimant alleging a construction defect may
5 counterclaim or file an independent action, as appropriate.

6 (b) Nothing in this article precludes a contractor, subcon-
7 tractor, supplier or design professional from perfecting a lien in
8 accordance with the provisions of article two, chapter thirty-
9 eight of this code.

§21-11A-4. Applicability of definitions; definitions.

1 For the purposes of this article, the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

6 (1) “Action” means any civil action, or any alternative
7 dispute resolution proceeding other than the negotiation
8 required under this article, for damages, asserting a claim for
9 injury or loss to real or personal property caused by an alleged
10 defect arising out of or related to residential improvements.

11 (2) “Claim” means a demand for damages by a claimant
12 based upon an alleged construction defect in residential
13 improvements.

14 (3) "Claimant" means a homeowner, including a subsequent
15 purchaser, who asserts a claim against a contractor concerning
16 an alleged construction defect in residential improvements.

17 (4) "Construction defect" means a deficiency in, or a
18 deficiency arising out of, the design, specifications, planning,
19 supervision or construction of residential improvements that
20 results from any of the following:

21 (A) Defective material, products or components used in the
22 construction of residential improvements;

23 (B) Violation of the applicable codes in effect at the time of
24 construction of residential improvements;

25 (C) Failure in the design of residential improvements to
26 meet the applicable professional standards of care;

27 (D) Failure to complete residential improvements in
28 accordance with accepted trade standards for good and work-
29 manlike construction: *Provided*, That compliance with the
30 applicable codes in effect at the time of construction is prima
31 facie evidence of construction in accordance with accepted
32 trade standards for good and workmanlike construction, with
33 respect to all matters specified in those codes; or

34 (E) Failure to properly oversee, supervise and inspect
35 services or goods provided by the contractor's subcontractor,
36 officer, employee, agent or other person furnishing goods or
37 services.

38 (5) "Contract" means a written contract between a contrac-
39 tor and a claimant by the terms of which the contractor agrees
40 to provide goods or services, by sale or lease, to or for a
41 claimant.

42 (6) "Contractor" means a contractor, licensed under the
43 provisions of article eleven of this chapter, who has entered into
44 a contract directly with a claimant. The term does not include
45 the contractor's subcontractor, officer, employee, agent or other
46 person furnishing goods or services to a claimant.

47 (7) "Day" means a calendar day. If an act is required to
48 occur on a day falling on a Saturday, Sunday or holiday, the
49 first working day which is not one of these days should be
50 counted as the required day for purposes of this article.

51 (8) "Goods" means supplies, materials or equipment.

52 (9) "Parties" means: (A) The claimant; and (B) any
53 contractor, subcontractor, agent or other person furnishing
54 goods or services and upon whom a claim of an alleged
55 construction defect has been served under this article.

56 (10) "Residential improvements" means: (A) The construc-
57 tion of a residential dwelling or appurtenant facility or utility;
58 (B) an addition to, or alteration, modification or rehabilitation
59 of an existing dwelling or appurtenant facility or utility; or (C)
60 repairs made to an existing dwelling or appurtenant facility or
61 utility. In addition to actual construction or renovation, residen-
62 tial improvements actually added to residential real property
63 include the design, specifications, surveying, planning, goods,
64 services and the supervision of a contractor's subcontractor,
65 officer, employee, agent or other person furnishing goods or
66 services to a claimant.

67 (11) "Services" means the furnishing of skilled or unskilled
68 labor or consulting or professional work, or a combination
69 thereof.

70 (12) "Subcontractor" means a contractor who performs
71 work on behalf of another contractor on residential improve-
72 ments.

73 (13) "Supplier" means a person who provides goods for
74 residential improvements.

§21-11A-5. Contract for residential improvements; notice.

1 (a) Upon entering into a contract for residential improve-
2 ments, the contractor shall provide notice to the owner of the
3 real property of the right of the contractor, or any subcontractor,
4 supplier or design professional to offer to cure construction
5 defects before a claimant may commence litigation against the
6 contractor, or a subcontractor, supplier or design professional.
7 Such notice shall be conspicuous and may be included as part
8 of the underlying contract.

9 (b) The notice required by subsection (a) of this section
10 shall be in substantially the following form:

11 WEST VIRGINIA STATE LAW, AS SET FORTH IN CHAP-
12 TER 21, ARTICLE 11A OF THE WEST VIRGINIA CODE,
13 CONTAINS IMPORTANT REQUIREMENTS YOU MUST
14 FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR
15 DEFECTIVE CONSTRUCTION AGAINST THE CONTRAC-
16 TOR WHO MADE RESIDENTIAL IMPROVEMENTS TO
17 YOUR PROPERTY. AT LEAST NINETY DAYS BEFORE
18 YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO
19 THE CONTRACTOR A WRITTEN NOTICE OF ANY
20 CONSTRUCTION CONDITIONS YOU ALLEGE ARE
21 DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND
22 ANY SUBCONTRACTORS, SUPPLIERS OR DESIGN
23 PROFESSIONALS THE OPPORTUNITY TO MAKE AN
24 OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU
25 ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE
26 BY THE CONTRACTOR OR ANY SUBCONTRACTORS,
27 SUPPLIERS OR DESIGN PROFESSIONALS. THERE ARE
28 DEADLINES AND PROCEDURES UNDER STATE LAW
29 AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR
30 ABILITY TO FILE A LAWSUIT.



§21-11A-6. Contractor notification requirements for a new residential dwelling constructed for sale.

1 (a) A contractor who constructs a new residential dwelling
2 shall, at or before the closing of the sale, provide in writing to
3 the initial purchaser of the residence:

4 (1) The name, license number, business address and
5 telephone number of each subcontractor, supplier or design
6 professional who provided goods or services related to the
7 design or construction of the dwelling; and

8 (2) A brief description of the goods or services provided by
9 each subcontractor, supplier or design professional identified
10 pursuant to this section.

11 (b) At or before the closing of the sale, a notice shall be
12 given to the purchaser that is in substantially the same form as
13 set forth in subsection (b), section five of this article.

§21-11A-7. Prerequisites to commencing an action.

1 (a) The procedures contained in this article are exclusive
2 and required prerequisites to commencing a civil action under
3 the West Virginia rules of civil procedure.

4 (b) If a claimant files a civil action alleging a construction
5 defect without first complying with the provisions of this
6 article, then on application by a party to the action, the court
7 shall dismiss the action, without prejudice, and the action may
8 not be refiled until the claimant has complied with the require-
9 ments of this article.

§21-11A-8. Notice of claim of construction defect.

1 (a) A claimant asserting a claim of a construction defect
2 under this article shall file notice of the claim as provided by
3 this section.

4 (b) The notice of claim shall:

5 (1) Be in writing and signed by the claimant or the claim-
6 ant's authorized representative;

7 (2) Be delivered by hand, certified mail, return receipt
8 requested, or other verifiable delivery service, to the person
9 designated in the contract to receive a notice of claim of a
10 construction defect; if no person is designated in the contract,
11 the notice shall be delivered to the contractor's chief adminis-
12 trative officer; and

13 (3) State in detail:

14 (A) The nature of the alleged construction defect and a
15 description of the results of the defect;

16 (B) A description of damages caused by the alleged
17 construction defect, including the amount and method used to
18 calculate those damages; and

19 (C) The legal theory of recovery, i.e., a construction defect,
20 including the causal relationship between the alleged construc-
21 tion defect and the damages claimed.

22 (c) In addition to the mandatory contents of the notice of
23 claim as required by subsection (b) of this section, the claimant
24 may submit supporting documentation or other tangible
25 evidence to facilitate the contractor's evaluation of the claim-
26 ant's claim.

27 (d) The notice of claim shall be delivered no later than
28 ninety days prior to filing an action.

§21-11A-9. Service on additional parties.

1 Within fourteen days after the initial service of the notice
2 of claim required in subsection (a) of this section, the contractor
3 shall forward a copy of the notice to each subcontractor,
4 supplier and design professional who the contractor reasonably
5 believes is responsible for a defect specified in the notice and
6 include with the notice a description of the specific defect for
7 which the contractor believes the subcontractor, supplier or
8 design professional is responsible.

§21-11A-10. Request for voluntary disclosure of additional information.

1 (a) Upon the filing of a claim, parties may request to review
2 and copy relevant information in the possession or custody or
3 subject to the control of the other party that pertains to the
4 alleged construction defect, including, without limitation:

5 (1) Reports of outside consultants or experts; or

6 (2) Photographs and videotapes.

7 (b) Subsection (a) of this section applies to all information
8 in the parties' possession regardless of the manner in which it
9 is recorded, including, without limitation, paper and electronic
10 media.

11 (c) The claimant and the contractor may seek additional
12 information directly from third parties.

13 (d) Nothing in this section requires any party to disclose the
14 requested information or any matter that is privileged under
15 West Virginia law.

16 Within thirty days after service of the notice of claim by the
17 claimant, each contractor, subcontractor, supplier or design

18 professional that has received a notice of claim shall serve a
19 written response on the claimant, delivered by hand, certified
20 mail, return receipt requested, or other verifiable delivery
21 service, directed to the claimant or representative of the
22 claimant who signed the notice of claim of a construction
23 defect. The written response shall:

24 (1) Offer to compromise and settle the claim by monetary
25 payment without inspection;

26 (2) Propose to inspect the residential improvement that is
27 the subject of the claim; or

28 (3) State that the contractor, subcontractor, supplier or
29 design professional disputes the claim and will neither remedy
30 the alleged construction defect nor compromise and settle the
31 claim.

32 (e) If the contractor, subcontractor, supplier or design
33 professional disputes the claim pursuant to subdivision (3),
34 subsection (d) of this section and will neither remedy the
35 alleged construction defect nor compromise and settle the claim
36 or does not respond to the claimant's notice of claim within the
37 time stated in said subsection, the claimant may bring an action
38 against the contractor, subcontractor, supplier or design
39 professional for the claim described in the notice of claim
40 without further notice.

41 (f) If the claimant rejects the inspection proposal or the
42 settlement offer made by the contractor, subcontractor, supplier
43 or design professional pursuant to subsection (d) of this section,
44 the claimant shall serve written notice of the claimant's
45 rejection on the contractor, subcontractor, supplier or design
46 professional. The notice shall include the basis for the claim-
47 ant's rejection of the contractor, subcontractor, supplier or
48 design professional's proposal or offer.

49 (g) After service of the rejection required by subsection (f)
50 of this section, the claimant may bring an action against the
51 contractor, subcontractor, supplier or design professional for the
52 claim described in the initial notice of claim without further
53 notice.

54 (h) If the claimant elects to allow the contractor, subcon-
55 tractor, supplier or design professional to inspect the residential
56 improvement in accordance with the contractor, subcontractor,
57 supplier or design professional's proposal pursuant to subdivi-
58 sion (2), subsection (d) of this section, the claimant shall
59 provide the contractor, subcontractor, supplier or design
60 professional and its contractors or other agents reasonable
61 access to the claimant's residence during normal working hours
62 to inspect the premises and the claimed defect to determine the
63 nature and cause of the alleged defects and the nature and
64 extent of any repairs or replacements necessary to remedy the
65 alleged defects.

66 (i) Within fourteen days following completion of the
67 inspection, the contractor, subcontractor, supplier or design
68 professional shall serve on the claimant:

69 (1) A written offer to remedy the construction defect at no
70 cost to the claimant, including a report of the scope of the
71 inspection, the findings and results of the inspection, a descrip-
72 tion of the additional labor and materials necessary to remedy
73 the defect described in the claim and a timetable for the
74 completion of such construction;

75 (2) A written offer to compromise and settle the claim by
76 monetary payment; or

77 (3) A written statement that the contractor, subcontractor,
78 supplier or design professional will not proceed further to
79 remedy the defect.

80 (j) If a claimant accepts a contractor, subcontractor,
81 supplier or design professional's offer made pursuant to
82 subdivision (1) or (2), subsection (i) of this section and the
83 contractor, subcontractor, supplier or design professional does
84 not proceed to make the monetary payment or remedy the
85 construction defect within the agreed timetable, the claimant
86 may bring an action against the contractor, subcontractor,
87 supplier or design professional for the claim described in the
88 initial notice of claim without further notice.

89 (k) If a claimant receives a written statement that the
90 contractor, subcontractor, supplier or design professional will
91 not proceed further to remedy the defect, the claimant may
92 bring an action against the contractor, subcontractor, supplier
93 or design professional for the claim described in the initial
94 notice of claim without further notice.

95 (l) If the claimant rejects the offer made by the contractor,
96 subcontractor, supplier or design professional to either remedy
97 the construction defect or to compromise and settle the claim by
98 monetary payment, the claimant shall serve written notice of
99 the claimant's rejection on the contractor, subcontractor,
100 supplier or design professional. The notice shall include the
101 basis for the claimant's rejection of the contractor, subcontrac-
102 tor, supplier or design professional's offer. After service of the
103 rejection, the claimant may bring an action against the contrac-
104 tor, subcontractor, supplier or design professional for the claim
105 described in the notice of claim without further notice.

106 (m) Any claimant accepting the offer of the contractor,
107 subcontractor, supplier or design professional to remedy the
108 construction defects shall do so by serving the contractor,
109 subcontractor, supplier or design professional with a written
110 notice of acceptance within a reasonable period of time after
111 receipt of the offer but no later than thirty days after receipt of
112 the offer.

113 (n) If a claimant accepts a contractor, subcontractor,
114 supplier or design professional's offer to repair a defect
115 described in an initial notice of claim, the claimant shall
116 provide the contractor, subcontractor, supplier or design
117 professional and its contractors or other agents reasonable
118 access to the claimant's residence during normal working hours
119 to perform and complete the construction by the timetable
120 stated in the offer.

121 (o) During negotiations under this article, if the running of
122 the applicable statute of limitations would otherwise become a
123 bar to a civil action, service of a claimant's written notice of
124 claim pursuant to this article tolls the applicable statute of
125 limitations until six months after the termination of negotiations
126 under this article.

§21-11A-11. Duty to negotiate.

1 The parties shall negotiate in accordance with the times set
2 forth in section twelve of this article (relating to timetable) to
3 attempt to resolve all claims. No party is obligated to settle with
4 the other party as a result of the negotiation.

§21-11A-12. Timetable.

1 (a) Following receipt of a claimant's notice of claim, the
2 contractor or other designated representative shall review the
3 claimant's claim and initiate negotiations with the claimant to
4 attempt to resolve the claim.

5 (b) Subject to subsection (c) of this section, the parties shall
6 begin negotiations within a reasonable period of time not to
7 exceed thirty days following the date the contractor receives the
8 claimant's notice of claim.

9 (c) The parties may conduct negotiations according to an
10 agreed schedule, but must begin negotiations no later than the
11 deadline set forth in subsection (b) of this section.

12 (d) Subject to subsection (e) of this section, the parties shall
13 complete the negotiations that are required by this article within
14 ninety days after the contractor receives the claimant's notice
15 of claim.

16 (e) The parties may agree in writing to extend the time for
17 negotiations, on or before the ninetieth day after the contractor
18 receives the claimant's notice of claim. The agreement shall be
19 signed by representatives of the parties with authority to bind
20 each respective party and shall provide for the extension of the
21 statutory negotiation period until a date certain. The parties may
22 enter into a series of written extension agreements that comply
23 with the requirements of this section.

§21-11A-13. Conduct of negotiation.

1 Negotiation is a consensual bargaining process in which the
2 parties attempt to resolve the claim. A negotiation under this
3 article may be conducted by any method, technique or proce-
4 dure authorized under the contract or agreed upon by the
5 parties, including, without limitation, negotiation in person, by
6 telephone, by correspondence, by video conference or by any
7 other method that permits the parties to identify their respective
8 positions, discuss their respective differences, confer with their
9 respective advisers, exchange offers of settlement and settle.

§21-11A-14. Settlement agreement.

1 (a) A settlement agreement may resolve an entire claim or
2 any designated and severable portion of a claim.

3 (b) To be enforceable, a settlement agreement must be in
4 writing and signed by representatives of the claimant and the
5 contractor who have authority to bind each respective party.

6 (c) A partial settlement does not waive parties' rights as to
7 the parts of the claims that are not resolved.

§21-11A-15. Costs of negotiation.

1 Unless the parties agree otherwise, each party shall be
2 responsible for its own costs incurred in connection with a
3 negotiation, including, without limitation, the costs of attor-
4 ney's fees, consultant's fees and expert's fees.

§21-11A-16. Commencement of action.

1 If a claim for a construction defect is not resolved in its
2 entirety through negotiation in accordance with this article on
3 or before the ninetieth day after the contractor receives the
4 notice of claim or after the expiration of any extension agreed
5 to by the parties, the claimant may commence an action.

§21-11A-17. Additional construction defects; additional notice of claim.

1 A construction defect which is discovered after a claimant
2 has provided a contractor with the original notice of claim is
3 subject to the notice requirements and timetable of this article.

CHAPTER 74

**(Com. Sub. for H. B. 3117 — By Mr. Speaker, Mr. Kiss, and Delegates
Staton, Amores, Michael, Pino, Kuhn and Cann)**

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two, all relating to bidding on government construction contracts; inclusion of certain valid bid bonds; designation of time and place of opening of certain bids; inability to waive certain bid provisions and requirements; and inability to resubmit certain bids on a project after bid withdrawal.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section two, all to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.

§5-22-2. Designation of time and place for opening of bids; right to reject or withdraw bid; bid resubmission.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.

1 (a) As used in this section, “the state and its subdivisions”
2 means the state of West Virginia, every political subdivision
3 thereof, every administrative entity that includes such a
4 subdivision, all municipalities and all county boards of educa-
5 tion.

6 (b) The state and its subdivisions shall, except as provided
7 in this section, solicit competitive bids for every construction
8 project exceeding twenty-five thousand dollars in total cost:
9 *Provided*, That a vendor who has been debarred pursuant to the
10 provisions of sections thirty-three-a through thirty-three-f,
11 article three, chapter five-a of this code, may not bid on or be
12 awarded a contract under this section. All bids submitted
13 pursuant to this chapter shall include a valid bid bond or other
14 surety as approved by the state of West Virginia or its subdivi-
15 sions.

16 (c) Following the solicitation of such bids, the construction
17 contract shall be awarded to the lowest qualified responsible
18 bidder, who shall furnish a sufficient performance and payment
19 bond: *Provided*, That the state and its subdivisions may reject
20 all bids and solicit new bids on said project.

21 (d) All bids shall be opened in accordance with the provi-
22 sions of section two of this article, except design-build projects
23 which are governed by article twenty-two-a, chapter five of this
24 code are exempt from these provisions.

25 (e) Nothing in this section shall apply to:

26 (1) Work performed on construction or repair projects by
27 regular full-time employees of the state or its subdivisions;

28 (2) Prevent students enrolled in vocational educational
29 schools from being utilized in construction or repair projects
30 when such use is a part of the student's training program;

31 (3) Emergency repairs to building components and systems.
32 For the purpose of this subdivision, emergency repairs means
33 repairs that if not made immediately will seriously impair the
34 use of such building components and systems, or cause danger
35 to those persons using such building components and systems;
36 and

37 (4) Any situation where the state or a subdivision thereof
38 shall come to an agreement with volunteers, or a volunteer
39 group, whereby the governmental body will provide construc-
40 tion or repair materials, architectural, engineering, technical or
41 any other professional services and the volunteers will provide
42 the necessary labor without charge to, or liability upon, the
43 governmental body.

§5-22-2. Designation of time and place for opening of bids; right to reject or withdraw bid; bid resubmission.

1 (a) The public entity accepting public contract bids shall, in
2 its resolution providing for the contract or purchase and for the
3 advertisement for bids, designate the time and place that the
4 bids will be received and shall at that time and place publicly
5 open the bids and read them aloud. No public entity may accept
6 or take any bid, including receiving any hand delivered bid,
7 after the time advertised to take bids. No bid may be opened on
8 days which are recognized as holidays by the United States
9 postal service. No public entity may accept or consider any bids
10 that do not contain a valid bid bond or other surety approved by
11 the state of West Virginia or its subdivisions.

12 (b) The provisions and requirements of this section, section
13 one, article twenty-two of this chapter, the requirements stated
14 in the advertisement for bids and the requirements on the bid

15 form may not be waived by any public entity. The public entity
16 may only reject an erroneous bid after the opening if all of the
17 following conditions exist: (1) An error was made; (2) the error
18 materially affected the bid; (3) rejection of the bid would not
19 cause a hardship on the public entity involved, other than losing
20 an opportunity to receive construction projects at a reduced
21 cost; and (4) enforcement of the bid in error would be uncon-
22 scionable. If a public entity rejects a bid, it shall maintain a file
23 of documented evidence demonstrating that all the conditions
24 set forth in this subdivision existed. If the public entity deter-
25 mines the bid to be erroneous, the public entity shall return the
26 bid security to the contractor.

27 (c) A contractor who withdraws a bid under the provisions
28 of this section may not resubmit a bid on the same project. If
29 the bid withdrawn is the lowest bid, the next lowest bid may be
30 accepted.

CHAPTER 75

**(Com. Sub. for S. B. 354 — By Senators Sprouse,
Weeks, Deem, Smith and Boley)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred eleven, relating to creating the offense of operating or attempting to operate a clandestine drug laboratory; defining clandestine drug laboratory; offenses; penalties; and requiring payment for costs of remediation.

Be it enacted by the Legislature of West Virginia:

That article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four hundred eleven, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses; penalties.

1 (a) Any person who operates or attempts to operate a
2 clandestine drug laboratory is guilty of a felony and, upon
3 conviction, shall be confined in a state correctional facility for
4 not less than two years nor more than ten years or fined not less
5 than five thousand dollars nor more than twenty-five thousand
6 dollars, or both.

7 (b) For purposes of this section, a “clandestine drug
8 laboratory” means any property, real or personal, on or in which
9 a person assembles any chemicals or equipment or combination
10 thereof for the purpose of manufacturing methamphetamine,
11 methylenedioxymethamphetamine or lysergic acid
12 diethylamide in violation of the provisions of section four
13 hundred one of this article.

14 (c) Any person convicted of a violation of subsection (a) of
15 this section shall be responsible for all reasonable costs, if any,
16 associated with remediation of the site of the clandestine drug
17 laboratory.

CHAPTER 76

**(H. B. 3108 — By Delegates Fleischauer, Varner, Beane,
Stemple, Palumbo, Foster and Manchin)**

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred one, one hundred eight and one hundred nine, article one, chapter thirty-one-b; to amend and reenact sections two hundred three, two hundred six, two hundred eleven, article two of said chapter thirty-one-b; to amend and reenact sections one thousand two and one thousand six, article ten of said chapter thirty-one-b; to amend and reenact section three hundred one, article three, chapter thirty-one-e of said code; to amend and reenact section four, article eight, chapter forty-seven of said code; to amend and reenact sections one, thirteen, sixteen and fifty, article nine of said chapter forty-seven; to amend and reenact sections two, three and four, article nine-a of said chapter forty-seven; to amend and reenact section one, article one, chapter forty-seven-b of said code; and to amend and reenact sections one and four, article ten of said chapter forty-seven-b, all relating to making all business entity filing requirements consistent with the corporation requirements under the new corporation laws, including electronic filing, no requirement to have an agent and office in West Virginia, and no requirement to have a street address; requiring county and business class codes to be on the annual tax returns filed with the tax department; and clarifying the use of trade names by limited liability companies.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one hundred one, one hundred eight and one hundred nine, article one, chapter thirty-one-b of said code be amended and reenacted; that sections two hundred three, two hundred six, two hundred eleven, article two of said chapter be amended and reenacted; that sections one thousand two and one thousand six, article ten of said chapter be amended and reenacted; that section three hundred one, article three, chapter thirty-one-e of said code be amended and reenacted; that section four, article eight, chapter forty-seven of said code be amended and reenacted; that sections one, thirteen, sixteen and fifty, article nine of said chapter be amended and reenacted; that sections two, three and four, article nine-a of said chapter be amended and reenacted; that section one, article one, chapter forty-seven-b of said code be amended and reenacted; and that sections one and four, article ten of said chapter be amended and reenacted, all to read as follows:

Chapter

- 11. Taxation.**
- 31B. Uniform Limited Liability Company Act.**
- 31E. West Virginia Nonprofit Corporation Act.**
- 47. Regulation of Trade.**
- 47B. Uniform Partnership Act.**

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

- 1 (a) *Payment and collection of tax.* — When application is
- 2 made to the secretary of state for a certificate of incorporation
- 3 or authority to do business in this state, the applicant shall pay
- 4 all taxes and fees due under this article; and the secretary of
- 5 state shall collect the corporate license tax for the first year

6 before issuing the certificate. Thereafter, on or before the first
7 day of the license tax year next following the date of the
8 certificate, and on or before the first day of each succeeding
9 license tax year, the corporation shall pay and the tax commis-
10 sioner shall collect the tax for a full license tax year together
11 with the statutory attorney fee: *Provided*, That if the application
12 is made on or after the first day of the second month preceding
13 the beginning of the next license tax year, and before the first
14 day of the license tax year, the secretary of state shall collect
15 the tax for the full year beginning on the first day of the next
16 license tax year in addition to the initial tax, together with the
17 statutory attorney fee.

18 (b) *Deposit of money.* — The first year license tax received
19 by the secretary of state pursuant to the provisions of this article
20 shall be deposited by the secretary of state as follows: One-half
21 shall be deposited in the state general revenue fund and one-half
22 shall be deposited in the services fees and collections account
23 established by section two, article one, chapter fifty-nine of this
24 code. The license tax received by the tax commissioner every
25 year after the initial registration shall be deposited into the state
26 general revenue fund.

27 (c) *Returns.* — Payment of the tax and statutory attorney
28 fee required under the provisions of this section shall be
29 accompanied by a return on forms provided by the tax commis-
30 sioner for that purpose. The tax commissioner shall upon
31 completion of processing the return, forward it to the secretary
32 of state, together with a list of all corporations which have paid
33 the tax. The return shall contain: (1) The address of the corpora-
34 tion's principal office; (2) the names and mailing addresses of
35 its officers and directors; (3) the name and mailing address of
36 the person on whom notice of process may be served; (4) the
37 name and address of the corporation's parent corporation and
38 of each subsidiary of the corporation licensed to do business in
39 this state; (5) the county or county code in which the principal

40 office address or mailing address of the company is located in;
41 (6) business class code; and (7) any other information the tax
42 commissioner considers appropriate. Notwithstanding any other
43 provision of law to the contrary, the secretary of state shall,
44 upon request of any person, disclose: (A) The address of the
45 corporation's principal office; (B) the names and addresses of
46 its officers and directors; (C) the name and mailing address of
47 the person on whom notice of process may be served; (D) the
48 name and address of each subsidiary of the corporation and the
49 corporation's parent corporation; (E) the county or county code
50 in which the principal office address or mailing address of the
51 company is located; and (F) the business class code.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

Article

- 1. General Provisions.**
- 2. Organization.**
- 10. Foreign Limited Liability Companies.**

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-101. Definitions.

§31B-1-108. Designated office and agent for service of process.

§31B-1-109. Change of designated office or agent for service of process.

§31B-1-101. Definitions.

1 In this chapter:

- 2 (1) "Articles of organization" means initial, amended and
3 restated articles of organization and articles of merger. In the
4 case of a foreign limited liability company, the term includes all
5 records serving a similar function required to be filed in the
6 office of the secretary of state or other official having custody
7 of company records in the state or country under whose law it
8 is organized.

9 (2) “At-will company” means a limited liability company
10 other than a term company.

11 (3) “Business” includes every trade, occupation, profession
12 and other lawful purpose, whether or not carried on for profit.

13 (4) “Debtor in bankruptcy” means a person who is the
14 subject of an order for relief under Title 11 of the United States
15 Code or a comparable order under a successor statute of general
16 application or a comparable order under federal, state or foreign
17 law governing insolvency.

18 (5) “Deliver” or “delivery” means any method of delivery
19 used in conventional commercial practice, including, but not
20 limited to, delivery by hand, mail, commercial delivery and
21 electronic transmission.

22 (6) “Distinguishable” means, in relation to the name of a
23 business a difference between names which would allow a
24 person to recognize or perceive the name of the business as
25 being noticeably different including at least a one-word
26 difference between names when the words are common terms
27 and the company is or might appear to be in a similar business
28 and at least a word order difference between names when the
29 different word is a proper name or an unusual term, or when the
30 company is clearly in a different type of business from the
31 existing name.

32 (7) “Distribution” means a transfer of money, property or
33 other benefit from a limited liability company to a member in
34 the member’s capacity as a member or to a transferee of the
35 member’s distributional interest.

36 (8) “Distributional interest” means all of a member’s
37 interest in distributions by the limited liability company.

38 (9) "Electronic transmission" or "electronically transmit-
39 ted" means any process of communication not directly involv-
40 ing the physical transfer of paper that is suitable for the
41 retention, retrieval and reproduction of information by the
42 recipient.

43 (10) "Entity" means a person other than an individual.

44 (11) "Foreign limited liability company" means an unincor-
45 porated entity organized under laws other than the laws of this
46 state which afford limited liability to its owners comparable to
47 the liability under section 3-303 and is not required to obtain a
48 certificate of authority to transact business under any law of this
49 state other than this chapter.

50 (12) "Limited liability company" means a limited liability
51 company organized under this chapter.

52 (13) "Manager" means a person, whether or not a member
53 of a manager-managed company, who is vested with authority
54 under section 3-301.

55 (14) "Manager-managed company" means a limited
56 liability company which is so designated in its articles of
57 organization.

58 (15) "Member-managed company" means a limited liability
59 company other than a manager-managed company.

60 (16) "Operating agreement" means the agreement under
61 section 1-103 concerning the relations among the members,
62 managers and limited liability company. The term includes
63 amendments to the agreement.

64 (17) "Person" means an individual, corporation, business
65 trust, estate, trust, partnership, limited liability company,
66 association, joint venture, government, governmental subdivi-

67 sion, agency, or instrumentality or any other legal or commer-
68 cial entity.

69 (18) "Principal office" means the office, whether or not in
70 this state, where the principal executive office of a domestic or
71 foreign limited liability company is located.

72 (19) "Record" means information that is inscribed on a
73 tangible medium or that is stored in an electronic or other
74 medium and is retrievable in perceivable form.

75 (20) "Sign" or "signature" means to identify a record by
76 means of a signature, mark or other symbol, with intent to
77 authenticate it and includes, but is not limited to, any manual,
78 facsimile, conformed or electronic signature.

79 (21) "State" means a state of the United States, the District
80 of Columbia, the Commonwealth of Puerto Rico or any
81 territory or insular possession subject to the jurisdiction of the
82 United States.

83 (22) "Term company" means a limited liability company in
84 which its members have agreed to remain members until the
85 expiration of a term specified in the articles of organization.

86 (23) "Transfer" includes an assignment, conveyance, deed,
87 bill of sale, lease, mortgage, security interest, encumbrance and
88 gift.

§31B-1-108. Designated office and agent for service of process.

1 (a) A limited liability company and a foreign limited
2 liability company authorized to do business in this state may
3 continuously maintain in this state:

4 (1) An office, which need not be a place of its business in
5 this state; and

6 (2) An agent and address of the agent for service of process
7 on the company.

8 (b) An agent shall be an individual resident of this state, a
9 domestic corporation, another limited liability company or a
10 foreign corporation or foreign company authorized to do
11 business in this state.

12 (c) Every limited liability company shall pay an annual fee
13 of twenty-five dollars for the services of the secretary of state
14 as attorney-in-fact for the limited liability company, which fee
15 shall be due and payable at the initial registration of the limited
16 liability company and every year thereafter the same time that
17 the annual report required under section two hundred eleven,
18 article two of this chapter is due and one half of each fee shall
19 be deposited in the state fund, general revenue and one half of
20 the fees in the service fees and collections account established
21 by section two, article one, chapter fifty-nine of this code for
22 the operation of the office of the secretary of state. The secre-
23 tary of state shall dedicate sufficient resources from that fund
24 or other funds to provide the services required in this chapter.

25 (d) The secretary of state shall keep a record of all pro-
26 cesses, notices and demands served pursuant to this section and
27 record the time of and the action taken regarding the service.

28 (e) This section does not affect the right to serve process,
29 notice or demand in any manner otherwise provided by law.

**§31B-1-109. Change of designated office or agent for service of
process.**

1 A limited liability company may change its designated
2 office or agent for service of process by delivering to the
3 secretary of state for filing a statement of change which sets
4 forth:

5 (1) The name of the company;

6 (2) The address of its current designated office, if any;

7 (3) If the current designated office is to be changed, the
8 address of the new designated office;

9 (4) The name and address of its current agent for service of
10 process, if any;

11 (5) If the current agent for service of process or address of
12 that agent is to be changed, the new address or the name and
13 address of the new agent for service of process.

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

§31B-2-206. Filing in office of secretary of state.

§31B-2-211. Annual report for secretary of state.

§31B-2-203. Articles of organization.

1 (a) Articles of organization of a limited liability company
2 must set forth:

3 (1) The name of the company;

4 (2) The address of the initial designated office;

5 (3) The name and address of the initial agent for service of
6 process;

7 (4) The name and address of each organizer and of each
8 member having authority to execute instruments on behalf of
9 the limited liability company;

10 (5) Whether the company is to be a term company and, if
11 so, the term specified;

12 (6) Whether the company is to be manager-managed and,
13 if so, the name and address of each initial manager; and

14 (7) Whether one or more of the members of the company
15 are to be liable for its debts and obligations under section 3-
16 303(c).

17 (b) Articles of organization of a limited liability company
18 may set forth:

19 (1) Provisions permitted to be set forth in an operating
20 agreement; or

21 (2) Other matters not inconsistent with law.

22 (c) Articles of organization of a limited liability company
23 may not vary the nonwaivable provisions of section 1-103(b).
24 As to all other matters, if any provision of an operating agree-
25 ment is inconsistent with the articles of organization:

26 (1) The operating agreement controls as to managers,
27 members and members' transferees; and

28 (2) The articles of organization control as to persons other
29 than managers, members and their transferees who reasonably
30 rely on the articles to their detriment.

§31B-2-206. Filing in office of secretary of state.

1 (a) Articles of organization or any other record authorized
2 to be filed under this chapter must be in a medium permitted by
3 the secretary of state and must be delivered to the office of the
4 secretary of state. Delivery may be made by electronic trans-
5 mission if permitted by the secretary of state. Unless the
6 secretary of state determines that a record fails to comply as to
7 form with the filing requirements of this chapter, and if all
8 filing fees have been paid, the secretary of state shall file the

9 record and send a receipt for the record and the fees to the
10 limited liability company or its representative.

11 (b) Upon request and payment of a fee, the secretary of
12 state shall send to the requester a certified copy of the requested
13 record.

14 (c) Except as otherwise provided in subsection (d) of this
15 section and section 2-207(c), a record accepted for filing by the
16 secretary of state is effective:

17 (1) At the time of filing on the date it is filed, as evidenced
18 by the secretary of state's date and time endorsement on the
19 original record; or

20 (2) At the time specified in the record as its effective time
21 on the date it is filed.

22 (d) A record may specify a delayed effective time and date,
23 and if it does so the record becomes effective at the time and
24 date specified. If a delayed effective date but no time is
25 specified, the record is effective at the close of business on that
26 date. If a delayed effective date is later than the ninetieth day
27 after the record is filed, the record is effective on the ninetieth
28 day.

§31B-2-211. Annual report for secretary of state.

1 (a) A limited liability company, and a foreign limited
2 liability company authorized to transact business in this state,
3 shall deliver to the secretary of state for filing an annual report
4 that sets forth:

5 (1) The name of the company and the state or country under
6 whose law it is organized;

7 (2) The address of its designated office, if any and the name

8 and address of its agent for service of process in this state, if
9 any;

10 (3) The address of its principal office; and

11 (4) The names and business addresses of any managers and
12 the name and address of each member having authority to
13 execute instruments on behalf of the limited liability company.

14 (b) Information in an annual report must be current as of the
15 date the annual report is signed on behalf of the limited liability
16 company.

17 (c) The first annual report must be delivered to the secretary
18 of state between the first day of January and the first day of
19 April of the year following the calendar year in which a limited
20 liability company was organized or a foreign company was
21 authorized to transact business. Subsequent annual reports must
22 be delivered to the secretary of state between the first day of
23 January and the first day of April of the ensuing calendar years.

24 (d) If an annual report does not contain the information
25 required in subsection (a) of this section, the secretary of state
26 shall promptly notify the reporting limited liability company or
27 foreign limited liability company and return the report to it for
28 correction. If the report is corrected to contain the information
29 required in subsection (a) of this section and delivered to the
30 secretary of state within thirty days after the effective date of
31 the notice, it is timely filed.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1002. Application for certificate of authority.

§31B-10-1006. Revocation and reinstatement of certificate of authority.

§31B-10-1002. Application for certificate of authority.

1 (a) A foreign limited liability company may apply for a
2 certificate of authority to transact business in this state by
3 delivering an application to the secretary of state for filing,
4 together with the fee prescribed by section two, article one,
5 chapter fifty-nine of this code.

6 The application shall set forth:

7 (1) The name of the foreign company or, if its name is
8 unavailable for use in this state, a name that satisfies the
9 requirements of section 10-1005 of this article;

10 (2) The name of the state or country under whose law it is
11 organized;

12 (3) The street address of its principal office;

13 (4) The name and address of each member having authority
14 to execute instruments on behalf of the limited liability com-
15 pany;

16 (5) The address of its initial designated office in this state,
17 if any;

18 (6) The name and address of its initial agent for service of
19 process in this state, if any;

20 (7) Whether the duration of the company is for a specified
21 term and, if so, the period specified;

22 (8) Whether the company is manager-managed and, if so,
23 the name and address of each initial manager; and

24 (9) Whether the members of the company are to be liable
25 for its debts and obligations under a provision similar to section
26 3-303(c).

27 (b) A foreign limited liability company shall deliver with
28 the completed application a certificate of existence or a record
29 of similar import authenticated by the secretary of state or other
30 official having custody of company records in the state or
31 country under whose law it is organized.

§31B-10-1006. Revocation and reinstatement of certificate of authority.

1 (a) A certificate of authority of a foreign limited liability
2 company to transact business in this state may be revoked by
3 the secretary of state in the manner provided in subsection (b)
4 of this section if:

5 (1) The company fails to:

6 (i) Pay any fees, taxes and penalties owed to this state;

7 (ii) Deliver its annual report required under section 2-211
8 to the secretary of state within sixty days after it is due; or

9 (iii) File a statement of a change in the name or business
10 address of the agent as required by this article; or

11 (2) A misrepresentation has been made of any material
12 matter in any application, report, affidavit or other record
13 submitted by the company pursuant to this article.

14 (b) The secretary of state may not revoke a certificate of
15 authority of a foreign limited liability company unless the
16 secretary of state sends the company notice of the revocation,
17 at least sixty days before its effective date, by a record ad-
18 dressed to its principal office. The notice must specify the cause
19 for the revocation of the certificate of authority. The authority
20 of the company to transact business in this state ceases on the
21 effective date of the revocation unless the foreign limited
22 liability company cures the failure before that date.

23 (c) A foreign limited liability company administratively
24 revoked may apply to the secretary of state for reinstatement
25 within two years after the effective date of revocation. The
26 application must: (1) Recite the name of the company and the
27 effective date of its administrative revocation; (2) state that the
28 ground for revocation either did not exist or has been elimi-
29 nated; (3) state that the company's name satisfies the require-
30 ments of section 10-1005; and (4) contain a certificate from the
31 tax commissioner reciting that all taxes owed by the company
32 have been paid.

33 (d) If the secretary of state determines that the application
34 contains the information required by subsection (a) of this
35 section and that the information is correct, the secretary of state
36 shall cancel the certificate of revocation and prepare a certifi-
37 cate of reinstatement that recites this determination and the
38 effective date of reinstatement, file the original of the certifi-
39 cate, and serve the company with a copy of the certificate.

40 (e) When reinstatement is effective, it relates back to and
41 takes effect as of the effective date of the administrative
42 revocation and the company may resume its business as if the
43 administrative revocation had never occurred.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 3. PURPOSES AND POWERS.

§31E-3-301. Purposes.

1 Corporations may be organized under this chapter for any
2 lawful purpose, including any one or more of the following
3 purposes: Charitable, benevolent, eleemosynary, educational,
4 civic, patriotic, political, religious, social, fraternal, literary,

- 5 cultural, athletic, scientific, agricultural, horticultural, animal
6 husbandry, and professional commercial, industrial or trade
7 association.

CHAPTER 47. REGULATION OF TRADE.

Article

8. Trade Names.
9. Uniform Limited Partnership Act.
9A. Voluntary Associations and Business Trusts.

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations, limited partnerships, limited liability partnerships, and limited liability companies not to conduct business under assumed name without certificate of trade name; application; issuance of certificate of trade name.

1 (a) No business entity organized as a corporation, limited
2 partnership, limited liability partnership, limited liability
3 company, business trust or voluntary association required to
4 register with the secretary of state in order to conduct business
5 within the state may conduct or transact any business in this
6 state under any assumed name, or under any designation, name
7 or style, corporate or otherwise, other than the name established
8 by the original certificate establishing the business entity or by
9 an amendment thereto, unless the business entity files in the
10 office of the secretary of state an application for registration of
11 trade name. The application shall set forth:

12 (1) The name under which the business entity is organized
13 and registered;

14 (2) The name under which the business of such business
15 entity is, or is to be, conducted or transacted upon approval of
16 the application, which name must be distinguishable from the
17 name of any other corporation, limited partnership, limited

18 liability partnership, limited liability company, business trust or
19 voluntary association, and from any name reserved or registered
20 for any of those business entities;

21 (3) The address of the principal office within the state or, if
22 no office is maintained within the state, the address of the
23 principal office in the state in which the business entity is
24 established; and

25 (4) The name, title and signature of a person having
26 authority to make the application.

27 The secretary of state shall grant a certificate of registration
28 to any applicant who has met the requirements of this subsection.
29 A new certificate of registration is to be filed if the
30 business entity desires to conduct or transact any business in
31 this state under any other assumed name not on file in the office
32 of the secretary of state.

33 (b) One original executed of the application for trade name
34 registration shall be delivered to the secretary of state. Delivery
35 may be made by electronic transmission if permitted by the
36 secretary of state. If the filing officer finds that the application
37 for trade name registration conforms to law, he or she shall,
38 when all fees have been paid as prescribed by law, file it and
39 shall deliver to the entity or its representative a receipt for the
40 record and fee.

41 (c) Upon discontinuing the use of a registered trade name
42 the certificate of registration of trade name shall be withdrawn
43 by filing a certificate of withdrawal with the office of the
44 secretary of state setting forth the name to be discontinued, the
45 real name, the address of the party transacting business and the
46 date upon which the original certificate of registration of trade
47 name was filed.

48 (d) Any corporation authorized to transact business in this
49 state shall procure an amended certificate of incorporation in
50 the event it changes its corporate name by filing articles of
51 amendment with the office of the secretary of state as provided
52 in article ten, chapter thirty-one-d, or article ten, chapter thirty-
53 one-e of this code.

54 (e) Any limited liability company registering a trade name
55 pursuant to the provisions of this section is subject to the
56 limitations set forth in subsections (b), (c) and (d) section one
57 hundred five, article one, chapter thirty-one-b of this code.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

§47-9-13. Filing of certificate.

§47-9-16. Delivery of certificates to limited partners.

§47-9-50. Issuance of registration.

§47-9-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Certificate of limited partnership" means the certificate
4 referred to in section eight of this article and the certificate as
5 amended;

6 (2) "Contribution" means any cash, property, services
7 rendered, or a promissory note or other binding obligation to
8 contribute cash or property or to perform services, which a
9 partner contributes to a limited partnership in his or her
10 capacity as a partner;

11 (3) "Deliver" or "delivery" means any method of delivery
12 used in conventional commercial practice, including, but not
13 limited to, delivery by hand, mail, commercial delivery and
14 electronic transmission;

15 (4) “Electronic transmission” or “electronically transmit-
16 ted” means any process of communication not directly involv-
17 ing the physical transfer of paper that is suitable for the
18 retention, retrieval and reproduction of information by the
19 recipient;

20 (5) “Event of withdrawal of a general partner” means an
21 event that causes a person to cease to be a general partner as
22 provided in section twenty-three of this article;

23 (6) “Foreign limited partnership” means a partnership
24 formed under the laws of any state other than this state and
25 having as partners one or more general partners and one or
26 more limited partners;

27 (7) “General partner” means a person who has been
28 admitted to a limited partnership as a general partner in
29 accordance with the partnership agreement and named in the
30 certificate of limited partnership as a general partner;

31 (8) “Limited partner” means a person who has been
32 admitted to a limited partnership as a limited partner in accor-
33 dance with the partnership agreement;

34 (9) “Limited partnership” and “domestic limited partner-
35 ship” means a partnership formed by two or more persons under
36 the laws of this state and having one or more general partners
37 and one or more limited partners;

38 (10) “Partner” means a limited or general partner;

39 (11) “Partnership agreement” means any valid agreement,
40 written or oral, of the partners as to the affairs of a limited
41 partnership and the conduct of its business;

42 (12) “Partnership interest” means a partner’s share of the
43 profits and losses of a limited partnership and the right to
44 receive distributions of partnership assets;

45 (13) "Person" means a natural person, partnership, limited
46 partnership (domestic or foreign), limited liability company,
47 professional limited liability company, trust, estate, association,
48 corporation, or any other legal or commercial entity;

49 (14) "Sign" or "signature" includes, but is not limited to,
50 any manual, facsimile, conformed or electronic signature; and

51 (15) "State" means a state, territory or possession of the
52 United States, the District of Columbia or the Commonwealth
53 of Puerto Rico.

§47-9-13. Filing of certificate.

1 (a) One signed copy of the certificate of limited partnership
2 and of any certificates of amendment or cancellation, or of any
3 judicial decree of amendment or cancellation, shall be delivered
4 to the secretary of state. Delivery may be made by electronic
5 transmission if permitted by the secretary of state. A person
6 who executes a certificate as an agent or fiduciary need not
7 exhibit evidence of his authority as a prerequisite to filing.
8 Unless the secretary of state finds that any certificate does not
9 conform to law, upon receipt of all filing fees required by law,
10 he or she shall file it and deliver to the limited partnership or its
11 representative a receipt for the record and the fees.

12 (b) Upon the filing of a certificate of amendment, or
13 judicial decree of amendment, in the office of the secretary of
14 state the certificate of limited partnership shall be amended as
15 set forth therein, and upon the effective date of a certificate of
16 cancellation, or a judicial decree thereof, the certificate of
17 limited partnership is canceled.

18 This filing, or failure to file, shall in no way affect the
19 formation of the limited partnership. Only the filing in the
20 office of the secretary of state, required by section eight of this
21 article, shall determine the validity of the limited partnership.

§47-9-16. Delivery of certificates to limited partners.

1 Upon the return by the secretary of state pursuant to section
2 thirteen of this article of a receipt for the record and the fees the
3 general partners shall promptly deliver or mail a copy of the
4 receipt for the record and the fees to each limited partner unless
5 the partnership agreement provides otherwise.

§47-9-50. Issuance of registration.

1 (a) If the secretary of state finds that an application for
2 registration conforms to law and all requisite fees have been
3 paid, he shall file it and deliver to the limited partnership or its
4 representative a receipt for the record and the fees.

5 This filing, or failure to file, shall in no way affect the
6 formation of the limited partnership. Only the filing in the
7 office of the secretary of state, required by section nine of this
8 article, shall determine the validity of the limited partnership.

ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.

§47-9A-2. Application for registration of business trust; issuance of certificate of business trust.

§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association.

§47-9A-4. Application of laws relating to corporations; name of business trust or voluntary association; adoption and use of trade name and seal; amendment of declaration, article or agreement; change of agent for service of process, trustees, and members; dissolution; filing.

§47-9A-2. Application for registration of business trust; issuance of certificate of business trust.

1 (a) For the purposes of this article, a “business trust” is any
2 trust organized for the purpose of conducting business and
3 commonly designated as a Massachusetts trust.

4 (b) Any business trust organized in this state shall file with

5 secretary of state: (1) One executed original copy of an applica-
6 tion for registration; and (2) one executed original copy of the
7 declaration, articles or agreement of trust creating the business
8 trust.

9 (c) Any business trust organized outside this state and
10 operating within this state shall file with the secretary of state:
11 (1) One executed original copy of an application for registra-
12 tion; (2) one executed original copy of the declaration, articles
13 or agreement of trust creating the business trust as recorded in
14 the state or country of origin of the business trust; and (3) a
15 statement or certificate from the proper officer of the state or
16 country of origin that the business trust is in good standing.

17 (d) An application for registration shall set forth:

18 (1) The name of the business trust;

19 (2) If organized within the state, a statement that it is a
20 West Virginia business trust, or if organized outside the state,
21 the state in which it was organized and the formation date of the
22 business trust;

23 (3) The purpose or purposes for which the business trust is
24 organized;

25 (4) The address of its principal office;

26 (5) The name and address of the person to whom notice of
27 process may be sent, if any;

28 (6) The names and addresses of all trustees having authority
29 to act on behalf of the business trust; and

30 (7) A statement reflecting the business trust's consent to
31 and recognition of the application to the business trust of the
32 law of this state with respect to corporations.

33 (e) An application for registration may contain the nota-
34 rized signature of a trustee of the business trust.

35 (f) If the secretary of state determines that an application
36 for registration has been properly filed in complete form and
37 that the fee prescribed in section two, article one, chapter fifty-
38 nine of this code has been paid, he or she shall file it and deliver
39 to the business trust or its representative a receipt for the record
40 and the fees.

**§47-9A-3. Filing of voluntary association; issuance of certificate
of voluntary association.**

1 (a) For purposes of this article, a “voluntary association” is
2 any association organized for the purpose of conducting
3 business in this state, but does not include an organization
4 formed as an unincorporated nonprofit association under the
5 provisions of article eleven, chapter thirty-six of this code.

6 (b) Any voluntary association organized in this state shall
7 file with secretary of state: (1) One executed original copy of an
8 application for registration; and (2) one executed original copy
9 of the agreement of association creating the voluntary associa-
10 tion (if such an agreement exists apart from the application for
11 registration itself).

12 (c) Any voluntary association organized outside this state
13 and operating within this state shall file with the secretary of
14 state: (1) One executed original copy of an application for
15 registration; (2) one executed original copy of the agreement of
16 association creating the voluntary association; and (3) a
17 statement or certificate from the proper officer of the state or
18 country of origin that the voluntary association is in good
19 standing.

20 (d) An application for registration shall set forth:

- 21 (1) The name of the voluntary association;
- 22 (2) The principal office address of the voluntary associa-
23 tion;
- 24 (3) The mailing address of the voluntary association, if
25 different from the principal office address;
- 26 (4) The name and address of the person to whom notice of
27 process may be sent, if any;
- 28 (5) Whether the voluntary association is organized for
29 profit or as a nonprofit voluntary association;
- 30 (6) The purpose or purposes for which the voluntary
31 association is formed;
- 32 (7) The full names and addresses of one or more of the
33 organizers of the voluntary association;
- 34 (8) The full names and addresses of no fewer than two
35 officers, owners or members of the voluntary association who
36 have signatory authority for the association;
- 37 (9) Any additional statements as may be required for the
38 type of business to be conducted; and
- 39 (10) A statement reflecting the voluntary association's
40 consent to and recognition of the application of the law of this
41 state with respect to corporations to the voluntary association.
- 42 (e) An application for registration may contain the nota-
43 rized signature of at least one organizer or member of the
44 voluntary association.
- 45 (f) If the secretary of state determines that an application
46 for registration has been properly filed in complete form and
47 that the fee prescribed in section two, article one, chapter fifty-

48 nine of this code has been paid, he or she shall file it and deliver
49 to the voluntary association or its representative a receipt for
50 the record and the fees.

**§47-9A-4. Application of laws relating to corporations; name of
business trust or voluntary association; adoption
and use of trade name and seal; amendment of
declaration, articles or agreement; change of
agent for service of process, trustees, and mem-
bers; dissolution; filing.**

1 (a) Unless otherwise specifically provided in this article,
2 any business trust or voluntary association conducting business
3 in this state is subject to the laws of this state with respect to
4 corporations, including laws relating to license fees and all
5 other taxes, to the extent such laws are applicable.

6 (b) The name of any business trust or voluntary association
7 applying for registration shall meet the requirements for
8 corporate names set forth in section four hundred one, article
9 four, chapter thirty-one-d or section four hundred one, chapter
10 thirty-one-e of this code, except that the name shall not contain
11 the words “incorporated,” “corporation,” “limited,” or any
12 abbreviation of these terms.

13 (c) Any business trust or voluntary association may use a
14 trade name upon complying with the provisions of section four,
15 article eight, chapter forty-seven of this code. Any business
16 trust or voluntary association may adopt and use a common
17 seal.

18 (d) Upon the adoption of an amendment to the declaration,
19 articles or agreement of trust of a business trust or the agree-
20 ment of association of a voluntary association, the business
21 trust or voluntary association shall file one executed original
22 copy of the amendment, and may contain the notarized signa-
23 ture of at least one trustee of the business trust or at least one

24 organizer or member of the voluntary association, with the
25 office of the secretary of state.

26 (e) Upon any change of trustees, organizers, members or
27 other persons previously recorded as having authority to act on
28 behalf of the business trust or voluntary association, or upon
29 any change of the agent of the business trust or voluntary
30 association for service of process, a business trust or voluntary
31 association shall file notice of the change with the secretary of
32 state.

33 (f) Upon the determination of the majority of trustees of a
34 business trust or a majority of members of a voluntary associa-
35 tion that the business trust or voluntary association shall be
36 dissolved; and after all debts, liabilities and obligations of the
37 business trust or voluntary association have been paid and
38 discharged, the business trust or voluntary association shall
39 distribute all of the remaining assets of the business trust or
40 voluntary association and file articles of dissolution with the
41 secretary of state in the manner provided for corporations in
42 section one thousand four hundred three, article fourteen,
43 chapter thirty-one-d, or section one thousand three hundred
44 three, article thirteen, chapter thirty-one-e of this code. Upon
45 verification by the appropriate state agencies that the business
46 trust or voluntary association has paid all taxes, assessments
47 and fees due to the state, the secretary of state shall file it and
48 deliver to the voluntary association or business trust or its
49 representative a receipt for the record and the fees.

50 (g) A business trust or voluntary association organized
51 outside the state and registered to do business within this state
52 may withdraw from the state in the manner provided for
53 corporations in section one thousand five hundred twenty,
54 article fifteen, chapter thirty-one-d or section one thousand four
55 hundred twenty, article fourteen, chapter thirty-one-e of this
56 code.

57 (h) No document required to be filed by this section shall
58 be filed with the secretary of state unless the trustee of the
59 business trust or the organizer or member of the voluntary
60 association is currently authorized as such.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

Article

1. General Provisions.
10. Limited Liability Partnerships.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.

1 In this chapter:

2 (1) "Business" includes every trade, occupation and
3 profession.

4 (2) "Debtor in bankruptcy" means a person who is the
5 subject of:

6 (i) In order for relief under Title 11 of the United States
7 Code or a comparable order under a successor statute of general
8 application; or

9 (ii) A comparable order under federal, state or foreign law
10 governing insolvency.

11 (3) "Deliver" or "delivery" means any method of delivery
12 used in conventional commercial practice, including, but not
13 limited to, delivery by hand, mail, commercial delivery and
14 electronic transmission.

15 (4) "Distribution" means a transfer of money or other
16 property from a partnership to a partner in the partner's
17 capacity as a partner or to the partner's transferee.

18 (5) “Electronic transmission” or “electronically transmit-
19 ted”, means any process of communication not directly involv-
20 ing the physical transfer of paper that is suitable for the
21 retention, retrieval and reproduction of information by the
22 recipient.

23 (6) “Foreign limited liability partnership” means a partner-
24 ship or association formed under or pursuant to an agreement
25 governed by the laws of any state or jurisdiction other than this
26 state that is denominated as a registered limited liability
27 partnership or limited liability partnership under the laws of
28 such other jurisdiction.

29 (7) “Partnership” means an association of two or more
30 persons to carry on as coowners a business for profit formed
31 under section two, article two of this chapter, predecessor law,
32 or comparable law of another jurisdiction and includes, for all
33 purposes of the laws of this state, a registered limited liability
34 partnership.

35 (8) “Partnership agreement” means the agreement, whether
36 written, oral or implied, among the partners concerning the
37 partnership, including amendments to the partnership agree-
38 ment.

39 (9) “Partnership at will” means a partnership in which the
40 partners have not agreed to remain partners until the expiration
41 of a definite term or the completion of a particular undertaking.

42 (10) “Partnership interest” or “partner’s interest in the
43 partnership” means all of a partner’s interests in the partnership,
44 including the partner’s transferable interest and all management
45 and other rights.

46 (11) “Person” means an individual, corporation, business
47 trust, estate, trust, partnership, limited liability company,
48 professional limited liability company, association, joint

49 venture, government, governmental subdivision, agency or
50 instrumentality, or any other legal or commercial entity.

51 (12) “Property” means all property, real, personal or mixed,
52 tangible or intangible, or any interest therein.

53 (13) “Registered limited liability partnership” means a
54 partnership formed pursuant to an agreement governed by the
55 laws of this state, registered under section one, article ten of this
56 chapter.

57 (14) “Sign” or “signature” includes, but is not limited to,
58 any manual, facsimile, conformed or electronic signature.

59 (15) “State” means a state of the United States, the District
60 of Columbia, the Commonwealth of Puerto Rico, or any
61 territory or insular possession subject to the jurisdiction of the
62 United States.

63 (16) “Statement” means a statement of partnership author-
64 ity under section three, article three of this chapter, a statement
65 of denial under section four of said article, a statement of
66 dissociation under section four, article seven of this chapter, a
67 statement of dissolution under section five, article eight of this
68 chapter, a statement of merger under section seven, article nine
69 of this chapter, a statement of registration and a statement of
70 withdrawal under section one, article ten of this chapter, or an
71 amendment or cancellation of any of the foregoing.

72 (17) “Transfer” includes an assignment, conveyance, lease,
73 mortgage, deed and encumbrance.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.

§47B-10-1. Registered limited liability partnerships.

§47B-10-4. Applicability of article to foreign and interstate commerce.

§47B-10-1. Registered limited liability partnerships.

1 (a) To become a registered limited liability partnership, a
2 partnership shall deliver and file with the secretary of state a
3 statement of registration stating the name of the partnership; the
4 address of its principal office; the address of a registered office
5 and the name and address of a registered agent for service of
6 process; a brief statement of the business in which the partner-
7 ship engages; any other matters that the partnership determines
8 to include; and that the partnership thereby registers as a
9 registered limited liability partnership.

10 (b) The registration shall be executed by one or more
11 partners authorized to execute a registration.

12 (c) The registration shall be accompanied by a fee of two
13 hundred fifty dollars.

14 (d) The secretary of state shall register as a registered
15 limited liability partnership any partnership that submits a
16 completed registration with the required fee and deliver to the
17 partnership or its representative a receipt for the record and the
18 fees.

19 (e) A partnership registered under this section shall pay, in
20 each year following the year in which its registration is filed, on
21 a date specified by the secretary of state, an annual fee of five
22 hundred dollars. The fee shall be accompanied by a notice, on
23 a form provided by the secretary of state, of any material
24 changes in the information contained in the partnership's
25 registration.

26 (f) Registration is effective:

27 (1) Immediately after the date a registration is filed; or

28 (2) On a date specified in the statement of registration,
29 which date shall not be more than sixty days after the date of
30 filing.

31 (g) Registration remains effective until:

32 (1) It is voluntarily withdrawn by filing with the secretary
33 of state a statement of withdrawal; or

34 (2) Thirty days after receipt by the partnership of a notice
35 from the secretary of state, which shall be sent by certified mail,
36 return receipt requested, that the partnership has failed to make
37 timely payment of the annual fee specified in subsection (e) of
38 this section, unless the fee is paid within a thirty-day period.

39 (h) The status of a partnership as a registered limited
40 liability partnership and the liability of the partners thereof shall
41 not be affected by:

42 (1) Errors in the information contained in a statement of
43 registration under subsection (a) of this section or notice under
44 subsection (e) of this section; or

45 (2) Changes after the filing of the statement of registration
46 or notice in the information stated in the registration or notice.

47 (i) The secretary of state may provide forms for the
48 statement of registration under subsection (a) of this section or
49 a notice under subsection (e) of this section.

50 (j) All fees and moneys collected by the secretary of state
51 pursuant to the provisions of this article shall be deposited by
52 the secretary of state as follows: One-half shall be deposited in
53 the state general revenue fund and one-half shall be deposited
54 in the service fees and collections account established by
55 section two, article one, chapter fifty-nine of this code for the
56 operation of the office of the secretary of state. The secretary of
57 state shall dedicate sufficient resources from that fund or other
58 funds to provide the services required in this article.

§47B-10-4. Applicability of article to foreign and interstate commerce.

1 (a) A registered limited liability partnership formed under
2 this article may conduct its business, carry on its operations,
3 and have and exercise the powers granted by this chapter in any
4 state, territory, district or possession of the United States or in
5 any foreign country.

6 (b) It is the intent of the Legislature that the legal existence
7 of registered limited liability partnerships formed under this
8 article be recognized outside the boundaries of this state and
9 that the laws of this state governing such registered limited
10 liability partnerships doing business outside this state be
11 granted the protection of full faith and credit under the Consti-
12 tution of the United States.

13 (c) Notwithstanding section six, article one of this chapter,
14 the internal affairs of registered limited liability partnerships
15 formed under this article, including the liability of partners for
16 debts, obligations and liabilities of or chargeable to the partner-
17 ship, shall be subject to and governed by the laws of this state.

18 (d) Before transacting business in this state, a foreign
19 registered limited liability partnership shall:

20 (i) Comply with any statutory or administrative registration
21 or filing requirements governing the specific type of business
22 in which the partnership is engaged; and

23 (ii) File a notice with the secretary of state, stating the name
24 of the partnership; the address of its principal office; the
25 address of a registered office and the name and address of a
26 registered agent for service of process; any other matters that
27 the partnership determines to include; and a brief statement of
28 the business in which the partnership engages. Such notice shall

29 be effective for two years from the date of filing, after which
30 time the partnership shall file a new notice.

31 (e) The name of a foreign registered limited liability
32 partnership doing business in this state shall contain the words
33 "Registered Limited Liability Partnership" or the abbreviation
34 "L.L.P." or "LLP" as the last words or letters of its name.

35 (f) Notwithstanding section six, article one of this chapter,
36 the internal affairs of foreign registered limited liability
37 partnerships, including the liability of partners for debts,
38 obligations and liabilities of or chargeable to the partnership,
39 shall be subject to and governed by the laws of the jurisdiction
40 in which the foreign registered limited liability partnership is
41 registered.



CHAPTER 77

**(Com. Sub. for S. B. 424 — By Senators Love, Dempsey,
Hunter, White, Rowe and Ross)**



[Passed March 8, 2003; in effect from passage. Approved by the Governor.]



AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-a, relating to governor's authority to authorize the commissioner of corrections to consent to transfers of convicted offenders under a federal treaty requiring consent of inmate; and requiring inmate be informed of rights and procedures in a language he or she understands.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen-a, to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS
MANAGEMENT.**

**§25-1-16a. Governor's authority to authorize commissioner of
corrections to consent to transfer of inmates
under a federal treaty.**

1 If a treaty in effect between the United States and a foreign
2 country provides for the transfer or exchange of convicted
3 offenders to the country of which they are citizens or nationals,
4 the governor may, on behalf of the state and subject to the terms
5 of the treaty and with the consent of the offender, authorize the
6 commissioner of corrections to consent to the transfer or
7 exchange of inmates in his or her custody and take any other
8 action necessary to initiate the participation of this state in the
9 treaty. No transfer may occur pursuant to the provisions of this
10 section until the inmate is informed of his or her rights and the
11 procedures involved in his or her native language unless it is
12 determined that the inmate's knowledge of English is sufficient.

CHAPTER 78

**(Com. Sub. for H. B. 2705 — By Delegates Staton, Amores, Armstead,
Fleischauer, R. Thompson, Webb and Webster)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

16 encouraged compacts for cooperative efforts and mutual
17 assistance in the prevention of crime.

18 (b) It is the purpose of this compact and the interstate
19 commission created hereunder, through means of joint and
20 cooperative action among the compacting states:

21 (1) To provide the framework for the promotion of public
22 safety and protect the rights of victims through the control and
23 regulation of the interstate movement of offenders in the
24 community;

25 (2) To provide for the effective tracking, supervision, and
26 rehabilitation of these offenders by the sending and receiving
27 states; and

28 (3) To equitably distribute the costs, benefits and obliga-
29 tions of the compact among the compacting states.

30 (c) In addition, this compact will:

31 (1) Create an interstate commission which will establish
32 uniform procedures to manage the movement between states of
33 adults placed under community supervision and released to the
34 community under the jurisdiction of courts, paroling authorities,
35 corrections or other criminal justice agencies which will
36 promulgate rules to achieve the purpose of this compact;

37 (2) Ensure an opportunity for input and timely notice to
38 victims and to jurisdictions where defined offenders are
39 authorized to travel or to relocate across state lines;

40 (3) Establish a system of uniform data collection, access to
41 information on active cases by authorized criminal justice
42 officials, and regular reporting of compact activities to heads of
43 state councils, state executive, judicial, and legislative branches
44 and criminal justice administrators;

45 (4) Monitor compliance with rules governing interstate
46 movement of offenders and initiate interventions to address and
47 correct noncompliance; and

48 (5) Coordinate training and education regarding regulations
49 of interstate movement of offenders for officials involved in
50 such activity.

51 (d) The compacting states recognize that there is no “right”
52 of any offender to live in another state and that duly accredited
53 officers of a sending state may at all times enter a receiving
54 state and there apprehend and retake any offender under
55 supervision subject to the provisions of this compact and by-
56 laws and rules promulgated hereunder. It is the policy of the
57 compacting states that the activities conducted by the interstate
58 commission created herein are the formation of public policies
59 and are therefore public business.

60 ARTICLE II. DEFINITIONS.

61 As used in this compact, unless the context clearly requires
62 a different construction:

63 (a) “Adult” means both individuals legally classified as
64 adults and juveniles treated as adults by court order, statute, or
65 operation of law.

66 (b) “Bylaws” means those bylaws established by the
67 interstate commission for its governance, or for directing or
68 controlling the interstate commission’s actions or conduct.

69 (c) “Compact administrator” means the individual in each
70 compacting state appointed pursuant to the terms of this
71 compact responsible for the administration and management of
72 the state’s supervision and transfer of offenders subject to the
73 terms of this compact, the rules adopted by the interstate

74 commission and policies adopted by the state council under this
75 compact.

76 (d) "Compacting state" means any state which has enacted
77 the enabling legislation for this compact.

78 (e) "Commissioner" means the voting representative of
79 each compacting state appointed pursuant to article III of this
80 compact.

81 (f) "Interstate commission" means the interstate commis-
82 sion for adult offender supervision established by this compact.

83 (g) "Member" means the commissioner of a compacting
84 state or designee, who shall be a person officially connected
85 with the commissioner.

86 (h) "Noncompacting state" means any state which has not
87 enacted the enabling legislation for this compact.

88 (i) "Offender" means an adult placed under or subject to
89 supervision as the result of the commission of a criminal
90 offense and released to the community under the jurisdiction of
91 courts, paroling authorities, corrections, or other criminal
92 justice agencies.

93 (j) "Person" means any individual, corporation, business
94 enterprise, or other legal entity, either public or private.

95 (k) "Rules" means acts of the interstate commission, duly
96 promulgated pursuant to article VIII of this compact, substan-
97 tially affecting interested parties in addition to the interstate
98 commission which shall have the force and effect of law in the
99 compacting states.

100 (l) "State" means a state of the United States, the District of
101 Columbia and any other territorial possessions of the United
102 States.

103 (m) "State council" means the resident members of the state
104 council for interstate adult offender supervision created by each
105 state under article III of this compact.

106 ARTICLE III. THE COMPACT COMMISSION.

107 (a) The compacting states hereby created the "Interstate
108 Commission for Adult Offender Supervision." The interstate
109 commission shall be a body corporate and joint agency of the
110 compacting states. The interstate commission shall have all the
111 responsibilities, powers and duties set forth herein, including
112 the power to sue and be sued, and such additional powers as
113 may be conferred upon it by subsequent action of the respective
114 legislatures of the compacting states in accordance with the
115 terms of this compact.

116 (b) The interstate commission shall consist of commission-
117 ers selected and appointed by resident members of a state
118 council for interstate adult offender supervision for each state.
119 In addition to the commissioners who are the voting representa-
120 tives of each state, the interstate commission shall include
121 individuals who are not commissioners but who are members
122 of interested organizations; such noncommissioner members
123 must include a member of the national organizations of
124 governors, legislators, state chief justices, attorneys general and
125 crime victims. All noncommissioner members of the interstate
126 commission shall be ex-officio (nonvoting) members. The
127 interstate commission may provide in its bylaws for such
128 additional, ex-officio, nonvoting members as it deems neces-
129 sary.

130 (c) Each compacting state represented at any meeting of the
131 interstate commission is entitled to one vote. A majority of the

132 compacting states shall constitute a quorum for the transaction
133 of business, unless a larger quorum is required by the bylaws of
134 the interstate commission.

135 (d) The interstate commission shall meet at least once each
136 calendar year. The chairperson may call additional meetings
137 and, upon the request of twenty-seven or more compacting
138 states, shall call additional meetings. Public notice shall be
139 given of all meetings and meetings shall be open to the public.

140 (e) The interstate commission shall establish an executive
141 committee which shall include commission officers, members
142 and others as shall be determined by the bylaws. The executive
143 committee shall have the power to act on behalf of the interstate
144 commission during periods when the interstate commission is
145 not in session, with the exception of rule making and/or an
146 amendment to the compact. The executive committee oversees
147 the day-to-day activities managed by the executive director and
148 interstate commission staff; administers enforcement and
149 compliance with the provisions of the compact, its bylaws and
150 as directed by the interstate commission and performs other
151 duties as directed by the commission or set forth in the bylaws.

152 ARTICLE IV. THE STATE COUNCIL.

153 (a) Each member state shall create a state council for
154 interstate adult offender supervision which shall be responsible
155 for the appointment of the commissioner who shall serve on the
156 interstate commission from that state. Each state council shall
157 appoint as its commissioner the compact administrator from
158 that state to serve on the interstate commission in such capacity
159 under or pursuant to applicable law of the member state. While
160 each member state may determine the membership of its own
161 state council, its membership must include at least one repre-
162 sentative from the legislative, judicial, and executive branches
163 of government, victims groups and compact administrators.

164 (b) Each compacting state retains the right to determine the
165 qualifications of the compact administrator who shall be
166 appointed by the state council or by the governor in consulta-
167 tion with the Legislature and the judiciary.

168 (c) In addition to appointment of its commissioner to the
169 national interstate commission, each state council shall exercise
170 oversight and advocacy concerning its participation in interstate
171 commission activities and other duties as may be determined by
172 each member state including, but not limited to, development
173 of policy concerning operations and procedures of the compact
174 within that state.

175 ARTICLE V. POWERS AND DUTIES OF THE
176 INTERSTATE COMMISSION.

177 The interstate commission shall have the following powers:

178 (1) To adopt a seal and suitable bylaws governing the
179 management and operation of the interstate commission;

180 (2) To promulgate rules which shall have the force and
181 effect of statutory law and shall be binding in the compacting
182 states to the extent and in the manner provided in this compact;

183 (3) To oversee, supervise and coordinate the interstate
184 movement of offenders subject to the terms of this compact and
185 any bylaws adopted and rules promulgated by the compact
186 commission;

187 (4) To enforce compliance with compact provisions,
188 interstate commission rules, and bylaws, using all necessary and
189 proper means, including, but not limited to, the use of judicial
190 process;

191 (5) To establish and maintain offices;

192 (6) To purchase and maintain insurance and bonds;

193 (7) To borrow, accept or contract for services of personnel,
194 including, but not limited to, members and their staffs;

195 (8) To establish and appoint committees and hire staff
196 which it deems necessary for the carrying out of its functions
197 including, but not limited to, an executive committee as
198 required by article III which shall have the power to act on
199 behalf of the interstate commission in carrying out its powers
200 and duties hereunder;

201 (9) To elect or appoint such officers, attorneys, employees,
202 agents, or consultants, and to fix their compensation, define
203 their duties and determine their qualifications; and to establish
204 the interstate commission's personnel policies and programs
205 relating to, among other things, conflicts of interest, rates of
206 compensation, and qualifications of personnel;

207 (10) To accept any and all donations and grants of money,
208 equipment, supplies, materials, and services, and to receive,
209 utilize, and dispose of same;

210 (11) To lease, purchase, accept contributions or donations
211 of, or otherwise to own, hold, improve or use any property, real,
212 personal, or mixed;

213 (12) To sell, convey, mortgage, pledge, lease, exchange,
214 abandon, or otherwise dispose of any property, real, personal or
215 mixed;

216 (13) To establish a budget and make expenditures and levy
217 dues as provided in article X of this compact;

218 (14) To sue and be sued;

219 (15) To provide for dispute resolution among compacting
220 states;

221 (16) To perform such functions as may be necessary or
222 appropriate to achieve the purposes of this compact;

223 (17) To report annually to the legislatures, governors,
224 judiciary, and state councils of the compacting states concern-
225 ing the activities of the interstate commission during the
226 preceding year. Such reports shall also include any recommen-
227 dations that may have been adopted by the interstate commis-
228 sion;

229 (18) To coordinate education, training and public awareness
230 regarding the interstate movement of offenders for officials
231 involved in such activity; and

232 (19) To establish uniform standards for the reporting,
233 collecting, and exchanging of data.

234 ARTICLE VI. ORGANIZATION AND OPERATION
235 OF THE INTERSTATE COMMISSION.

236 Section A. Bylaws.

237 (a) The interstate commission shall, by a majority of the
238 members, within twelve months of the first interstate commis-
239 sion meeting, adopt bylaws to govern its conduct as may be
240 necessary or appropriate to carry out the purposes of the
241 compact, including, but not limited to:

242 (1) Establishing the fiscal year of the interstate commission;

243 (2) Establishing an executive committee and such other
244 committees as may be necessary providing reasonable standards
245 and procedures:

246 (i) For the establishment of committees; and

247 (ii) Governing any general or specific delegation of any
248 authority or function of the interstate commission;

249 (3) Providing reasonable procedures for calling and
250 conducting meetings of the interstate commission, and ensuring
251 reasonable notice of each such meeting;

252 (4) Establishing the titles and responsibilities of the officers
253 of the interstate commission;

254 (5) Providing reasonable standards and procedures for the
255 establishment of the personnel policies and programs of the
256 interstate commission. Notwithstanding any civil service or
257 other similar laws of any compacting state, the bylaws shall
258 exclusively govern the personnel policies and programs of the
259 interstate commission;

260 (6) Providing a mechanism for winding up the operations
261 of the interstate commission and the equitable return of any
262 surplus funds that may exist upon the termination of the
263 compact after the payment and/or reserving of all of its debts
264 and obligations;

265 (7) Providing transition rules for “start up” administration
266 of the compact; and

267 (8) Establishing standards and procedures for compliance
268 and technical assistance in carrying out the compact.

269 Section B. Officers and Staff.

270 (b)(1) The interstate commission shall, by a majority of the
271 members, elect from among its members a chairperson and a
272 vice chairperson, each of whom shall have such authorities and
273 duties as may be specified in the bylaws. The chairperson or, in
274 his or her absence or disability, the vice chairperson, shall
275 preside at all meetings of the interstate commission. The
276 officers so elected shall serve without compensation or remun-
277 eration from the interstate commission: *Provided*, That subject
278 to the availability of budgeted funds, the officers shall be

279 reimbursed for any actual and necessary costs and expenses
280 incurred by them in the performance of their duties and
281 responsibilities as officers of the interstate commission.

282 (2) The interstate commission shall, through its executive
283 committee, appoint or retain an executive director for such
284 period, upon such terms and conditions and for such compensa-
285 tion as the interstate commission may deem appropriate. The
286 executive director shall serve as secretary to the interstate
287 commission, and hire and supervise such other staff as may be
288 authorized by the interstate commission, but shall not be a
289 member.

290 Section C. Corporate Records of the Interstate Commission.

291 (c) The interstate commission shall maintain its corporate
292 books and records in accordance with the bylaws.

293 Section D. Qualified Immunity, Defense and Indemnification.

294 (d)(1) The members, officers, executive director and
295 employees of the interstate commission shall be immune from
296 suit and liability, either personally or in their official capacity,
297 for any claim for damage to or loss of property or personal
298 injury or other civil liability caused or arising out of any actual
299 or alleged act, error or omission that occurred within the scope
300 of interstate commission employment, duties or responsibili-
301 ties: *Provided*, That nothing in this paragraph shall be construed
302 to protect any such person from suit and/or liability for any
303 damage, loss, injury or liability caused by the intentional or
304 willful and wanton misconduct of any such person.

305 (2) The interstate commission shall defend the commis-
306 sioner of a compacting state, or his or her representatives or
307 employees, or the interstate commission's representatives or
308 employees, in any civil action seeking to impose liability,
309 arising out of any actual or alleged act, error or omission that

310 occurred within the scope of interstate commission employ-
311 ment, duties or responsibilities, or that the defendant has a
312 reasonable basis for believing occurred within the scope of
313 interstate commission employment, duties or responsibilities:
314 *Provided*, That the actual or alleged act, error or omission did
315 not result from intentional wrongdoing on the part of such
316 person.

317 (3) The interstate commission shall indemnify and hold the
318 commissioner of a compacting state, the appointed designee or
319 employees, or the interstate commission's representatives or
320 employees, harmless in the amount of any settlement or
321 judgment obtained against such persons arising out of any
322 actual or alleged act, error or omission that occurred within the
323 scope of interstate commission employment, duties or responsi-
324 bilities, or that such persons had a reasonable basis for believ-
325 ing occurred within the scope of interstate commission employ-
326 ment, duties or responsibilities: *Provided*, That the actual or
327 alleged act, error or omission did not result from gross negli-
328 gence or intentional wrongdoing on the part of such person.

329 ARTICLE VII. ACTIVITIES OF THE INTERSTATE COMMISSION.

330 (a) The interstate commission shall meet and take such
331 actions as are consistent with the provisions of this compact.

332 (b) Except as otherwise provided in this compact and unless
333 a greater percentage is required by the bylaws, in order to
334 constitute an act of the interstate commission, such act shall
335 have been taken at a meeting of the interstate commission and
336 shall have received an affirmative vote of a majority of the
337 members present.

338 (c) Each member of the interstate commission shall have
339 the right and power to cast a vote to which that compacting
340 state is entitled and to participate in the business and affairs of
341 the interstate commission. A member shall vote in person on

342 behalf of the state and shall not delegate a vote to another
343 member state. However, a state council shall appoint another
344 authorized representative, in the absence of the commissioner
345 from that state, to cast a vote on behalf of the member state at
346 a specified meeting. The bylaws may provide for members'
347 participation in meetings by telephone or other means of
348 telecommunication or electronic communication. Any voting
349 conducted by telephone, or other means of telecommunication
350 or electronic communication shall be subject to the same
351 quorum requirements of meetings where members are present
352 in person.

353 (d) The interstate commission shall meet at least once
354 during each calendar year. The chairperson of the interstate
355 commission may call additional meetings at any time and, upon
356 the request of a majority of the members, shall call additional
357 meetings.

358 (e) The interstate commission's bylaws establish conditions
359 and procedures under which the interstate commission shall
360 make its information and official records available to the public
361 for inspection or copying. The interstate commission may
362 exempt from disclosure any information or official records to
363 the extent they would adversely affect personal privacy rights
364 or proprietary interests. In promulgating such rules, the
365 interstate commission may make available to law-enforcement
366 agencies records and information otherwise exempt from
367 disclosure, and may enter into agreements with law-enforce-
368 ment agencies to receive or exchange information or records
369 subject to nondisclosure and confidentiality provisions.

370 (f) Public notice shall be given of all meetings and all
371 meetings shall be open to the public, except as set forth in the
372 rules or as otherwise provided in the compact. The interstate
373 commission shall promulgate rules consistent with the princi-
374 pals contained in the "Government in Sunshine Act" 5 U.S.C.
375 § 552(b), as may be amended. The interstate commission and

376 any of its committees may close a meeting to the public where
377 it determines by two-thirds vote that an open meeting would be
378 likely to:

379 (1) Relate solely to the interstate commission's internal
380 personnel practices and procedures;

381 (2) Disclose matters specifically exempted from disclosure
382 by statute;

383 (3) Disclose trade secrets or commercial or financial
384 information which is privileged or confidential;

385 (4) Involve accusing any person of a crime, or formally
386 censuring any person;

387 (5) Disclose information of a personal nature where
388 disclosure would constitute a clearly unwarranted invasion of
389 personal privacy;

390 (6) Disclose investigatory records compiled for law-
391 enforcement purposes;

392 (7) Disclose information contained in or related to examina-
393 tion, operating or condition reports prepared by, or on behalf of
394 or for the use of, the interstate commission with respect to a
395 regulated entity for the purpose of regulation or supervision of
396 such entity;

397 (8) Disclose information, the premature disclosure of which
398 would significantly endanger the life of a person or the stability
399 of a regulated entity; and

400 (9) Specifically relate to the interstate commission's
401 issuance of a subpoena or its participation in a civil action or
402 proceeding.

403 (g) For every meeting closed pursuant to this provision, the
404 interstate commission's chief legal officer shall publicly certify
405 that, in his or her opinion, the meeting may be closed to the
406 public, and shall reference each relevant exemptive provision.
407 The interstate commission shall keep minutes which shall fully
408 and clearly describe all matters discussed in any meeting and
409 shall provide a full and accurate summary of any actions taken,
410 and the reasons therefor, including a description of each of the
411 views expressed on any item and the record of any roll call
412 (effective in the vote of each member on the question). All
413 documents considered in connection with any action shall be
414 identified in such minutes.

415 (h) The interstate commission shall collect standardized
416 data concerning the interstate movement of offenders as
417 directed through its bylaws and rules which shall specify the
418 data to be collected, the means of collection and data exchange
419 and reporting requirements.

420 ARTICLE VIII. RULE MAKING FUNCTIONS
421 OF THE INTERSTATE COMMISSION.

422 (a) The interstate commission shall promulgate rules in
423 order to effectively and efficiently achieve the purposes of the
424 compact including transition rules governing administration of
425 the compact during the period in which it is being considered
426 and enacted by the states;

427 (b) Rule making shall occur pursuant to the criteria set forth
428 in this article and the bylaws and rules adopted pursuant
429 thereto. Such rule making shall substantially conform to the
430 principles of the federal Administrative Procedure Act, 5 U.S.C.
431 § 551 et seq., and the federal Advisory Committee Act, 5
432 U.S.C. app. 2, § 1 et seq., as may be amended (hereinafter
433 "APA"). All rules and amendments shall become binding as of
434 the date specified in each rule or amendment.

435 (c) If a majority of the legislatures of the compacting states
436 rejects a rule, by enactment of a statute of resolution in the
437 same manner used to adopt the compact, then such rule shall
438 have no further force and effect in any compacting state.

439 (d) When promulgating a rule, the interstate commission
440 shall:

441 (1) Publish the proposed rule stating with particularity the
442 text of the rule which is proposed and the reason for the
443 proposed rule;

444 (2) Allow persons to submit written data, facts, opinions
445 and arguments, which information shall be publicly available;

446 (3) Provide an opportunity for an informal hearing; and

447 (4) Promulgate a final rule and its effective date, if appro-
448 priate, based on the rule making record.

449 (e) Not later than sixty days after a rule is promulgated, any
450 interested person may file a petition in the United States
451 District Court for the District of Columbia or in the Federal
452 District Court where the interstate commission's principal
453 office is located for judicial review of such rule. If the court
454 finds that the interstate commission's action is not supported by
455 substantial evidence, (as defined in the APA), in the rule
456 making record, the court shall hold the rule unlawful and set it
457 aside.

458 (f) Subjects to be addressed within twelve months after the
459 first meeting must at a minimum include:

460 (1) Notice to victims and opportunity to be heard;

461 (2) Offender registration and compliance;

- 462 (3) Violations/returns;
- 463 (4) Transfer procedures and forms;
- 464 (5) Eligibility for transfer;
- 465 (6) Collection of restitution and fees from offenders;
- 466 (7) Data collection and reporting;
- 467 (8) The level of supervision to be provided by the receiving
468 state;
- 469 (9) Transition rules governing the operation of the compact
470 and the interstate commission during all or part of the period
471 between the effective date of the compact and the date on which
472 the last eligible state adopts the compact; and
- 473 (10) Mediation, arbitration and dispute resolution.
- 474 (g) The existing rules governing the operation of the
475 previous compact superceded by this act shall be null and void
476 twelve months after the first meeting of the interstate commis-
477 sion created hereunder.
- 478 (h) Upon determination by the interstate commission that
479 an emergency exists, it may promulgate an emergency rule
480 which shall become effective immediately upon adoption:
481 *Provided*, That the usual rule-making procedures provided
482 hereunder shall be retroactively applied to said rule as soon as
483 reasonably possible, in no event later than ninety days after the
484 effective date of the rule.

485 ARTICLE IX. OVERSIGHT, ENFORCEMENT,
486 AND DISPUTE RESOLUTION BY
487 THE INTERSTATE COMMISSION.

488 Section A. Oversight.

489 (a)(1) The interstate commission shall oversee the interstate
490 movement of adult offenders in the compacting states and shall
491 monitor such activities being administered in noncompacting
492 states which may significantly affect compacting states.

493 (2) The courts and executive agencies in each compacting
494 state shall enforce this compact and shall take all actions
495 necessary and appropriate to effectuate the compact's purposes
496 and intent. In any judicial or administrative proceeding in a
497 compacting state pertaining to the subject matter of this
498 compact which may affect the powers, responsibilities or
499 actions of the interstate commission, the interstate commission
500 shall be entitled to receive all service of process in any such
501 proceeding, and shall have standing to intervene in the proceed-
502 ing for all purposes.

503 Section B. Dispute Resolution.

504 (b)(1) The compacting states shall report to the interstate
505 commission on issues or activities of concern to them, and
506 cooperate with and support the interstate commission on the
507 discharge of its duties and responsibilities.

508 (2) The interstate commission shall attempt to resolve any
509 disputes or other issues which are subject to the compact and
510 which may arise among compacting states and noncompacting
511 states.

512 (3) The interstate commission shall enact a bylaw or
513 promulgate a rule providing for both mediation and binding
514 dispute resolution for disputes among the compacting states.

515 Section C. Enforcement.

516 (c) The interstate commission, in the reasonable exercise of
517 its discretion, shall enforce the provisions of this compact using

518 any or all means set forth in article XII, section B, of this
519 compact.

520

ARTICLE X. FINANCE.

521 (a) The interstate commission shall pay or provide for the
522 payment of the reasonable expenses of its establishment
523 organization and ongoing activities.

524 (b) The interstate commission shall levy on and collect an
525 annual assessment from each compacting state to cover the cost
526 of the internal operations and activities of the interstate com-
527 mission and its staff which must be in a total amount sufficient
528 to cover the interstate commission's annual budget as approved
529 each year. The aggregate annual assessment amount shall be
530 allocated based upon a formula to be determined by the
531 interstate commission, taking into consideration the population
532 of the state and the volume of interstate movement of offenders
533 in each compacting state and shall promulgate a rule binding
534 upon all compacting states which governs said assessment.

535 (c) The interstate commission shall not incur any obliga-
536 tions of any kind prior in securing the funds adequate to meet
537 the same; nor shall the interstate commission pledge the credit
538 of any of the compacting states, except by and with the author-
539 ity of the compacting state.

540 (d) The interstate commission shall keep accurate accounts
541 of all receipts and disbursements. The receipts and disburse-
542 ments of the interstate commission shall be subject to the audit
543 and accounting procedures established under its bylaws.
544 However, all receipts and disbursements of funds handled by
545 the interstate commission shall be audited yearly by a certified
546 or licensed public accountant and the report of the audit shall be
547 included in and become part of the annual report of the inter-
548 state commission.

549 ARTICLE XI. COMPACTING STATES, EFFECTIVE DATE
550 AND AMENDMENT.

551 (a) Any state, as defined in article II of this compact, is
552 eligible to become a compacting state.

553 (b) The compact shall become effective and binding upon
554 legislative enactment of the compact into law by no less than
555 thirty-five of the states. The initial effective date shall be the
556 later of the first day of July, two thousand one, or upon enact-
557 ment into law by the thirty-fifth jurisdiction. Thereafter it shall
558 become effective and binding, as to any other compacting state,
559 upon enactment of the compact into law by that state. The
560 governors of nonmember states or their designees will be
561 invited to participate in interstate commission activities on a
562 nonvoting basis prior to adoption of the compact by all states
563 and territories of the United States.

564 (c) Amendments to the compact may be proposed by the
565 interstate commission for enactment by the compacting states.
566 No amendment shall become effective and binding upon the
567 interstate commission and the compacting states unless and
568 until it is enacted into law by unanimous consent of the
569 compacting states.

570 ARTICLE XII. WITHDRAWAL, DEFAULT,
571 TERMINATION, AND JUDICIAL ENFORCEMENT.

572 Section A. Withdrawal.

573 (a)(1) Once effective, the compact shall continue in force
574 and remain binding upon each and every compacting state:
575 *Provided*, That a compacting state may withdraw from the
576 compact (“withdrawing state”) by enacting a statute specifically
577 repealing the statute which enacted the compact into law.

578 (2) The effective date of withdrawal is the effective date of
579 the repeal.

580 (3) The withdrawing state shall immediately notify the
581 chairperson of the interstate commission in writing upon the
582 introduction of legislation repealing this compact in the
583 withdrawing state. The interstate commission shall notify the
584 other compacting states of the withdrawing state's intent to
585 withdraw within sixty days of its receipt thereof.

586 (4) The withdrawing state is responsible for all assessments,
587 obligations and liabilities incurred through the effective date of
588 withdrawal, including any obligations, the performance of
589 which extend beyond the effective date of withdrawal.

590 (5) Reinstatement following withdrawal of any compacting
591 state shall occur upon the withdrawing state reenacting the
592 compact or upon such later date as determined by the interstate
593 commission.

594 Section B. Default

595 (b)(1) If the interstate commission determines that any
596 compacting state has at any time defaulted ("defaulting state")
597 in the performance of any of its obligations or responsibilities
598 under this compact, the bylaws or any duly promulgated rules
599 the interstate commission may impose any or all of the follow-
600 ing penalties:

601 (A) Fines, fees and costs in such amounts as are deemed to
602 be reasonable as fixed by the interstate commission;

603 (B) Remedial training and technical assistance as directed
604 by the interstate commission; and

605 (C) Suspension and termination of membership in the
606 compact. Suspension shall be imposed only after all other
607 reasonable means of securing compliance under the bylaws and
608 rules have been exhausted. Immediate notice of suspension
609 shall be given by the interstate commission to the governor, the

610 chief justice or chief judicial officer of the state, the majority
611 and minority leaders of the defaulting state's legislature, and
612 the state council.

613 (2) The grounds for default include, but are not limited to,
614 failure of a compacting state to perform such obligations or
615 responsibilities imposed upon it by the compact, interstate
616 commission bylaws, or duly promulgated rules. The interstate
617 commission shall immediately notify the defaulting state in
618 writing of the penalty imposed by the interstate commission on
619 the defaulting state pending a cure of the default. The interstate
620 commission shall stipulate the conditions and the time period
621 within which the defaulting state must cure its default. If the
622 defaulting state fails to cure the default within the time period
623 specified by the interstate commission, in addition to any other
624 penalties imposed herein, the defaulting state may be termi-
625 nated from the compact upon an affirmative vote of a majority
626 of the compacting states and all rights, privileges and benefits
627 conferred by this compact shall be terminated from the effective
628 date of suspension. Within sixty days of the effective date of
629 termination of a defaulting state, the interstate commission shall
630 notify the governor, the chief justice or chief judicial officer
631 and the majority and minority leaders of the defaulting state's
632 legislature and the state council of such termination.

633 (3) The defaulting state is responsible for all assessments,
634 obligations and liabilities incurred through the effective date of
635 termination including any obligations, the performance of
636 which extends beyond the effective date of termination.

637 (4) The interstate commission shall not bear any costs
638 relating to the defaulting state unless otherwise mutually agreed
639 upon between the interstate commission and the defaulting
640 state. Reinstatement following termination of any compacting
641 state requires both a reenactment of the compact by the default-

642 ing state and the approval of the interstate commission pursuant
643 to the rules.

644 Section C. Judicial Enforcement.

645 (c) The interstate commission shall not bear any costs
646 relating to the defaulting state unless otherwise mutually agreed
647 upon between the interstate commission and the defaulting
648 state. Reinstatement following termination of any compacting
649 state requires both a reenactment of the compact by the default-
650 ing state and the approval of the interstate commission pursuant
651 to the rules. The interstate commission may, by majority vote
652 of the members, initiate legal action in the United States
653 District Court for the District of Columbia or, at the discretion
654 of the interstate commission, in the Federal District where the
655 interstate commission has its offices to enforce compliance with
656 the provisions of the compact, its duly promulgated rules and
657 bylaws, against any compacting state in default. In the event
658 judicial enforcement is necessary the prevailing party shall be
659 awarded all costs of such litigation including reasonable
660 attorneys fees.

661 Section D. Dissolution of Compact.

662 (d)(1) The compact dissolves effective upon the date of the
663 withdrawal or default of the compacting states which reduces
664 membership in the compact to one compacting state.

665 (2) Upon the dissolution of this compact, the compact
666 becomes null and void and shall be of no further force or effect,
667 and the business and affairs of the interstate commission shall
668 be wound up and any surplus funds shall be distributed in
669 accordance with the bylaws.

670 ARTICLE XIII. SEVERABILITY AND CONSTRUCTION.

671 (a) The provisions of this compact shall be severable, and
672 if any phrase, clause, sentence or provision is deemed unen-
673 forceable, the remaining provisions of the compact shall be
674 enforceable.

675 (b) The provisions of this compact shall be liberally
676 constructed to effectuate its purposes.

677 ARTICLE XIV. BINDING EFFECT OF
678 COMPACT AND OTHER LAWS.

679 Section A. Other laws.

680 (a)(1) Nothing herein prevents the enforcement of any other
681 law of a compacting state that is not inconsistent with this
682 compact.

683 (2) All compacting states' laws conflicting with this
684 compact are superseded to the extent of the conflict.

685 Section B. Binding Effect of the Compact

686 (b)(1) All lawful actions of the interstate commission,
687 including all rules and bylaws promulgated by the interstate
688 commission, are binding upon the compacting states.

689 (2) All agreements between the interstate commission and
690 the compacting states are binding in accordance with their
691 terms.

692 (3) Upon the request of a party to a conflict over meaning
693 or interpretation of interstate commission actions, and upon a
694 majority vote of the compacting states, the interstate commis-
695 sions may issue advisory opinions regarding such meaning or
696 interpretation.

697 (4) In the event any provision of this compact exceeds the
698 constitutional limits imposed on the legislature of any compact-

699 ing state, the obligations, duties, powers or jurisdiction sought
700 to be conferred by such provision upon the interstate commis-
701 sion shall be ineffective and such obligations, duties, powers or
702 jurisdiction shall remain in the compacting state and shall be
703 exercised by the agency thereto to which such obligations,
704 duties, powers or jurisdiction are delegated by law in effect at
705 the time this compact becomes effective.

§28-7-2. State council for interstate adult offender supervision.

1 (a) Within thirty days of the effective date of this article,
2 there shall be created a state council for interstate adult offender
3 supervision. Said state council shall be comprised of a total of
4 nine members, to be selected and designated as follows:

5 (1) Two members designated by the state Legislature, one
6 of whom shall be named and appointed by the speaker of the
7 House, and the other of whom shall be designated by the
8 president of the Senate;

9 (2) Two members designated by the judiciary, both of
10 whom shall be named and appointed by the chief justice of the
11 supreme court of appeals of West Virginia;

12 (3) The compact administrator or a designee of the compact
13 administrator;

14 (4) Four members to be designated and appointed by the
15 governor, two of whom must be representatives of state
16 agencies dealing with adult corrections, parole or probation, and
17 one of whom must be a representative of a victims' group.

18 (b) Within sixty days of the effective date of this article, the
19 state council shall meet and designate a commissioner who

20 shall represent the state as the compacting state's voting
21 representative under article III of this compact.

22 (c) The state council will exercise oversight and advocacy
23 concerning West Virginia's participation in interstate commis-
24 sion activities and rule makings, and engage in other duties and
25 activities as determined by its members, including, but not
26 limited to, the development of policy concerning the operations
27 and procedures for implementing the compact and interstate
28 commission rules within West Virginia.

§28-7-3. Appointment of compact administrator.

1 (a) Upon and after the effective date of the interstate
2 compact for adult offender supervision, the governor is hereby
3 authorized and empowered to designate an officer who shall be
4 the compact administrator and who, acting jointly with like
5 offices of the other party states, shall be responsible for the
6 administration and management of this state's supervision and
7 transfer of adult offenders subject to the terms of this compact,
8 the rules adopted by the interstate commission and the policies
9 adopted by the state council under this compact. Said compact
10 administrator shall serve subject to the will and pleasure of the
11 governor, and must meet the minimum qualifications for the
12 position of compact administrator, as established by the state
13 council. The compact administrator is hereby authorized,
14 empowered and directed to cooperate with all departments,
15 agencies and officers of and in the government of this state and
16 its subdivisions in facilitating the proper administration of the
17 compact or of any supplementary agreement or agreements
18 entered into by this state hereunder.

19 (b) Until such time as the state council has met and estab-
20 lished minimum qualifications for the position of compact

21 administrator, the individual or administrator who has been
22 designated by the governor to act as the compact administrator
23 for the supervision of out-of-state parolees and probationers,
24 pursuant to section one, article six of this chapter, may perform
25 the duties and responsibilities of compact administrator under
26 this article.

27 (c) Until such time as the state council has met and desig-
28 nated a commissioner to vote on behalf of the state of West
29 Virginia at the interstate commission, the individual or adminis-
30 trator who has been designated to act as the compact adminis-
31 trator for the supervision of out-of-state parolees and probatio-
32 ners, pursuant to section one, article six of this chapter, shall
33 function as the acting commissioner for the state of West
34 Virginia before the interstate commission formed under the new
35 compact.

CHAPTER 79

**(S. B. 654 — By Senators Caldwell, Kessler, Jenkins, Hunter, Minard,
Oliverio, Ross, Rowe, White, Deem, Harrison, Smith and Weeks)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-six, relating to community corrections generally; eligibility for community corrections supervision; extended supervision for certain sex offenders; supervision where available through community corrections; fees; procedures; and penalties.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-six, to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

1 (a) Notwithstanding any provision of this code to the
2 contrary, any defendant convicted after the effective date of this
3 section of a violation of section twelve, article eight, chapter
4 sixty-one of this code or a felony violation of the provisions of
5 article eight-b, eight-c or eight-d of said chapter may, as part of
6 the sentence imposed at final disposition, be required to serve,
7 in addition to any other penalty or condition imposed by the
8 court, a period of supervised release of up to fifty years. The
9 period of supervised release imposed by the provisions of this
10 section shall begin upon the expiration of any period of
11 probation, the expiration of any sentence of incarceration or the
12 expiration of any period of parole supervision imposed or
13 required of the person so convicted, whichever expires later.

14 (b) Any person sentenced to a period of supervised release
15 pursuant to the provisions of this section shall be supervised by
16 the probation office of the sentencing court or by the commu-
17 nity corrections program established in said circuit unless
18 jurisdiction is transferred elsewhere by order of the sentencing
19 court.

20 (c) A defendant sentenced to a period of supervised release
21 shall be subject to any or all of the conditions applicable to a

22 person placed upon probation pursuant to the provisions of
23 section nine, article twelve, chapter sixty-one of this code:
24 *Provided*, That any defendant sentenced to a period of super-
25 vised release pursuant to this section shall be required to
26 participate in appropriate offender treatment programs or
27 counseling during the period of supervised release unless the
28 court deems such to no longer be appropriate or necessary and
29 makes express findings in support thereof.

30 (d) The sentencing court may, based upon defendant's
31 ability to pay, impose a supervision fee to offset the cost of
32 supervision. Said fee shall not exceed fifty dollars per month.
33 Said fee may be modified periodically based upon the defen-
34 dant's ability to pay.

35 (e) *Modification of conditions or revocation.* — The court
36 may:

37 (1) Terminate a term of supervised release and discharge
38 the defendant released at any time after the expiration of two
39 years of supervised release, pursuant to the provisions of the
40 West Virginia rules of criminal procedure relating to the
41 modification of probation, if it is satisfied that such action is
42 warranted by the conduct of the defendant released and the
43 interests of justice;

44 (2) Extend a period of supervised release if less than the
45 maximum authorized period was previously imposed or modify,
46 reduce or enlarge the conditions of supervised release, at any
47 time prior to the expiration or termination of the term of
48 supervised release, consistent with the provisions of the West
49 Virginia rules of criminal procedure relating to the modification
50 of probation and the provisions applicable to the initial setting
51 of the terms and conditions of post-release supervision;

52 (3) Revoke a term of supervised release and require the
53 defendant to serve in prison all or part of the term of supervised
54 release without credit for time previously served on supervised
55 release if the court, pursuant to the West Virginia rules of
56 criminal procedure applicable to revocation of probation, finds
57 by clear and convincing evidence that the defendant violated a
58 condition of supervised release, except that a defendant whose
59 term is revoked under this subdivision may not be required to
60 serve more than the period of supervised release: *Provided,*
61 That no person may serve a period of incarceration for a
62 violation of supervised release which exceeds the maximum
63 statutory period of confinement for the offense of conviction
64 underlying the period of supervised release;

65 (4) Order the defendant to remain at his place of residence
66 during nonworking hours and, if the court so directs, to have
67 compliance monitored by telephone or electronic signaling
68 devices, except that an order under this paragraph may be
69 imposed only as an alternative to incarceration.

70 (f) *Written statement of conditions.* — The court shall direct
71 that the probation officer provide the defendant with a written
72 statement that sets forth all the conditions to which the term of
73 supervised release is subject and that it is sufficiently clear and
74 specific to serve as a guide for the defendant's conduct and for
75 such supervision as is required.

76 (g) *Supervised release following revocation.* — When a
77 term of supervised release is revoked and the defendant is
78 required to serve a term of imprisonment that is less than the
79 maximum term of imprisonment authorized under subsection
80 (a) of this section, the court may include a requirement that the
81 defendant be placed on a term of supervised release after
82 imprisonment. The length of such term of supervised release
83 shall not exceed the term of supervised release authorized by

84 this section less any term of imprisonment that was imposed
85 upon revocation of supervised release.

86 (h) *Delayed revocation.* — The power of the court to revoke
87 a term of supervised release for violation of a condition of
88 supervised release and to order the defendant to serve a term of
89 imprisonment and, subject to the limitations in subsection (f) of
90 this section, a further term of supervised release extends beyond
91 the expiration of the term of adjudication of matters arising
92 before its expiration if, before its expiration, a warrant or
93 summons has been issued on the basis of an allegation of such
94 a violation.

CHAPTER 80

(Com. Sub. for H. B. 2001 — By Delegates Stemple, Kominar,
Pino, Pethtel, Mahan, Amores and Craig)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-ll, relating to restricting public access to military discharge forms recorded in the county clerks office.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ll, to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-31l. Clerk of the county commission duties relating to record keeping of military discharge forms.

1 (a) The county commission shall order that the clerk of the
2 county commission wherein a person discharged from the
3 armed forces of the United States resides record, upon presenta-
4 tion, free of charge, the original or a properly authenticated
5 copy of either the discharge certificate or the report of separa-
6 tion from active duty (Department of Defense Document DD-
7 214), or both, and maintain the discharge certificate or report,
8 or both, in the clerk's office in a secure manner, rendering the
9 records unavailable to the public.

10 (b) Notwithstanding the provisions of article one, chapter
11 twenty-nine-b of this code, discharge certificates and reports of
12 separation from active duty recorded pursuant to this section
13 may be copied or inspected only by the following:

14 (1) The person of the record;

15 (2) The duly qualified conservator or guardian of the person
16 of the record;

17 (3) The duly qualified executor or administrator of the
18 estate of the person of the record, if deceased, or, in the event
19 no executor or administrator has qualified, the next of kin of the
20 deceased person;

21 (4) An attorney, attorney-in-fact, or other agent or represen-
22 tative of any of the persons described in subdivision (1), (2) or
23 (3), subsection (b) of this section, acting pursuant to a written
24 power of attorney or other written authorization; or

25 (5) A duly authorized representative of an agency or
26 instrumentality of federal, state, or local government seeking
27 the record in the ordinary course of performing its official
28 duties.

29 (c) Under the circumstances where time is of the essence,
30 including, but not limited to, requests for copies of records
31 attendant to the making of funeral arrangements or arrange-
32 ments for medical care, the clerk, in ascertaining whether a
33 person seeking access to discharge certificates or reports of
34 separation from active duty is qualified to do so pursuant to
35 subsection (b) of this section, may rely upon the sworn state-
36 ment of the requestor made in person before the clerk or his
37 deputy.

38 (d) Notwithstanding the provisions of subsection (b) of this
39 section, the clerk may permit access to discharge certificates or
40 reports of separation from active duty of deceased persons for
41 bona fide genealogical or other research purposes.

CHAPTER 81

(Com. Sub. for H. B. 2818 — By Delegates Doyle, Tabb and Manuel)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections three-mm and three-nn, all relating to authorizing the county commissions of growth counties, by adoption of an ordinance, to establish programs for the transfer of property rights upon approval by a majority of the legal votes cast at a county-wide election; providing for a county-wide election on an ordinance for a program for transfer of development rights; form of ballots or ballot labels; election procedure.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections three-mm and three-nn, all to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3mm. Transfer of development rights in growth counties.

§7-1-3nn. Election on ordinance for program for transfer of development rights; form of ballots or ballot labels; procedure.

§7-1-3mm. Transfer of development rights in growth counties.

1 (a) In addition to all other powers and duties now conferred
2 by law upon county commissions, if a county has been desig-
3 nated as a growth county, as that term is defined in section
4 three, article twenty, chapter seven of this code, those county
5 commissions, upon approval by a majority of the legal votes
6 cast at an election as provided in section three-nn of this article,
7 are hereby authorized to, as part of a county-wide zoning
8 ordinance, which has been in effect for a minimum of five
9 years, establish a program for the transfer of development
10 rights, in order to:

11 (1) Encourage the preservation of natural resources;

12 (2) Protect the scenic, recreational and agricultural qualities
13 of open lands; and

14 (3) Facilitate orderly growth and development in the
15 county.

16 (b) The program for the transfer of development rights may
17 provide for:

18 (1) The voluntary transfer of the development rights
19 permitted on any parcel of land to another parcel of land;

20 (2) Restricting or prohibiting further development of the
21 parcel from which development rights; and

22 (3) Increasing the density or intensity of development of the
23 parcel to which such rights are transferred.

24 (c) The program for the transfer of development rights
25 shall:

26 (1) Designate a universal program for which development
27 rights may be transferred from any parcel of land to any other
28 parcel of land;

29 (2) Provide that any rights transferred under this section be
30 for ten years; and

31 (3) Any rights purchased, but not used for development,
32 revert to the original owner after ten years.

33 (d) The county commission may not set a price for any
34 development rights that are proposed to be transferred or
35 received.

36 (e) "Transferable development rights" means an interest in
37 real property that constitutes the right to develop and use
38 property under the zoning ordinance which is made severable
39 from the parcel to which the interest is appurtenant and trans-
40 ferable to another parcel of land for development and use in
41 accordance with the zoning ordinance. Transferable develop-
42 ment rights may be transferred by deed from the owner of the
43 parcel from which the development rights are derived and upon
44 the transfer shall vest in the grantee and be freely alienable. The
45 zoning ordinance may provide for the method of transfer of
46 these rights and may provide for the granting of easements and
47 reasonable regulations to effect and control transfers and assure
48 compliance with the provisions of the ordinance.

§7-1-3nn. Election on ordinance for program for transfer of development rights; form of ballots or ballot labels; procedure.

1 (a) A county commission which has been designated as a
2 growth county may submit a proposed ordinance to establish a
3 program for the transfer of development rights pursuant to
4 section three-mm of this article to the qualified voters residing
5 within the county for approval or rejection at any regular
6 primary or general election. Notice of the election shall be
7 provided and the ballots shall be printed as set forth in subsec-
8 tion (b) of this section. The ordinance may be adopted if it is
9 approved by a majority of the legal votes cast thereon in that
10 county. If the ordinance is rejected, no election on the issue
11 shall be held thereafter for a period of one hundred four weeks.

12 (b) On the election ballots shall be printed the following:

13 Shall the County Commission of (name of county) be
14 authorized to adopt an ordinance to establish a program for the
15 transfer of development rights in accordance with Section three-
16 mm, Article one, Chapter seven of the Code of West Virginia?

17 //Yes

18 //No

19 (c) If a majority of the legal votes cast upon the question be
20 for the ordinance, the provisions of the ordinance become
21 effective upon the date the results of the election are declared.
22 If a majority of the legal votes cast upon the question be against
23 the ordinance, the ordinance shall not take effect.

24 (d) Subject to the provisions of subsection (c) of this
25 section, an election permitted by this section may be conducted
26 at any regular primary or general election as the county

27 commission in its order submitting the same to a vote may
28 designate.

29 (e) Notice of an election pursuant to this section shall be
30 given by publication of the order calling for a vote on the
31 question as a Class II-0 legal advertisement in compliance with
32 the provisions of article three, chapter fifty-nine of this code
33 and the publication area for the publication shall be the county
34 in which the election is to be conducted.

35 (f) Any election permitted by this section shall be held at
36 the voting precincts established for holding primary or general
37 elections. All of the provisions of the general election laws of
38 this state applicable to primary or general elections not incon-
39 sistent with the provisions of this section shall apply to voting
40 and elections authorized by this section.

CHAPTER 82

(Com. Sub. for S. B. 432 — By Senator Oliverio)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to payment plans when collecting a portion of a magistrate court fine; and permitting an obligor to accelerate payment of a fine.

Be it enacted by the Legislature of West Virginia:

That section two-a, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment by credit card or payment plan; suspension of licenses for failure to make payments or appear or respond; restitution; liens.

1 (a) A magistrate court may accept credit cards in payment
2 of all costs, fines, fees, forfeitures, restitution or penalties in
3 accordance with rules promulgated by the supreme court of
4 appeals. Any charges made by the credit company shall be paid
5 by the person responsible for paying the cost, fine, forfeiture or
6 penalty.

7 (b) Unless otherwise required by law, a magistrate court
8 may collect a portion of any costs, fines, fees, forfeitures,
9 restitution or penalties at the time the amount is imposed by the
10 court so long as the court requires the balance to be paid in
11 accordance with a payment plan which specifies: (1) The
12 number of payments to be made; (2) the dates on which the
13 payments are due; and (3) the amounts due for each payment.
14 The written agreement represents the minimum payments and
15 the last date those payments may be made. The obligor or the
16 obligor's agent may accelerate the payment schedule at any
17 time by paying any additional portion of any costs, fines, fees,
18 forfeitures, restitution or penalties.

19 (c) (1) If any costs, fines, fees, forfeitures, restitution or
20 penalties imposed by the magistrate court in a criminal case are
21 not paid within one hundred eighty days from the date of
22 judgment and the expiration of any stay of execution, the
23 magistrate court clerk or, upon judgment rendered on appeal,
24 the circuit clerk shall notify the commissioner of the division of
25 motor vehicles of the failure to pay. Upon notice, the division

26 of motor vehicles shall suspend any privilege the person
27 defaulting on payment may have to operate a motor vehicle in
28 this state, including any driver's license issued to the person by
29 the division of motor vehicles, until all costs, fines, fees,
30 forfeitures, restitution or penalties are paid in full. The suspen-
31 sion shall be imposed in accordance with the provisions of
32 section six, article three, chapter seventeen-b of this code:
33 *Provided*, That any person who has had his or her license to
34 operate a motor vehicle in this state suspended pursuant to this
35 subsection and his or her failure to pay is based upon inability
36 to pay may, if he or she is employed on a full or part-time basis,
37 petition to the circuit court for an order authorizing him or her
38 to operate a motor vehicle solely for employment purposes.
39 Upon a showing satisfactory to the court of inability to pay,
40 employment and compliance with other applicable motor
41 vehicle laws, the court shall issue an order granting relief.

42 (2) In addition to the provisions of subdivision (1) of this
43 subsection, if any costs, fines, fees, forfeitures, restitution or
44 penalties imposed or ordered by the magistrate court for a
45 hunting violation described in chapter twenty of this code are
46 not paid within one hundred eighty days from the date of
47 judgment and the expiration of any stay of execution, the
48 magistrate court clerk or, upon a judgment rendered on appeal,
49 the circuit clerk shall notify the director of the division of
50 natural resources of the failure to pay. Upon notice, the director
51 of the division of natural resources shall suspend any privilege
52 the person failing to appear or otherwise respond may have to
53 hunt in this state, including any hunting license issued to the
54 person by the division of natural resources, until all the costs,
55 fines, fees, forfeitures, restitution or penalties are paid in full.

56 (3) In addition to the provisions of subdivision (1) of this
57 subsection, if any costs, fines, fees, forfeitures, restitution or
58 penalties imposed or ordered by the magistrate court for a
59 fishing violation described in chapter twenty of this code are

60 not paid within one hundred eighty days from the date of
61 judgment and the expiration of any stay of execution, the
62 magistrate court clerk or, upon a judgment rendered on appeal,
63 the circuit clerk shall notify the director of the division of
64 natural resources of the failure to pay. Upon notice, the director
65 of the division of natural resources shall suspend any privilege
66 the person failing to appear or otherwise respond may have to
67 fish in this state, including any fishing license issued to the
68 person by the division of natural resources, until all the costs,
69 fines, fees, forfeitures, restitution or penalties are paid in full.

70 (d) (1) If a person charged with any criminal violation of
71 this code fails to appear or otherwise respond in court, the
72 magistrate court shall notify the commissioner of the division
73 of motor vehicles thereof within fifteen days of the scheduled
74 date to appear unless the person sooner appears or otherwise
75 responds in court to the satisfaction of the magistrate. Upon
76 notice, the division of motor vehicles shall suspend any
77 privilege the person failing to appear or otherwise respond may
78 have to operate a motor vehicle in this state, including any
79 driver's license issued to the person by the division of motor
80 vehicles, until final judgment in the case and, if a judgment of
81 guilty, until all costs, fines, fees, forfeitures, restitution or
82 penalties imposed are paid in full. The suspension shall be
83 imposed in accordance with the provisions of section six, article
84 three, chapter seventeen-b of this code.

85 (2) In addition to the provisions of subdivision (1) of this
86 subsection, if a person charged with any hunting violation
87 described in chapter twenty of this code fails to appear or
88 otherwise respond in court, the magistrate court shall notify the
89 director of the division of natural resources of the failure
90 thereof within fifteen days of the scheduled date to appear
91 unless the person sooner appears or otherwise responds in court
92 to the satisfaction of the magistrate. Upon notice, the director
93 of the division of natural resources shall suspend any privilege

94 the person failing to appear or otherwise respond may have to
95 hunt in this state, including any hunting license issued to the
96 person by the division of natural resources, until final judgment
97 in the case and, if a judgment of guilty, until all costs, fines,
98 fees, forfeitures, restitution or penalties imposed are paid in
99 full.

100 (3) In addition to the provisions of subdivision (1) of this
101 subsection, if a person charged with any fishing violation
102 described in chapter twenty of this code fails to appear or
103 otherwise respond in court, the magistrate court shall notify the
104 director of the division of natural resources of the failure
105 thereof within fifteen days of the scheduled date to appear
106 unless the person sooner appears or otherwise responds in court
107 to the satisfaction of the magistrate. Upon notice, the director
108 of the division of natural resources shall suspend any privilege
109 the person failing to appear or otherwise respond may have to
110 fish in this state, including any fishing license issued to the
111 person by the division of natural resources, until final judgment
112 in the case and, if a judgment of guilty, until all costs, fines,
113 fees, forfeitures, restitution or penalties imposed are paid in
114 full.

115 (e) In every criminal case which involves a misdemeanor
116 violation, a magistrate may order restitution where appropriate
117 when rendering judgment.

118 (f) (1) If all costs, fines, fees, forfeitures, restitution or
119 penalties imposed by a magistrate court and ordered to be paid
120 are not paid within one hundred eighty days from the date of
121 judgment and the expiration of any stay of execution, the clerk
122 of the magistrate court shall notify the prosecuting attorney of
123 the county of nonpayment and provide the prosecuting attorney
124 with an abstract of judgment. The prosecuting attorney shall file
125 the abstract of judgment in the office of the clerk of the county
126 commission in the county where the defendant was convicted

127 and in any county wherein the defendant resides or owns
128 property. The clerks of the county commissions shall record and
129 index the abstracts of judgment without charge or fee to the
130 prosecuting attorney and when so recorded, the amount stated
131 to be owing in the abstract shall constitute a lien against all
132 property of the defendant.

133 (2) When all the costs, fines, fees, forfeitures, restitution or
134 penalties described in subdivision (1) of this subsection for
135 which an abstract of judgment has been recorded are paid in
136 full, the clerk of the magistrate court shall notify the prosecut-
137 ing attorney of the county of payment and provide the prosecut-
138 ing attorney with a release of judgment, prepared in accordance
139 with the provisions of section one, article twelve, chapter
140 thirty-eight of this code, for filing and recordation pursuant to
141 the provisions of this subdivision. Upon receipt from the clerk,
142 the prosecuting attorney shall file the release of judgment in the
143 office of the clerk of the county commission in each county
144 where an abstract of the judgment was recorded. The clerks of
145 the county commissions shall record and index the release of
146 judgment without charge or fee to the prosecuting attorney.

CHAPTER 83

**(Com. Sub. for S. B. 213 — By Senators Kessler, Snyder, Harrison,
Sprouse, Oliverio, Caldwell, McKenzie, Love, Fanning, Facemyer,
Ross, Plymale, Boley, Sharpe, Minard, Jenkins, Bailey, Prezioso,
Minear, Deem, Weeks, Helmick, Guills, Edgell, Smith,
Hunter, Unger and Tomblin, Mr. President)**

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to venue in West Virginia state courts as it applies to nonresidents of the state; providing that a nonresident may not bring an action in this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state; setting forth the conditions under which a nonresident can file an action in this state if the nonresident cannot obtain jurisdiction over a defendant in the state where the action arose; requiring a nonresident to establish that such action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant; providing that in a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue; limiting a nonresident from intervening or joining as a plaintiff unless the person independently establishes proper venue; and requiring the court to dismiss a plaintiff without prejudice if venue is not proper as to any such nonresident plaintiff in any court of this state.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. VENUE.

§56-1-1. Venue generally.

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

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

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

21 (3) If it be to recover land or subject it to a debt, where the
22 land or any part may be;

23 (4) If it be against one or more nonresidents of the state,
24 where any one of them may be found and served with process
25 or may have estate or debts due him or them;

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

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

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

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

50 (c) Effective for actions filed after the effective date of this
51 section, a nonresident of the state may not bring an action in a
52 court of this state unless all or a substantial part of the acts or
53 omissions giving rise to the claim asserted occurred in this
54 state: *Provided*, That unless barred by the statute of limitations
55 or otherwise time barred in the state where the action arose, a
56 nonresident of this state may file an action in state court in this
57 state if the nonresident cannot obtain jurisdiction in either
58 federal or state court against the defendant in the state where
59 the action arose. A nonresident bringing such an action in this
60 state shall be required to establish, by filing an affidavit with
61 the complaint for consideration by the court, that such action
62 cannot be maintained in the state where the action arose due to
63 lack of any legal basis to obtain personal jurisdiction over the
64 defendant.

65 In a civil action where more than one plaintiff is joined,
66 each plaintiff must independently establish proper venue. A
67 person may not intervene or join in a pending civil action as a
68 plaintiff unless the person independently establishes proper
69 venue. If venue is not proper as to any such nonresident
70 plaintiff in any court of this state, the court shall dismiss the

- 71 claims of the plaintiff without prejudice to refile in a court in
72 any other state or jurisdiction.

CHAPTER 84

(Com. Sub. for H. B. 2092 — By Delegates Armstead, Amores,
Manuel and Craig)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to establishing within the governor's committee on crime, delinquency and correction a research component relating to criminal sentencing; and requiring reports.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four, to read as follows:

**ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY
AND CORRECTION.**

§15-9-4. Criminal sentencing research.

- 1 The governor's committee on crime, delinquency and
2 correction shall conduct comprehensive research on the state's
3 criminal sanctioning process for adult offenders. The purpose
4 of the research is to promote a fuller understanding of this
5 state's criminal justice system, and shall include the review of
6 issues of sentence length imposed, actual sentence length

7 served, parole eligibility, parole revocation, determinate or
8 indeterminate sentences, availability of alternatives to incarceration
9 ation for certain offenses, and the respective roles that each of
10 these and other criminal sanction issues may play in the
11 increased demand for prison bed space. The committee shall
12 report to the governor and the Legislature on or before the first
13 day of January, two thousand four, and at its discretion thereaf-
14 ter, the findings of its research and make any recommendations
15 for modifications of criminal sentencing laws or procedures
16 provided that no such recommendations or modifications shall
17 become effective without further action of the Legislature.

CHAPTER 85

**(Com. Sub. for H. B. 2500 — By Delegates Fleischauer, Amores,
Webster, Brown, Foster, Warner and Faircloth)**

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six hundred eight, article five, and section four hundred one, article twenty-seven, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to domestic relations generally and clarifying the authority of the courts to continue protective orders during certain proceedings.

Be it enacted by the Legislature of West Virginia:

That section six hundred eight, article five and section four hundred one, article twenty-seven, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Article

5. Divorce.

27. Prevention and Treatment of Domestic Violence.

ARTICLE 5. DIVORCE.

§48-5-608. Injunctive relief or protective orders.

1 (a) When allegations of abuse have been proved, the court
2 shall enjoin the offending party from molesting or interfering
3 with the other, or otherwise imposing any restraint on the
4 personal liberty of the other or interfering with the custodial or
5 visitation rights of the other. The order may permanently enjoin
6 the offending party from entering the school, business or place
7 of employment of the other for the purpose of molesting or
8 harassing the other; or from contacting the other, in person or
9 by telephone, for the purpose of harassment or threats; or from
10 harassing or verbally abusing the other in a public place.

11 (b) Any order entered by the court to protect a party from
12 abuse may grant relief pursuant to the provisions of article
13 twenty-seven of this chapter.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART IV. COORDINATION WITH PENDING COURT ACTIONS.

§48-27-401. Interaction between domestic proceedings.

1 (a) During the pendency of a divorce action, a person may
2 file for and be granted relief provided by this article, until an
3 order is entered in the divorce action pursuant to part 5-501, *et*
4 *seq.*

5 (b) If a person who has been granted relief under this article
6 should subsequently become a party to an action for divorce,
7 separate maintenance or annulment, such person shall remain
8 entitled to the relief provided under this article including the

9 right to file for and obtain any further relief, so long as no
10 temporary order has been entered in the action for divorce,
11 annulment and separate maintenance, pursuant to part 5-501, *et*
12 *seq.*

13 (c) Except as provided in section 5-509 of this chapter and
14 section 27-402 of this article for a petition and a temporary
15 emergency protective order, no person who is a party to a
16 pending action for divorce, separate maintenance or annulment
17 in which an order has been entered pursuant to part 5-501, *et*
18 *seq.* of this chapter, shall be entitled to file for or obtain relief
19 against another party to that action under this article until after
20 the entry of a final order which grants or dismisses the action
21 for divorce, annulment or separate maintenance.

22 (d) Notwithstanding the provisions set forth in section
23 27-505, any order, issued pursuant to this article where a
24 subsequent action is filed seeking a divorce, an annulment or
25 separate maintenance, the allocation of custodial responsibility
26 or a habeas corpus action to establish custody, the establishment
27 of paternity, the establishment or enforcement of child support,
28 or other relief under the provisions of this chapter, shall remain
29 in full force and effect by operation of this statute until a
30 temporary or final order is entered pursuant to part 5-501, *et*
31 *seq.* of this chapter, or a final order is entered granting or
32 dismissing the action.

CHAPTER 86

(Com. Sub. for S. B. 178 — By Senators Oliverio, McKenzie and Rowe)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor;
in Effect Ninety Days from Passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred one, article twenty-five, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article two-a, chapter fifty-one of said code, all relating to defining and clarifying the family court's jurisdiction over petitions for a change of name; proceedings for the payment of attorney fees; proceedings for property distribution; and actions or proceedings to obtain spousal support.

Be it enacted by the Legislature of West Virginia:

That section one hundred one, article twenty-five, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article two-a, chapter fifty-one of said code be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.

51. Courts and Their Officers.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court or family court for change of name; contents thereof; notice of application.

1 (a) Any person desiring a change of his or her own name,
2 or that of his or her child or ward, may apply therefor to the
3 circuit court or family court of the county in which he or she
4 resides, by petition setting forth:

5 (1) That he or she has been a bona fide resident of the
6 county for at least one year prior to the filing of the petition;

7 (2) The cause for which the change of name is sought; and

8 (3) The new name desired.

9 (b) Previous to the filing of the petition the person shall
10 cause a notice of the time and place that the application will be
11 made to be published as a Class I legal advertisement in
12 compliance with the provisions of article three, chapter
13 fifty-nine of this code. The publication area for the publication
14 is the county.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the
2 following matters:

3 (1) All actions for divorce, annulment or separate mainte-
4 nance brought under the provisions of article three, four or five,
5 chapter forty-eight of this code except as provided in subsec-
6 tions (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought
8 under the provisions of articles eleven, twelve and fourteen,
9 chapter forty-eight of this code;

10 (3) All actions to establish paternity brought under the
11 provisions of article twenty-four, chapter forty-eight of this
12 code and any dependent claims related to such actions regard-
13 ing child support, parenting plans or other allocation of custo-
14 dial responsibility or decision-making responsibility for a child;

15 (4) All actions for grandparent visitation brought under the
16 provisions of article ten, chapter forty-eight of this code;

17 (5) All actions for the interstate enforcement of family
18 support brought under article sixteen, chapter forty-eight of this
19 code and for the interstate enforcement of child custody brought

20 under the provisions of article twenty, chapter forty-eight of
21 this code;

22 (6) All actions for the establishment of a parenting plan or
23 other allocation of custodial responsibility or decision-making
24 responsibility for a child, including actions brought under the
25 uniform child custody jurisdiction and enforcement act, as
26 provided in article twenty, chapter forty-eight of this code;

27 (7) All petitions for writs of habeas corpus wherein the
28 issue contested is custodial responsibility for a child;

29 (8) All motions for temporary relief affecting parenting
30 plans or other allocation of custodial responsibility or decision-
31 making responsibility for a child, child support, spousal support
32 or domestic violence;

33 (9) All motions for modification of an order providing for
34 a parenting plan or other allocation of custodial responsibility
35 or decision-making responsibility for a child or for child
36 support or spousal support;

37 (10) All actions brought, including civil contempt proceed-
38 ings, to enforce an order of spousal or child support or to
39 enforce an order for a parenting plan or other allocation of
40 custodial responsibility or decision-making responsibility for a
41 child;

42 (11) All actions brought by an obligor to contest the
43 enforcement of an order of support through the withholding
44 from income of amounts payable as support or to contest an
45 affidavit of accrued support, filed with the circuit clerk, which
46 seeks to collect an arrearage;

47 (12) All final hearings in domestic violence proceedings;

48 (13) Petitions for a change of name, exercising concurrent
49 jurisdiction with the circuit court;

50 (14) All proceedings for payment of attorney fees if the
51 family court judge has jurisdiction of the underlying action;

52 (15) All proceedings for property distribution brought under
53 article seven, chapter forty-eight of this code; and

54 (16) All proceedings to obtain spousal support brought
55 under article eight, chapter forty-eight of this code.

56 (b) If an action for divorce, annulment or separate mainte-
57 nance does not require the establishment of a parenting plan or
58 other allocation of custodial responsibility or decision-making
59 responsibility for a child and does not require an award or any
60 payment of child support, the circuit court has concurrent
61 jurisdiction with the family court over the action if, at the time
62 of the filing of the action, the parties also file a written property
63 settlement agreement executed by both parties.

64 (c) If an action for divorce, annulment or separate mainte-
65 nance is pending and a petition is filed pursuant to the provi-
66 sions of article six, chapter forty-nine of this code alleging
67 abuse or neglect of a child by either of the parties to the
68 divorce, annulment or separate maintenance action, the orders
69 of the circuit court in which the abuse or neglect petition is filed
70 shall supercede and take precedence over an order of the family
71 court respecting the allocation of custodial and decision-making
72 responsibility for the child between the parents. If no order for
73 the allocation of custodial and decision-making responsibility
74 for the child between the parents has been entered by the family
75 court in the pending action for divorce, annulment or separate
76 maintenance, the family court shall stay any further proceedings
77 concerning the allocation of custodial and decision-making

78 responsibility for the child between the parents and defer to the
79 orders of the circuit court in the abuse or neglect proceedings.

80 (d) A family court is a court of limited jurisdiction. A
81 family court is a court of record only for the purpose of
82 exercising jurisdiction in the matters for which the jurisdiction
83 of the family court is specifically authorized in this section and
84 in chapter forty-eight of this code. A family court may not
85 exercise the powers given courts of record in section one,
86 article five, chapter fifty-one of this code or exercise any other
87 powers provided for courts of record in this code unless
88 specifically authorized by the Legislature. A family court judge
89 is not a “judge of any court of record” or a “judge of a court of
90 record” as the terms are defined and used in article nine of this
91 chapter.

CHAPTER 87

**(Com. Sub. for S. B. 453 — By Senators Hunter, Rowe, McCabe,
Unger, Oliverio, Minard, Caldwell, Kessler, Bowman, Fanning,
Bailey, Love, Facemyer, Ross, Weeks, Smith, Sharpe,
Dempsey, Minear, Sprouse, Edgell, Plymale, Prezioso,
Helmick, Chafin, White, Jenkins and
Tomblin, Mr. President)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article twenty-seven-a, relating
to establishing the domestic violence fatality review team.

Be it enacted by the Legislature of West Virginia:

That chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-seven-a, to read as follows:

ARTICLE 27A. DOMESTIC VIOLENCE FATALITY REVIEW TEAM.

§48-27A-1. Domestic violence fatality review team.

§48-27A-2. Other agencies of government required to cooperate.

§48-27A-3. Law enforcement; prosecution; interference with performance of duties.

§48-27A-1. Domestic violence fatality review team.

1 (a) The domestic violence fatality review team is hereby
2 established under the office of the chief medical examiner. The
3 domestic violence fatality review team is a multidisciplinary
4 team created to review the deaths resulting from suspected
5 domestic violence as defined by the provisions of section two
6 hundred four, article twenty-seven of this chapter.

7 (b) The domestic violence fatality review team is to consist
8 of the following members, but not limited to, appointed by the
9 governor to serve three-year terms:

10 (1) The chief medical examiner, who is to serve as the
11 chairperson of the domestic violence fatality review team;

12 (2) Four prosecuting attorneys or their designees;

13 (3) The state superintendent of the West Virginia state
14 police or his or her designee;

15 (4) One county law-enforcement official;

16 (5) One local municipality police officer;

17 (6) One physician, resident or nurse practitioner specializ-
18 ing in the practice of family medicine or emergency medicine;

19 (7) One physician, resident or nurse practitioner specializ-
20 ing in the practice of obstetrics and gynecology;

21 (8) One adult protective service worker currently employed
22 in investigating reports of adult abuse or neglect;

23 (9) One social worker who may be employed in medical
24 social work;

25 (10) The commissioner of the office of behavioral health
26 services or his or her designee;

27 (11) The director of the office of social services of the
28 department of health and human resources or his or her
29 designee;

30 (12) One domestic violence advocate from a licensed
31 domestic violence program;

32 (13) A representative of the West Virginia coalition against
33 domestic violence;

34 (14) Director of the state division of corrections or his or
35 her designee; and

36 (15) Director of epidemiology and health promotion or his
37 or her designee.

38 (c) Members of the domestic violence fatality review team
39 shall, unless sooner removed, continue to serve until their
40 respective terms expire and until their successors have been
41 appointed and have qualified.

42 (d) Each appointment of a prosecuting attorney, whether for
43 a full term or to fill a vacancy, is to be made by the governor
44 from among three nominees selected by the West Virginia
45 prosecuting attorneys institute. Each appointment of a county

46 or local municipality law-enforcement officer, whether for a
47 full term or to fill a vacancy, is to be made by the governor
48 from among three nominees selected by the state fraternal order
49 of police or the West Virginia deputy sheriff's association or
50 the West Virginia chiefs of police association. Each appoint-
51 ment of a physician, resident or nurse practitioner, whether for
52 a full term or to fill a vacancy, is to be made by the governor
53 from among three nominees selected by the West Virginia state
54 medical association. Each appointment of an adult protective
55 services worker and a social worker, whether for a full term or
56 to fill a vacancy, is to be made by the governor from among
57 three nominees selected by the West Virginia social work
58 licensing board. Each appointment of a domestic violence
59 advocate is to be made by the governor from among three
60 nominees selected by the West Virginia coalition against
61 domestic violence. When an appointment is for a full term, the
62 nomination is to be submitted to the governor not later than
63 eight months prior to the date on which the appointment is to
64 become effective. In the case of an appointment to fill a
65 vacancy, the nominations are to be submitted to the governor
66 within thirty days after the request for the nomination has been
67 made by the governor to the chairperson or president of the
68 organization. When an association fails to submit to the
69 governor nominations for the appointment in accordance with
70 the requirements of this section, the governor may make the
71 appointment from any nomination provided by the chief
72 medical examiner.

73 (e) Each member of the domestic violence fatality review
74 team shall serve without additional compensation and may not
75 be reimbursed for any expenses incurred in the discharge of his
76 or her duties under the provisions of this article.

77 (f) The domestic violence fatality review team shall,
78 pursuant to the provisions of chapter twenty-nine-a of this code,
79 promulgate rules applicable to the following:

80 (1) The standard procedures for the establishment, forma-
81 tion and conduct of the domestic violence fatality review team;
82 and

83 (2) Recommend protocols for the systematic review of
84 domestic violence fatalities where other than natural causes are
85 suspected.

86 (g) The domestic violence fatality review team shall:

87 (1) Review all deaths of victims or suspected victims of
88 domestic violence, including suicides, eighteen years and older,
89 who are residents of this state, in order to identify trends,
90 patterns and risk factors;

91 (2) Provide statistical analysis regarding the causes of
92 domestic violence fatalities in West Virginia;

93 (3) Promote public awareness of the incidence and causes
94 of domestic violence fatalities, including recommendations for
95 their reduction; and

96 (4) Provide training for state agencies.

97 (h) The domestic violence fatality review team shall submit
98 an annual report to the governor and to the Legislature concern-
99 ing its activities and the incidents of domestic violence fatalities
100 within the state. The report is due annually in the first day of
101 March. The report is to include statistics setting forth the
102 number of domestic violence fatalities, identifiable trends in
103 domestic violence fatalities in the state, including possible
104 causes, if any, and recommendations to reduce the number of
105 preventable domestic violence fatalities in the state.

106 (i) The domestic violence fatality review team, in the
107 exercise of its duties as defined in this section, may not:

108 (1) Call witnesses or take testimony from individuals
109 involved in the investigation of a domestic violence fatality;

110 (2) Contact a family member of the deceased; any member
111 of the team when involved in the investigation of a death in the
112 course of performing his or her duties outside of the team must
113 so notify the team and will be recused from any analysis or
114 other participation or discussion of that death by the domestic
115 violence fatality review team; and

116 (3) Enforce any public health standard or criminal law or
117 otherwise participate in any legal proceeding, except if a
118 member of the team is involved in the investigation of the death
119 or resulting prosecution and must participate in a legal proceed-
120 ing in the course of performing his or her duties outside of the
121 team.

122 (j) Proceedings, records and opinions of the domestic
123 violence fatality review team are confidential and are not
124 subject to discovery, subpoena or introduction into evidence in
125 any civil or criminal proceeding. Nothing in this subsection is
126 to be construed to limit or restrict the right to discover or use in
127 any civil or criminal proceeding anything that is available from
128 another source and entirely independent of the proceedings of
129 the domestic violence fatality review team.

130 (k) Members of the domestic violence fatality review team
131 may not be questioned in any civil or criminal proceeding
132 regarding information presented in or opinions formed as a
133 result of a meeting of the team. Nothing in this subsection may
134 be construed to prevent a member of the domestic violence
135 fatality review team from testifying to information obtained
136 independently of the team or which is public information.

§48-27A-2. Other agencies of government required to cooperate.

1 State, county and local agencies, hospitals and other health
2 agencies shall provide the domestic violence fatality review
3 team with any information requested in writing by the team as
4 allowable by law or upon receipt of a certified copy of the
5 circuit court's order directing said agencies to release informa-
6 tion in its possession relating to the deceased. The team shall
7 assure that all information received and developed in connec-
8 tion with the provisions of this article remain confidential.

**§48-27A-3. Law enforcement; prosecution; interference with
performance of duties.**

1 The domestic violence fatality review team may not take
2 any action which, in the determination of the prosecuting
3 attorney or his or her assistant, impairs the ability of the
4 prosecuting attorney, his or her assistant or any law-enforce-
5 ment officer to perform his or her statutory duties.

CHAPTER 88

(Com. Sub. for S. B. 558 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two; to amend chapter eight of said code by adding thereto a new article, designated article thirty-eight; to amend and reenact section eleven-a, article ten, chapter eleven of said code; and to amend and reenact section

nine-f, article fifteen of said chapter, all relating generally to economic development for public purposes; authorizing counties and certain municipalities to create economic opportunity development districts and to use a special district excise tax to finance economic development within the districts; describing purposes for expenditures; providing for notice and hearing; providing for approval by council for community and economic development; establishing a special revenue account; providing for the Legislature's authorization to levy a special district excise tax; describing order or ordinance required to establish district; creating a district board to administer district; authorizing imposition of special district excise tax by order or ordinance; modifying district boundaries; procedures for abolition and dissolution of district; authorizing issuance of bonds or notes to finance development expenditures; providing for administration of special district excise tax by tax commissioner; and exempting certain sales and services in district from consumers sales and service tax.

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-two; that chapter eight of said code be amended by adding thereto a new article, designated article thirty-eight; that section eleven-a, article ten, chapter eleven of said code be amended and reenacted; and that section nine-f, article fifteen of said chapter be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.
- 8. Municipal Corporations.
- 11. Taxation.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

- §7-22-1. Short title.
- §7-22-2. Legislative findings and declaration of purpose.
- §7-22-3. Definitions.
- §7-22-4. Authorization to create economic opportunity development districts.
- §7-22-5. Development expenditures.
- §7-22-6. Notice; hearing.
- §7-22-7. Application to council for community and economic development for approval of an economic opportunity development district project.
- §7-22-8. Establishment of the economic opportunity development district fund.
- §7-22-9. Authorization to levy special district excise tax.
- §7-22-10. Ordinance to create district as approved by council and authorized by the Legislature.
- §7-22-11. District board; duties.
- §7-22-12. Special district excise tax authorized.
- §7-22-13. Requisition of district subaccount funds.
- §7-22-14. Modification of included area; notice; hearing.
- §7-22-15. Abolishment and dissolution of district; notice; hearing.
- §7-22-16. Bonds issued to finance economic opportunity development district projects.
- §7-22-17. Security for bonds.
- §7-22-18. Redemption of bonds.
- §7-22-19. Refunding bonds.
- §7-22-20. Use of proceeds from sale of bonds.
- §7-22-21. Bonds made legal investments.
- §7-22-22. Exemption from taxation.

§7-22-1. Short title.

- 1 This article is known and may be cited as the “County
- 2 Economic Opportunity Development District Act”.

§7-22-2. Legislative findings and declaration of purpose.

- 1 The Legislature finds that many significant business
- 2 opportunities initiated within the counties of this state face
- 3 financial and other economic obstacles. This adversely affects
- 4 the economic and general well-being of the citizens of those
- 5 counties. Establishment of economic opportunity development
- 6 districts within counties of the state, in accordance with the
- 7 purpose and powers set forth in this article, will serve a public
- 8 purpose and promote the health, safety, prosperity, security and
- 9 general welfare of all citizens in the state. It will also promote

10 the vitality of significant business opportunities within counties
11 while serving as an effective means for developing or restoring
12 and promoting retail and other business activity within the
13 economic opportunity development districts created herein.
14 This will be of special benefit to the tax base of the counties
15 within which any economic development district is created
16 under this article and will stimulate economic growth and job
17 creation.

§7-22-3. Definitions.

1 For purposes of this article, the term:

2 (1) "Council" means the council for community and
3 economic development established in section two, article two,
4 chapter five-b of this code;

5 (2) "County commission" means the governing body of a
6 county of this state;

7 (3) "Development expenditures" means payments for
8 governmental functions, programs, activities, facility construc-
9 tion, improvements and other goods and services which a
10 district board is authorized to perform or provide under section
11 five of this article;

12 (4) "District" means an economic opportunity development
13 district created pursuant to this article;

14 (5) "District board" means a district board created pursuant
15 to section ten of this article;

16 (6) "Eligible property" means any taxable or exempt real
17 property located in a district established pursuant to this article;
18 and

19 (7) "Gross annual district tax revenue amount" means the
20 total amount of consumers sales and service tax actually
21 remitted to the tax commissioner by retailers maintaining places
22 of business within the district with respect to sales made and
23 services rendered by retailers from a location within the district
24 for the twelve full calendar months immediately preceding the
25 filing of an application pursuant to section seven of this article.

§7-22-4. Authorization to create economic opportunity development districts.

1 A county commission may, in accordance with the proce-
2 dures and subject to the limitations set forth in this article:

3 (1) Create one or more economic opportunity development
4 districts within its county;

5 (2) Provide for the administration and financing of develop-
6 ment expenditures within the districts; and

7 (3) Provide for the administration and financing of a
8 continuing program of development and redevelopment
9 expenditures within the districts.

§7-22-5. Development expenditures.

1 Any county commission that has established an economic
2 opportunity development district under this article may make,
3 or authorize to be made by a district board and other public or
4 private parties, development expenditures as will promote the
5 economic vitality of the district and the general welfare of the
6 county, including, but not limited to, expenditures for the
7 following purposes:

8 (1) Beautification of the district by means such as landscap-
9 ing and construction and erection of fountains, shelters,

10 benches, sculptures, signs, lighting, decorations and similar
11 amenities;

12 (2) Provision of special or additional public services such
13 as sanitation, security for persons and property and the con-
14 struction and maintenance of public facilities, including, but not
15 limited to, sidewalks, parking lots, parking garages and other
16 public areas;

17 (3) Making payments for principal, interest, issuance costs,
18 any of the costs described in section twenty of this article and
19 appropriate reserves for bonds and other instruments and
20 arrangements issued or entered into by the county commission
21 for financing the expenditures of the district described in this
22 section and to otherwise implement the purposes of this article;

23 (4) Providing financial support for public transportation and
24 vehicle parking facilities open to the general public, whether
25 physically situate within the district's boundaries or on adjacent
26 land;

27 (5) Acquiring, building, demolishing, razing, constructing,
28 repairing, reconstructing, refurbishing, renovating, rehabilitat-
29 ing, expanding, altering, otherwise developing, operating and
30 maintaining real property generally, parking facilities, commer-
31 cial structures and other capital improvements to real property,
32 fixtures and tangible personal property, whether or not physi-
33 cally situate within the district's boundaries: *Provided*, That the
34 expenditure directly benefits the district;

35 (6) Developing plans for the architectural design of the
36 district and portions thereof and developing plans and programs
37 for the future development of the district;

38 (7) Developing, promoting and supporting community
39 events and activities open to the general public that benefit the
40 district;

41 (8) Providing the administrative costs for a district manage-
42 ment program;

43 (9) Providing for the usual and customary maintenance and
44 upkeep of all improvements and amenities in the district as are
45 commercially reasonable and necessary to sustain its economic
46 viability on a permanent basis;

47 (10) Providing any other services that the county commis-
48 sion or district board is authorized to perform and which the
49 county commission does not also perform to the same extent on
50 a countywide basis;

51 (11) Making grants to the owners or tenants of economic
52 opportunity development district for the purposes described in
53 this section;

54 (12) Acquiring an interest in any entity or entities that own
55 any portion of the real property situate in the district and
56 contributing capital to any entity or entities; and

57 (13) To do any and all things necessary, desirable or
58 appropriate to carry out and accomplish the purposes of this
59 article notwithstanding any provision of this code to the
60 contrary.

§7-22-6. Notice; hearing.

1 (a) *General.* -- A county commission desiring to create an
2 economic opportunity development district shall conduct a
3 public hearing.

4 (b) *Notice of hearing.* -- Notice of the public hearing shall
5 be published as a Class I-0 legal advertisement in compliance
6 with article three, chapter fifty-nine of this code at least twenty
7 days prior to the scheduled hearing. In addition to the time and
8 place of the hearing, the notice must also state:

- 9 (1) The purpose of the hearing;
- 10 (2) The name of the proposed district;
- 11 (3) The general purpose of the proposed district;
- 12 (4) The proposed property included in the district; and
- 13 (5) The proposed method of financing any costs involved,
14 including the base and rate of special district excise tax that
15 may be imposed upon sales of tangible personal property and
16 taxable services from business locations situated within the
17 proposed district.

18 (c) *Opportunity to be heard.* -- At the time and place set
19 forth in the notice, the county commission shall afford the
20 opportunity to be heard to any owner of real property situated
21 in the proposed district and any residents of the county.

22 (d) *Application to council.* -- If the county commission,
23 following the public hearing, determines it advisable and in the
24 public interest to establish an economic opportunity develop-
25 ment district, it shall apply to the council for community and
26 economic development for approval of the economic opportu-
27 nity development district project pursuant to the procedures
28 provided in section seven of this article.

**§7-22-7. Application to council for community and economic
development for approval of an economic opportu-
nity development district project.**

- 1 (a) *General.* -- The council for community and economic
2 development shall receive and act on applications filed with it
3 by county commissions pursuant to section six of this article.
4 Each application must include:

5 (1) A true copy of the notice described in section six of this
6 article;

7 (2) A general description of the capital improvements,
8 additional or extended services and other proposed develop-
9 ment expenditures to be made in the district;

10 (3) A description of the proposed method of financing the
11 development expenditures, together with a description of the
12 reserves to be established for financing ongoing development
13 or redevelopment expenditures necessary to permanently
14 maintain the optimum economic viability of the district
15 following its inception: *Provided*, That the amounts of the
16 reserves shall not exceed the amounts that would be required by
17 ordinary commercial capital market considerations;

18 (4) A description of the sources and anticipated amounts of
19 all financing, including, but not limited to, proceeds from the
20 issuance of any bonds or other instruments, revenues from the
21 special district excise tax and enhanced revenues from property
22 taxes and fees;

23 (5) A description of the financial contribution of the county
24 commission to the funding of development expenditures;

25 (6) Identification of any businesses that the county commis-
26 sion expects to relocate their business locations from the district
27 to another place in the state in connection with the establish-
28 ment of the district or from another place in this state to the
29 district: *Provided*, That for purposes of this article, any entities
30 shall be designated "relocated entities";

31 (7) Identification of any businesses currently conducting
32 business in the proposed economic opportunity development
33 district that the county commission expects to continue doing
34 business there after the district is created;

35 (8) A good faith estimate of the aggregate amount of
36 consumers sales and service tax that was actually remitted to
37 the tax commissioner by all business locations identified as
38 provided in subdivisions (6) and (7) of this subsection with
39 respect to their sales made and services rendered from their
40 then current business locations that will be relocated from, or
41 to, or remain in the district for the twelve full calendar months
42 next preceding the date of the application: *Provided*, That for
43 purposes of this article, the aggregate amount is designated as
44 “the base tax revenue amount”; a good faith estimate of the
45 gross annual district tax revenue amount; and the proposed
46 application of any surplus from all funding sources to further
47 the objectives of this article: *Provided, however*, That the
48 amount of all development expenditures proposed to be made
49 in the first twenty-four months following the creation of the
50 district shall be not less than fifty million dollars.

51 (b) *Additional criteria.* — The council may establish other
52 criteria for consideration when approving the applications:
53 *Provided*, That the council shall act to approve or not approve
54 any application within thirty days following the receipt of the
55 application.

56 (c) *Certification of project.* — If the committee approves a
57 county’s economic opportunity district project application, it
58 shall issue to the county commission a written certificate
59 evidencing the approval.

60 The certificate shall expressly state a base tax revenue
61 amount, the gross annual district tax revenue amount and the
62 estimated net annual district tax revenue amount which, for
63 purposes of this article, is the difference between the gross
64 annual district tax revenue amount and the base tax revenue
65 amount, all of which the council has determined with respect to
66 the district’s application based on any investigation it considers
67 reasonable and necessary, including, but not limited to, any

68 relevant information the council requests from the tax commis-
69 sioner and the tax commissioner provides to the council:
70 *Provided*, That in determining the net annual district tax
71 revenue amount, the council may not use a base tax revenue
72 amount less than that amount certified by the tax commissioner
73 but, in lieu of confirmation from the tax commissioner of the
74 gross annual district tax revenue amount, the council may use
75 the estimate of the gross annual district tax revenue amount
76 provided by the county commission pursuant to subsection (a)
77 of this section.

78 (d) *Promulgation of rules.* -- The council may promulgate
79 rules to implement the economic opportunity development
80 district project application approval process and to describe the
81 criteria and procedures it has established in connection there-
82 with. These rules are not subject to the provisions of chapter
83 twenty-nine-a of this code but shall be filed with the secretary
84 of state.

§7-22-8. Establishment of the economic opportunity development district fund.

1 (a) *General.* -- There is hereby created a special revenue
2 account in the state treasury designated the "economic opportu-
3 nity development district fund" which is an interest-bearing
4 account and shall be invested in the manner described in section
5 nine-c, article six, chapter twelve of this code with the interest
6 income a proper credit to the fund.

7 (b) *District subaccount.* -- A separate and segregated
8 subaccount within the account shall be established for each
9 economic opportunity development district that is approved by
10 the council and authorized by the Legislature pursuant to
11 subdivision (3) of this subsection. Funds paid into the account
12 for the credit of any subaccount may also be derived from the
13 following sources:

14 (1) All interest or return on the investment accruing to the
15 subaccount;

16 (2) Any gifts, grants, bequests, transfers, appropriations or
17 donations which are received from any governmental entity or
18 unit or any person, firm, foundation or corporation; and

19 (3) Any appropriations by the Legislature which are made
20 for this purpose.

§7-22-9. Authorization to levy special district excise tax.

1 (a) *General.* — County commissions have no inherent
2 authority to levy taxes and have only that authority expressly
3 granted to them by the Legislature. Because a special district
4 excise tax has the effect of diverting, for a specified period of
5 years, tax dollars that otherwise would go into the general
6 revenue fund of this state, no economic opportunity develop-
7 ment district excise tax may be levied by a county commission
8 until after the Legislature expressly authorizes the county
9 commission to levy a special district excise tax on sales of
10 tangible personal property and services made within district
11 boundaries approved by the Legislature.

12 (b) *Authorizations.* — The Legislature authorizes the
13 following county commission to levy special district excise
14 taxes on sales of tangible personal property and services made
15 from business locations in the following economic opportunity
16 development districts:

17 The Ohio County commission may levy a special district
18 excise tax for the benefit of the “Fort Henry” economic
19 opportunity development project district which comprises three
20 hundred contiguous acres of land.

**§7-22-10. Ordinance to create district as approved by council and
authorized by the Legislature.**

1 (a) *General.* -- If an economic opportunity development
2 district project has been approved by the council and the
3 levying of a special district excise tax for the district has been
4 authorized by the Legislature, all in accordance with this article,
5 the county commission may create the district by order entered
6 of record as provided for in article one of this chapter: *Pro-*
7 *vided*, That the county commission may not amend, alter or
8 change in any manner the boundaries of the economic opportu-
9 nity development district authorized by the Legislature. In
10 addition to all other requirements, the order shall contain the
11 following:

12 (1) The name of the district and a description of its bound-
13 aries;

14 (2) A summary of any proposed services to be provided and
15 capital improvements to be made within the district and a
16 reasonable estimate of any attendant costs;

17 (3) The base and rate of any special district excise tax that
18 may be imposed upon sales by businesses for the privilege of
19 operating within the district, which tax shall be passed on to and
20 paid by the consumer, and the manner in which the taxes will
21 be imposed, administered and collected, all of which shall be in
22 conformity with the requirements of this article; and

23 (4) The district board members' terms, their method of
24 appointment and a general description of the district board's
25 powers and duties, which powers may include the authority:

26 (A) To make and adopt all necessary bylaws and rules for
27 its organization and operations not inconsistent with any
28 applicable laws;

29 (B) To elect its own officers, to appoint committees and to
30 employ and fix compensation for personnel necessary for its
31 operations;

32 (C) To enter into contracts with any person, agency,
33 government entity, agency or instrumentality, firm, partnership,
34 limited partnership, limited liability company or corporation,
35 including both public and private corporations, and for-profit
36 and not-for-profit organizations and generally to do any and all
37 things necessary or convenient for the purpose of promoting,
38 developing and advancing the purposes described in section two
39 of this article;

40 (D) To amend or supplement any contracts or leases or to
41 enter into new, additional or further contracts or leases upon the
42 terms and conditions for consideration and for any term of
43 duration, with or without option of renewal, as agreed upon by
44 the district board and any person, agency, government entity,
45 agency or instrumentality, firm, partnership, limited partner-
46 ship, limited liability company or corporation;

47 (E) To, unless otherwise provided for in, and subject to the
48 provisions of any contracts or leases to operate, repair, manage,
49 and maintain buildings and structures and provide adequate
50 insurance of all types and in connection with the primary use
51 thereof and incidental thereto to provide services, such as retail
52 stores and restaurants, and to effectuate incidental purposes,
53 grant leases, permits, concessions or other authorizations to any
54 person or persons upon the terms and conditions for consider-
55 ation and for the term of duration as agreed upon by the district
56 board and any person, agency, governmental department, firm
57 or corporation;

58 (F) To delegate any authority given to it by law to any of its
59 officers, committees, agents or employees;

60 (G) To apply for, receive and use grants-in-aid, donations
61 and contributions from any source or sources and to accept and
62 use bequests, devises, gifts and donations from any person, firm
63 or corporation;

64 (H) To acquire real property by gift, purchase or construc-
65 tion or in any other lawful manner and hold title thereto in its
66 own name and to sell, lease or otherwise dispose of all or part
67 of any real property which it may own, either by contract or at
68 public auction, upon the approval by the district board;

69 (I) To purchase or otherwise acquire, own, hold, sell, lease
70 and dispose of all or part of any personal property which it may
71 own, either by contract or at public auction;

72 (J) Pursuant to a determination by the district board that
73 there exists a continuing need for redevelopment expenditures
74 and that moneys or funds of the district are necessary therefor,
75 to borrow money and execute and deliver the district's negotia-
76 ble notes and other evidences of indebtedness therefor, on the
77 terms as the district shall determine, and give security therefor
78 as is requisite, including, without limitation, a pledge of the
79 district's rights in its subaccount of the downtown district
80 redevelopment fund;

81 (K) To acquire (either directly or on behalf of the munici-
82 pality) an interest in any entity or entities that own any real
83 property situate in the district, to contribute capital to any entity
84 or entities and to exercise the rights of an owner with respect
85 thereto; and

86 (L) To expend its funds in the execution of the powers and
87 authority given in this section, which expenditures, by the
88 means authorized in this section, are hereby determined and
89 declared as a matter of legislative finding to be for a public
90 purpose and use, in the public interest and for the general
91 welfare of the people of West Virginia, to alleviate and prevent
92 economic deterioration and to relieve the existing critical
93 condition of unemployment existing within the state.

94 (b) *Additional contents of order.* — The county commis-
95 sion's order shall also state the general intention of the county
96 commission to develop and increase services and to make
97 capital improvements within the district.

98 (c) *Mailing of certified copies of order.* — Upon entry of an
99 order establishing an economic opportunity development
100 district excise tax, a certified copy of the order shall be mailed
101 to the state auditor, as ex officio the chief inspector and
102 supervisor of public offices, the state treasurer and the tax
103 commissioner.

§7-22-11. District board; duties.

1 (a) *General.* — The county commission of a county that has
2 been authorized by the Legislature to establish an economic
3 opportunity development district, in accordance with this
4 article, shall provide, by order entered of record, for the
5 appointment of a district board to oversee the operations of the
6 district: *Provided,* That the county commission may, by order,
7 in lieu of appointing a separate district board, designate itself to
8 act as the district board.

9 (b) *Composition of board.* — If a separate district board is
10 to be appointed, it shall be made up of at least seven members,
11 two of which shall be owners, or representatives of owners, of
12 real property situated in the economic opportunity development
13 district and the other five shall be residents of the county within
14 which the district is located.

15 (c) *Annual report.* — The district board, in addition to the
16 duties prescribed by the order creating the district, shall submit
17 an annual report to the county commission and the council
18 containing:

19 (1) An itemized statement of its receipts and disbursements
20 for the preceding fiscal year;

21 (2) A description of its activities for the preceding fiscal
22 year;

23 (3) A recommended program of services to be performed
24 and capital improvements to be made within the district for the
25 coming fiscal year; and

26 (4) A proposed budget to accomplish its objectives.

27 (d) *Conflict of interest exception.* -- Nothing in this article
28 prohibits any member of the district board from also serving on
29 the board of directors of a nonprofit corporation with which the
30 county commission may contract to provide specified services
31 within the district.

32 (e) *Compensation of board members.* -- Each member of
33 the district board may receive reasonable compensation for
34 services on the board in the amount determined by the county
35 commission: *Provided*, That when a district board is not created
36 for the district but the work of the board is done by the county
37 commission, the county commissioners shall receive no
38 additional compensation.

§7-22-12. Special district excise tax authorized.

1 (a) *General.* -- The county commission of a county,
2 authorized by the Legislature to levy a special district excise tax
3 for the benefit of an economic opportunity development district,
4 may, by order entered of record, impose that tax on the privi-
5 lege of selling tangible personal property and rendering select
6 services in the district in accordance with this section.

7 (b) *Tax base.* -- The base of a special district excise tax
8 imposed pursuant to this section shall be identical to the base of
9 the consumers sales and service tax imposed pursuant to article
10 fifteen, chapter eleven of this code on sales made and services
11 rendered within the boundaries of the district: *Provided*, That

12 except for the exemption provided in section nine-f of said
13 article, all exemptions and exceptions from the consumers sales
14 and service tax also apply to the special district excise tax and
15 sales of gasoline and special fuel shall not be subject to special
16 district excise tax but remain subject to the tax levied by said
17 article.

18 (c) *Tax rate.* -- The rate of a special district excise tax
19 levied pursuant to this section shall be stated in an order entered
20 of record by the county commission and equal to the general
21 rate of tax on each dollar of gross proceeds from sales of
22 tangible personal property and services subject to the tax levied
23 by section three, article fifteen, chapter eleven of this code. The
24 tax on fractional parts of a dollar shall be levied and collected
25 in conformity with the provision of section three of said article.

26 (d) *Collection by tax commissioner.* -- The order of the
27 county commission imposing a special district excise tax shall
28 provide for the tax to be collected by the tax commissioner in
29 the same manner as the tax levied by section three, article
30 fifteen, chapter eleven of this code is administered, assessed,
31 collected and enforced.

32 (e) *Deposit of net tax collected.* --

33 (1) The order of the county commission imposing a special
34 district excise tax shall provide that the tax commissioner
35 deposit the net amount of tax collected in the special economic
36 opportunity development district fund to the credit of the
37 county commission's subaccount therein for the economic
38 opportunity development district and that the money in the
39 subaccount may only be used to pay for development expendi-
40 tures as provided in this article except as provided in subsection
41 (f) of this section.

42 (2) The state treasurer shall withhold from the county
 43 commission’s subaccount in the economic opportunity develop-
 44 ment district fund and shall deposit in the general revenue fund
 45 of this state, on or before the twentieth day of each calendar
 46 month next following the effective date of a special district
 47 excise tax, a sum equal to one twelfth of the base tax revenue
 48 amount last certified by the council pursuant to section seven of
 49 this article.

50 (f) *Effective date of special district excise tax.* — Any taxes
 51 imposed pursuant to the authority of this section shall be
 52 effective on the first day of the calendar month that begins on
 53 or after the date of adoption of an order entered of record
 54 imposing the tax or at any later date expressly designated in the
 55 ordinance that begins on the first day of a calendar month.

56 (g) *Copies of order.* — Upon entry of an order levying a
 57 special district excise tax, a certified copy of the order shall be
 58 mailed to the state auditor, as ex officio the chief inspector and
 59 supervisor of public offices, the state treasurer and the tax
 60 commissioner.

§7-22-13. Requisition of district subaccount funds.

1 Sixty days after collection of a special district excise tax
 2 begins, the state auditor shall, upon receipt of a monthly
 3 requisition from the district board, issue his or her warrant on
 4 the state treasurer for the funds requested from the district’s
 5 subaccount, which funds are applied for the purposes described
 6 in section five of this article and the state treasurer shall pay the
 7 warrant out of funds in the subaccount.

§7-22-14. Modification of included area; notice; hearing.

1 (a) *General.* — The order creating an economic opportunity
 2 development district may not be amended to include additional
 3 contiguous property until after the amendment is approved by

4 the council in the same manner as an application to approve the
5 establishment of the district is acted upon under section seven
6 of this article and the amendment is authorized by the Legisla-
7 ture.

8 (b) *Limitations.* — Additional property may not be included
9 in the district unless it is situated within the boundaries of the
10 county and is contiguous to the then current boundaries of the
11 district.

12 (c) *Public hearing required.* —

13 (1) The county commission of any county desiring to
14 amend its order shall designate a time and place for a public
15 hearing upon the proposal to include additional property. The
16 notice shall meet the requirements set forth in section six of this
17 article.

18 (2) At the time and place set forth in the notice, the county
19 commission shall afford the opportunity to be heard to any
20 owners of real property either currently included in or proposed
21 to be added to the existing district and to any other residents of
22 the county.

23 (d) *Application to council.* — Following the hearing, the
24 county commission may, by resolution, apply to the council to
25 approve inclusion of the additional property in the district.

26 (e) *Consideration by council.* — Before the council ap-
27 proves inclusion of the additional property in the district, the
28 council shall determine the amount of taxes levied by article
29 fifteen, chapter eleven of this code that were collected by
30 businesses located in the area the county commission proposes
31 to add to the district in the same manner as the base amount of
32 tax was determined when the district was first created. The state
33 treasurer shall also deposit one twelfth of this additional tax

34 base amount into the general revenue fund each month, as
35 provided in section twelve of this article.

36 (f) *Legislative action required.* -- After the council ap-
37 proves amending the boundaries of the district, the Legislature
38 must amend section nine of this article to allow levy of the
39 special district excise tax on business located in geographic area
40 to be included in the district. After the Legislature amends said
41 section, the county commission may then amend its order:
42 *Provided,* That the order may not be effective any earlier than
43 the first day of the calendar month that begins thirty days after
44 the effective date of the act of the Legislature authorizing the
45 levy on the special district excise tax on businesses located in
46 the geographic area to be added to the boundaries of the district
47 for which the tax is levied or a later date as set forth in the order
48 of the county commission.

49 (g) *Collection of special district excise tax.* -- All busi-
50 nesses included in a district because of the boundary amend-
51 ment shall on the effective date of the order, determined as
52 provided in subsection (f) of this section, collect the special
53 district excise tax on all sales on tangible property or services
54 made from locations in the district on or after the effective date
55 of the county commission's order or a later date as set forth in
56 the order.

§7-22-15. Abolishment and dissolution of district; notice; hearing.

1 (a) *General.* -- Except upon the express written consent of
2 the council and of all the holders or obligees of any indebted-
3 ness or other instruments the proceeds of which were applied to
4 any development or redevelopment expenditures or any
5 indebtedness the payment of which is secured by revenues
6 payable into the fund provided under section eight of this article
7 or by any public property, a district may only be abolished by
8 the county commission when there is no outstanding indebted-

9 ness, the proceeds of which were applied to any development
10 or redevelopment expenditures or the payment of which is
11 secured by revenues payable into the fund provided under
12 section eight of this article, or by any public property, and
13 following a public hearing upon the proposed abolishment.

14 (b) *Notice of public hearing.* -- Notice of the public hearing
15 required by subsection (a) of this section shall be provided by
16 first-class mail to all owners of real property within the district
17 and shall be published as a Class I-0 legal advertisement in
18 compliance with article three, chapter fifty-nine of this code at
19 least twenty days prior to the public hearing.

20 (c) *Transfer of district assets and funds.* -- Upon the
21 abolishment of any economic opportunity development district,
22 any funds or other assets, contractual rights or obligations,
23 claims against holders of indebtedness or other financial
24 benefits, liabilities or obligations existing after full payment has
25 been made on all existing contracts, bonds, notes or other
26 obligations of the district are transferred to and assumed by the
27 county commission. Any funds or other assets transferred shall
28 be used for the benefit of the area included in the district being
29 abolished.

30 (d) *Reinstatement of district.* -- Following abolishment of
31 a district pursuant to this section, its reinstatement requires
32 compliance with all requirements and procedures set forth in
33 this article for the initial development, approval, establishment
34 and creation of an economic opportunity development district.

§7-22-16. Bonds issued to finance economic opportunity development district projects.

1 (a) *General.* -- The county commission that established the
2 economic opportunity development district may issue bonds or
3 notes for the purpose of financing development expenditures,
4 as described in section five of this article, with respect to one or

5 more projects within the economic opportunity development
6 district.

7 (b) *Limited obligations.* — All bonds and notes issued by a
8 county commission under the authority of this article are
9 limited obligations of the county.

10 (c) *Term of obligations.* — No county commission may
11 issue notes, bonds or other instruments for funding district
12 projects or improvements that exceed a repayment schedule of
13 thirty years.

14 (d) *Debt service.* — The principal and interest on the bonds
15 shall be payable out of the funds on deposit in the subaccount
16 established for the economic opportunity development district
17 pursuant to section eight of this article, including, without
18 limitation, any funds derived from the special district excise tax
19 imposed by section twelve of this article or other revenues
20 derived from the economic opportunity development district to
21 the extent pledged for the purpose by the county commission in
22 the resolution authorizing the bonds.

23 (e) *Surplus funds.* — To the extent that the average daily
24 amount on deposit in the subaccount established for a district
25 pursuant to section eight of this article exceeds, for more than
26 six consecutive calendar months, the sum of: (1) One hundred
27 thousand dollars; plus (2) the amount required to be kept on
28 deposit pursuant to the documents authorizing, securing or
29 otherwise relating to the bonds or notes issued under this
30 section, then the excess shall be used by the district either to
31 redeem the bonds or notes previously issued or remitted to the
32 general fund of this state.

33 (f) *Debt not general obligation of county.* — Neither the
34 notes or bonds and any interest coupons issued under the
35 authority of this article shall ever constitute an indebtedness of

36 the county commission issuing the notes or bonds within the
37 meaning of any constitutional provision or statutory limitation
38 and shall never constitute or give rise to a pecuniary liability of
39 the county commission issuing the notes or bonds.

40 (g) *Debt not a charge general credit or taxing powers of*
41 *county.* -- Neither the bonds or notes, nor interest thereon, is a
42 charge against the general credit or taxing powers of the county
43 commission and that fact shall be plainly stated on the face of
44 each bond or note.

45 (h) *Issuance of bonds or notes.* —

46 (1) Bonds or notes allowed under this section may be
47 executed, issued and delivered at any time and from time to
48 time, may be in a form and denomination, may be of a tenor,
49 must be negotiable but may be registered as to the principal
50 thereof or as to the principal and interest thereof, may be
51 payable in any amounts and at any time or times, may be
52 payable at any place or places, may bear interest at any rate or
53 rates payable at any place or places and evidenced in any
54 manner and may contain any provisions therein not inconsistent
55 herewith, all as provided in the order or orders of the county
56 commission whereunder the bonds or notes are authorized to be
57 issued.

58 (2) The bonds may be sold by the county commission at
59 public or private sale at, above or below par as the county
60 commission authorizes.

61 (3) Bonds and notes issued pursuant to this article shall be
62 signed by the president of the county commission, or other
63 chief officer thereof, and attested by the county clerk and be
64 under the seal of the county.

65 (4) Any coupons attached to the bonds shall bear the
66 facsimile signature of the president of the commission or other

67 chief officer thereof. In case any of the officials whose signa-
68 tures appear on the bonds, notes or coupons cease to be officers
69 before the delivery of the bonds or notes, their signatures shall,
70 nevertheless, be valid and sufficient for all purposes to the same
71 extent as if they had remained in office until the delivery.

72 (i) *Additional bonds or notes.* -- If the proceeds of the
73 bonds or notes, by error of calculation or otherwise, are less
74 than the cost of the economic opportunity development district
75 project, or if additional real or personal property is to be added
76 to the district project or if it is determined that financing is
77 needed for additional development or redevelopment expendi-
78 tures, additional bonds or notes may, in like manner, be issued
79 to provide the amount of the deficiency or to defray the cost of
80 acquiring or financing any additional real or personal property
81 or development or redevelopment expenditures and, unless
82 otherwise provided for in the trust agreement, mortgage or deed
83 of trust, are considered to be of the same issue and shall be
84 entitled to payment from the same fund, without preference or
85 priority, and shall be of equal priority as to any security.

§7-22-17. Security for bonds.

1 (a) *General.* -- Unless the county commission shall
2 otherwise determine in the resolution authorizing the issuance
3 of the bonds or notes under the authority of this article, there is
4 hereby created a statutory lien upon the subaccount created
5 pursuant to section eight of this article and all special district
6 excise tax revenues collected for the benefit of the district
7 pursuant to section eleven-a, article ten, chapter eleven of this
8 code for the purpose of securing the principal of the bonds or
9 notes and the interest thereon.

10 (b) *Security for debt service.* -- The principal of and interest
11 on any bonds or notes issued under the authority of this article
12 shall be secured by a pledge of the special district excise tax

13 revenues derived from the economic opportunity development
14 district project by the county commission issuing the bonds or
15 notes to the extent provided in the resolution adopted by the
16 county commission authorizing the issuance of the bonds or
17 notes.

18 (c) *Trust indenture.* —

19 (1) In the discretion and at the option of the county com-
20 mission, the bonds and notes may also be secured by a trust
21 indenture by and between the county commission and a
22 corporate trustee, which may be a trust company or bank having
23 trust powers, within or without the state of West Virginia.

24 (2) The resolution authorizing the bonds or notes and fixing
25 the details thereof may provide that the trust indenture may
26 contain provisions for the protection and enforcing the rights
27 and remedies of the bondholders as are reasonable and proper,
28 not in violation of law, including covenants setting forth the
29 duties of the county commission in relation to the construction,
30 acquisition or financing of an economic opportunity develop-
31 ment district project, or part thereof or an addition thereto, and
32 the improvement, repair, maintenance and insurance thereof
33 and for the custody, safeguarding and application of all moneys
34 and may provide that the economic opportunity development
35 district project shall be constructed and paid for under the
36 supervision and approval of the consulting engineers or
37 architects employed and designated by the county commission
38 or, if directed by the county commission in the resolution, by
39 the district board, and satisfactory to the purchasers of the
40 bonds or notes, their successors, assigns or nominees who may
41 require the security given by any contractor or any depository
42 of the proceeds of the bonds or notes or the revenues received
43 from the district project be satisfactory to the purchasers, their
44 successors, assigns or nominees.

45 (3) The indenture may set forth the rights and remedies of
46 the bondholders, the county commission or trustee and the
47 indenture may provide for accelerating the maturity of the
48 revenue bonds, at the option of the bondholders or the county
49 commission issuing the bonds, upon default in the payment of
50 the amounts due under the bonds.

51 (4) The county commission may also provide by resolution
52 and in the trust indenture for the payment of the proceeds of the
53 sale of the bonds or notes and the revenues from the economic
54 opportunity development district project to any depository it
55 determines, for the custody and investment thereof and for the
56 method of distribution thereof, with safeguards and restrictions
57 it determines to be necessary or advisable for the protection
58 thereof and upon the filing of a certified copy of the resolution
59 or of the indenture for record in the office of the clerk of the
60 county commission of the county in which the economic
61 opportunity development project is located, the resolution has
62 the same effect, as to notice, as the recordation of a deed of
63 trust or other recordable instrument.

64 (5) In the event that more than one certified resolution or
65 indenture is recorded, the security interest granted by the first
66 recorded resolution or indenture has priority in the same
67 manner as an earlier filed deed of trust except to the extent the
68 earlier recorded resolution or indenture provides otherwise.

69 (d) *Mortgage or deed of trust.* —

70 (1) In addition to or in lieu of the indenture provided for in
71 subsection (c) of this section, the principal of and interest on the
72 bonds or notes may, but need not, be secured by a mortgage or
73 deed of trust covering all or any part of the economic opportu-
74 nity development district project from which the revenues
75 pledged are derived and the same may be secured by an

76 assignment or pledge of the income received from the economic
77 opportunity development district project.

78 (2) The proceedings under which bonds or notes are
79 authorized to be issued, when secured by a mortgage or deed of
80 trust, may contain the same terms, conditions and provisions
81 provided for herein when an indenture is entered into between
82 the county commission and a trustee and any mortgage or deed
83 of trust may contain any agreements and provisions customarily
84 contained in instruments securing bonds or notes, including,
85 without limiting the generality of the foregoing, provisions
86 respecting the fixing and collection of revenues from the
87 economic opportunity development district project covered by
88 the proceedings or mortgage, the terms to be incorporated in
89 any lease, sale or financing agreement with respect to the
90 economic opportunity development district project, the im-
91 provement, repair, maintenance and insurance of the downtown
92 redevelopment district project, the creation and maintenance of
93 special funds from the revenues received from the economic
94 opportunity development district project and the rights and
95 remedies available in event of default to the bondholders or
96 note holders, the county commission, or to the trustee under an
97 agreement, indenture, mortgage or deed of trust, all as the
98 county commission body considers advisable and shall not be
99 in conflict with the provisions of this article or any existing law:
100 *Provided*, That in making any agreements or provisions, a
101 county commission shall not have the power to incur original
102 indebtedness by indenture, ordinance, resolution, mortgage or
103 deed of trust except with respect to the economic opportunity
104 development district project and the application of the revenues
105 therefrom and shall not have the power to incur a pecuniary
106 liability or a charge upon its general credit or against its taxing
107 powers unless approved by the voters in accordance with article
108 one, chapter thirteen of this code or as otherwise permitted by
109 the constitution of this state.

110 (e) *Enforcement of obligations.* —

111 (1) The proceedings authorizing any bonds and any
112 indenture, mortgage or deed of trust securing the bonds may
113 provide that, in the event of default in payment of the principal
114 of or the interest on the bonds, or notes, or in the performance
115 of any agreement contained in the proceedings, indenture,
116 mortgage or deed of trust, payment and performance may be
117 enforced by the appointment of a receiver in equity with power
118 to charge and collect rents or other amounts and to apply the
119 revenues from the economic opportunity development district
120 project in accordance with the proceedings or the provisions of
121 the agreement, indenture, mortgage or deed of trust.

122 (2) Any agreement, indenture, mortgage or deed of trust
123 may provide also that, in the event of default in payment or the
124 violation of any agreement contained in the mortgage or deed
125 of trust, the agreement, indenture, mortgage or deed of trust
126 may be foreclosed either by sale at public outcry or by proceed-
127 ings in equity and may provide that the holder or holders of any
128 of the bonds secured thereby may become the purchaser at any
129 foreclosure sale, if the highest bidder therefor.

130 (f) *No pecuniary liability.* — No breach of any agreement,
131 indenture, mortgage or deed of trust shall impose any pecuniary
132 liability upon a municipality or any charge upon its general
133 credit or against its taxing powers.

§7-22-18. Redemption of bonds.

1 The revenue bonds issued pursuant to this article may
2 contain a provision therein to the effect that they, or any of
3 them, may be called for redemption at any time prior to
4 maturity by the county commission and at the redemption
5 prices or premiums, which terms shall be stated in the bond.

§7-22-19. Refunding bonds.

1 (a) Any bonds issued under this article and at any time
2 outstanding may at any time, and from time to time, be re-
3 funded by a county commission by the issuance of its refunding
4 bonds in amount as the county commission considers necessary
5 to refund the principal of the bonds to be refunded, together
6 with any unpaid interest thereon; to make any improvements or
7 alterations in the downtown redevelopment district project; and
8 any premiums and commissions necessary to be paid in
9 connection therewith.

10 (b) Any refunding may be effected whether the bonds to be
11 refunded shall have then matured or shall thereafter mature,
12 either by sale of the refunding bonds and the application of the
13 proceeds thereof for the redemption of the bonds to be refunded
14 thereby, or by exchange of the refunding bonds for the bonds to
15 be refunded thereby: *Provided*, That the holders of any bonds
16 to be refunded shall not be compelled without their consent to
17 surrender their bonds for payment or exchange prior to the date
18 on which they are payable or, if they are called for redemption,
19 prior to the date on which they are by their terms subject to
20 redemption.

21 (c) Any refunding bonds issued under the authority of this
22 article is subject to the provisions contained in section sixteen
23 of this article and shall be secured in accordance with the
24 provisions of section seventeen of this article.

§7-22-20. Use of proceeds from sale of bonds.

1 (a) *General.* -- The proceeds from the sale of any bonds
2 issued under authority of this article shall be applied only for
3 the purpose for which the bonds were issued: *Provided*, That
4 any accrued interest received in any sale shall be applied to the
5 payment of the interest on the bonds sold: *Provided, however*,
6 That if for any reason any portion of the proceeds may not be
7 needed for the purpose for which the bonds were issued, then

8 the unneeded portion of the proceeds may be applied to the
9 purchase of bonds for cancellation or payment of the principal
10 of or the interest on the bonds, or held in reserve for the
11 payment thereof.

12 (b) *Payment of costs.* — The costs that may be paid with the
13 proceeds of the bonds include all development and redevelop-
14 ment costs described in section five of this article and may also
15 include, but not be limited to, the following:

16 (1) The cost of acquiring any real estate determined
17 necessary;

18 (2) The actual cost of the construction of any part of an
19 economic opportunity development district project which may
20 be constructed, including architects', engineers', financial or
21 other consultants' and legal fees;

22 (3) The purchase price or rental of any part of an economic
23 opportunity development district project that may be acquired
24 by purchase or lease;

25 (4) All expenses incurred in connection with the authoriza-
26 tion, sale and issuance of the bonds to finance the acquisition
27 and the interest on the bonds for a reasonable time prior to
28 construction during construction and for not exceeding twelve
29 months after completion of construction; and

30 (5) Any other costs and expenses reasonably necessary in
31 the establishment and acquisition of an economic opportunity
32 development district project and the financing thereof.

§7-22-21. Bonds made legal investments.

1 Bonds issued under the provisions of this article are legal
2 investments for banks, building and loan associations and
3 insurance companies organized under the laws of this state and

- 4 for a business development corporation organized pursuant to
5 chapter thirty-one, article fourteen of this code.

§7-22-22. Exemption from taxation.

- 1 The revenue bonds and notes issued pursuant to this article
2 and the income therefrom are exempt from taxation except
3 inheritance, estate and transfer taxes; and the real and personal
4 property which a county commission or district board acquires
5 pursuant to the provisions of this article are exempt from
6 taxation by the state, or any county, municipality or other
7 levying body, as public property so long as the property is
8 owned by the county commission or district board.

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT
DISTRICTS.**

- §8-38-1. Short title.
§8-38-2. Legislative findings and declaration of purpose.
§8-38-3. Definitions.
§8-38-4. Authorization to create economic opportunity development districts.
§8-38-5. Development expenditures.
§8-38-6. Notice; hearing.
§8-38-7. Application to council for community and economic development for approval of an economic opportunity development district project.
§8-38-8. Establishment of the economic opportunity development district fund.
§8-38-9. Authorization to levy special district excise tax.
§8-38-10. Ordinance to create district as approved by council and authorized by the Legislature.
§8-38-11. District board; duties.
§8-38-12. Special district excise tax authorized.
§8-38-13. Requisition of district subaccount funds.
§8-38-14. Modification of included area; notice; hearing.
§8-38-15. Abolishment and dissolution of district; notice; hearing.
§8-38-16. Bonds issued to finance economic opportunity development district projects.
§8-38-17. Security for bonds.
§8-38-18. Redemption of bonds.
§8-38-19. Refunding bonds.
§8-38-20. Use of proceeds from sale of bonds.

§8-38-21. Bonds made legal investments.

§8-38-22. Exemption from taxation.

§8-38-1. Short title.

- 1 This article is known and may be cited as the “Municipal
- 2 Economic Opportunity Development District Act”.

§8-38-2. Legislative findings and declaration of purpose.

1 The Legislature finds that many significant business
2 opportunities initiated within municipalities of this state face
3 financial and other economic obstacles. This adversely affects
4 the economic and general well-being of the citizens of those
5 municipalities. Establishment of economic opportunity devel-
6 opment districts within municipalities of the state, in accor-
7 dance with the purpose and powers set forth in this article, will
8 serve a public purpose and promote the health, safety, prosper-
9 ity, security and general welfare of all citizens in the state. It
10 will also promote the vitality of significant business opportuni-
11 ties within those municipalities while serving as an effective
12 means for developing or restoring and promoting retail and
13 other business activity within the economic opportunity
14 development districts created herein. This will be of special
15 benefit to the tax base of the municipalities within which any
16 economic development district is created under this article and
17 will stimulate economic growth and job creation.

§8-38-3. Definitions.

1 For purposes of this article, the term:

2 (1) “Council” means the council for community and
3 economic development established in section two, article two,
4 chapter five-b of this code;

5 (2) “County commission” means the governing body of a
6 county of this state;

7 (3) "Development expenditures" means payments for
8 governmental functions, programs, activities, facility construc-
9 tion, improvements and other goods and services which a
10 district board is authorized to perform or provide under section
11 five of this article;

12 (4) "District" means an economic opportunity development
13 district created pursuant to this article;

14 (5) "District board" means a district board created pursuant
15 to section ten of this article;

16 (6) "Eligible property" means any taxable or exempt real
17 property located in a district established pursuant to this article;

18 (7) "Gross annual district tax revenue amount" means the
19 total amount of consumers sales and service tax actually
20 remitted to the tax commissioner by retailers maintaining places
21 of business within the district with respect to sales made and
22 services rendered by retailers from a location within the district
23 for the twelve full calendar months immediately preceding the
24 filing of an application pursuant to section seven of this article;
25 and

26 (8) "Municipality" is a word of art and shall mean, for the
27 purposes of this article, only Class I and Class II cities as
28 classified in article one, section three of this chapter.

**§8-38-4. Authorization to create economic opportunity develop-
ment districts.**

1 A municipality may, in accordance with the procedures and
2 subject to the limitations set forth in this article:

3 (1) Create one or more economic opportunity development
4 districts within its limits;

5 (2) Provide for the administration and financing of develop-
6 ment expenditures within the districts; and

7 (3) Provide for the administration and financing of a
8 continuing program of development and redevelopment
9 expenditures within the districts.

§8-38-5. Development expenditures.

1 Any municipality that has established an economic opportu-
2 nity development district under this article may make, or
3 authorize to be made by a district board and other public or
4 private parties, development expenditures as will promote the
5 economic vitality of the district and the general welfare of the
6 municipality, including, but not limited to, expenditures for the
7 following purposes:

8 (1) Beautification of the district by means such as landscap-
9 ing and construction and erection of fountains, shelters,
10 benches, sculptures, signs, lighting, decorations and similar
11 amenities;

12 (2) Provision of special or additional public services such
13 as sanitation, security for persons and property and the con-
14 struction and maintenance of public facilities, including, but not
15 limited to, sidewalks, parking lots, parking garages and other
16 public areas;

17 (3) Making payments for principal, interest, issuance costs,
18 any of the costs described in section twenty of this article and
19 appropriate reserves for bonds and other instruments and
20 arrangements issued or entered into by the municipality for
21 financing the expenditures of the district described in this
22 section and to otherwise implement the purposes of this article;

23 (4) Providing financial support for public transportation and
24 vehicle parking facilities open to the general public, whether

25 physically situate within the district's boundaries or on adjacent
26 land;

27 (5) Acquiring, building, demolishing, razing, constructing,
28 repairing, reconstructing, refurbishing, renovating, rehabilitat-
29 ing, expanding, altering, otherwise developing, operating and
30 maintaining real property generally, parking facilities, commer-
31 cial structures and other capital improvements to real property,
32 fixtures and tangible personal property, whether or not physi-
33 cally situate within the district's boundaries: *Provided*, That the
34 expenditure directly benefits the district;

35 (6) Developing plans for the architectural design of the
36 district and portions thereof and developing plans and programs
37 for the future development of the district;

38 (7) Developing, promoting and supporting community
39 events and activities open to the general public that benefit the
40 district;

41 (8) Providing the administrative costs for a district manage-
42 ment program;

43 (9) Providing for the usual and customary maintenance and
44 upkeep of all improvements and amenities in the district as are
45 commercially reasonable and necessary to sustain its economic
46 viability on a permanent basis;

47 (10) Providing any other services that the municipality or
48 district board is authorized to perform and which the municipal-
49 ity does not also perform to the same extent on a countywide
50 basis;

51 (11) Making grants to the owners or tenants of economic
52 opportunity development district for the purposes described in
53 this section;

54 (12) Acquiring an interest in any entity or entities that own
55 any portion of the real property situate in the district and
56 contributing capital to any entity or entities; and

57 (13) To do any and all things necessary, desirable or
58 appropriate to carry out and accomplish the purposes of this
59 article notwithstanding any provision of this code to the
60 contrary.

§8-38-6. Notice; hearing.

1 (a) *General.* -- A municipality desiring to create an
2 economic opportunity development district shall conduct a
3 public hearing.

4 (b) *Notice of hearing.* -- Notice of the public hearing shall
5 be published as a Class I-0 legal advertisement in compliance
6 with article three, chapter fifty-nine of this code at least twenty
7 days prior to the scheduled hearing. In addition to the time and
8 place of the hearing, the notice must also state:

9 (1) The purpose of the hearing;

10 (2) The name of the proposed district;

11 (3) The general purpose of the proposed district;

12 (4) The proposed property included in the district; and

13 (5) The proposed method of financing any costs involved,
14 including the base and rate of special district excise tax that
15 may be imposed upon sales of tangible personal property and
16 taxable services from business locations situated within the
17 proposed district.

18 (c) *Opportunity to be heard.* -- At the time and place set
19 forth in the notice, the municipality shall afford the opportunity

20 to be heard to any owner of real property situated in the
21 proposed district and any residents of the municipality.

22 (d) *Application to council.* -- If the municipality, following
23 the public hearing, determines it advisable and in the public
24 interest to establish an economic opportunity development
25 district, it shall apply to the council for community and eco-
26 nomic development for approval of the economic opportunity
27 development district project pursuant to the procedures pro-
28 vided in section seven of this article.

**§8-38-7. Application to council for community and economic
development for approval of an economic opportu-
nity development district project.**

1 (a) *General.* -- The council for community and economic
2 development shall receive and act on applications filed with it
3 by municipalities pursuant to section six of this article. Each
4 application must include:

5 (1) A true copy of the notice described in section six of this
6 article;

7 (2) A general description of the capital improvements,
8 additional or extended services and other proposed develop-
9 ment expenditures to be made in the district;

10 (3) A description of the proposed method of financing the
11 development expenditures, together with a description of the
12 reserves to be established for financing ongoing development
13 or redevelopment expenditures necessary to permanently
14 maintain the optimum economic viability of the district
15 following its inception: *Provided*, That the amounts of the
16 reserves shall not exceed the amounts that would be required by
17 ordinary commercial capital market considerations;

18 (4) A description of the sources and anticipated amounts of
19 all financing, including, but not limited to, proceeds from the
20 issuance of any bonds or other instruments, revenues from the
21 special district excise tax and enhanced revenues from property
22 taxes and fees;

23 (5) A description of the financial contribution of the
24 municipality to the funding of development expenditures;

25 (6) Identification of any businesses that the municipality
26 expects to relocate their business locations from the district to
27 another place in the state in connection with the establishment
28 of the district or from another place in this state to the district:
29 *Provided*, That for purposes of this article, any entities shall be
30 designated “relocated entities”;

31 (7) Identification of any businesses currently conducting
32 business in the proposed economic opportunity development
33 district that the municipality expects to continue doing business
34 there after the district is created;

35 (8) A good faith estimate of the aggregate amount of
36 consumers sales and service tax that was actually remitted to
37 the tax commissioner by all business locations identified as
38 provided in subdivisions (6) and (7) of this subsection with
39 respect to their sales made and services rendered from their
40 then current business locations that will be relocated from, or
41 to, or remain in the district for the twelve full calendar months
42 next preceding the date of the application: *Provided*, That for
43 purposes of this article, the aggregate amount is designated as
44 “the base tax revenue amount”; a good faith estimate of the
45 gross annual district tax revenue amount; and the proposed
46 application of any surplus from all funding sources to further
47 the objectives of this article: *Provided, however*, That the
48 amount of all development expenditures proposed to be made

49 in the first twenty-four months following the creation of the
50 district shall be not less than fifty million dollars.

51 (b) *Additional criteria.* — The council may establish other
52 criteria for consideration when approving the applications:
53 *Provided,* That the council shall act to approve or not approve
54 any application within thirty days following the receipt of the
55 application.

56 (c) *Certification of project.* — If the committee approves a
57 municipality's economic opportunity district project applica-
58 tion, it shall issue to the municipality a written certificate
59 evidencing the approval.

60 The certificate shall expressly state a base tax revenue
61 amount, the gross annual district tax revenue amount and the
62 estimated net annual district tax revenue amount which, for
63 purposes of this article, is the difference between the gross
64 annual district tax revenue amount and the base tax revenue
65 amount, all of which the council has determined with respect to
66 the district's application based on any investigation it considers
67 reasonable and necessary, including, but not limited to, any
68 relevant information the council requests from the tax commis-
69 sioner and the tax commissioner provides to the council:
70 *Provided,* That in determining the net annual district tax
71 revenue amount, the council may not use a base tax revenue
72 amount less than that amount certified by the tax commissioner
73 but, in lieu of confirmation from the tax commissioner of the
74 gross annual district tax revenue amount, the council may use
75 the estimate of the gross annual district tax revenue amount
76 provided by the municipality pursuant to subsection (a) of this
77 section.

78 (d) *Promulgation of rules.* — The council may promulgate
79 rules to implement the economic opportunity development
80 district project application approval process and to describe the

81 criteria and procedures it has established in connection there-
82 with. These rules are not subject to the provisions of chapter
83 twenty-nine-a of this code but shall be filed with the secretary
84 of state.

§8-38-8. Establishment of the economic opportunity development district fund.

1 (a) *General.* -- There is hereby created a special revenue
2 account in the state treasury designated the "economic opportu-
3 nity development district fund" which is an interest-bearing
4 account and shall be invested in the manner described in section
5 nine-c, article six, chapter twelve of this code with the interest
6 income a proper credit to the fund.

7 (b) *District subaccount.* -- A separate and segregated
8 subaccount within the account shall be established for each
9 economic opportunity development district that is approved by
10 the council and authorized by the Legislature pursuant to
11 subdivision (3) of this subsection. Funds paid into the account
12 for the credit of any subaccount may also be derived from the
13 following sources:

14 (1) All interest or return on the investment accruing to the
15 subaccount;

16 (2) Any gifts, grants, bequests, transfers, appropriations or
17 donations which are received from any governmental entity or
18 unit or any person, firm, foundation or corporation; and

19 (3) Any appropriations by the Legislature which are made
20 for this purpose.

§8-38-9. Authorization to levy special district excise tax.

1 (a) *General.* -- Municipalities have no inherent authority to
2 levy taxes and have only that authority expressly granted to

3 them by the Legislature. Because a special district excise tax
4 has the effect of diverting, for a specified period of years, tax
5 dollars that otherwise would go into the general revenue fund
6 of this state, no economic opportunity development district
7 excise tax may be levied by a municipality until after the
8 Legislature expressly authorizes the municipality to levy a
9 special district excise tax on sales of tangible personal property
10 and services made within district boundaries approved by the
11 Legislature.

12 (b) *Authorizations.* -- The Legislature authorizes the
13 following municipalities to levy special district excise taxes on
14 sales of tangible personal property and services made from
15 business locations in the following economic opportunity
16 development districts.

**§8-38-10. Ordinance to create district as approved by council and
authorized by the Legislature.**

1 (a) *General.* -- If an economic opportunity development
2 district project has been approved by the council and the
3 levying of a special district excise tax for the district has been
4 authorized by the Legislature, all in accordance with this article,
5 the municipality may create the district by order entered of
6 record as provided for in article one of this chapter: *Provided,*
7 That the municipality may not amend, alter or change in any
8 manner the boundaries of the economic opportunity develop-
9 ment district authorized by the Legislature. In addition to all
10 other requirements, the order shall contain the following:

11 (1) The name of the district and a description of its bound-
12 aries;

13 (2) A summary of any proposed services to be provided and
14 capital improvements to be made within the district and a
15 reasonable estimate of any attendant costs;

16 (3) The base and rate of any special district excise tax that
17 may be imposed upon sales by businesses for the privilege of
18 operating within the district, which tax shall be passed on to and
19 paid by the consumer, and the manner in which the taxes will
20 be imposed, administered and collected, all of which shall be in
21 conformity with the requirements of this article; and

22 (4) The district board members' terms, their method of
23 appointment and a general description of the district board's
24 powers and duties, which powers may include the authority:

25 (A) To make and adopt all necessary bylaws and rules for
26 its organization and operations not inconsistent with any
27 applicable laws;

28 (B) To elect its own officers, to appoint committees and to
29 employ and fix compensation for personnel necessary for its
30 operations;

31 (C) To enter into contracts with any person, agency,
32 government entity, agency or instrumentality, firm, partnership,
33 limited partnership, limited liability company or corporation,
34 including both public and private corporations, and for-profit
35 and not-for-profit organizations and generally to do any and all
36 things necessary or convenient for the purpose of promoting,
37 developing and advancing the purposes described in section two
38 of this article;

39 (D) To amend or supplement any contracts or leases or to
40 enter into new, additional or further contracts or leases upon the
41 terms and conditions for consideration and for any term of
42 duration, with or without option of renewal, as agreed upon by
43 the district board and any person, agency, government entity,
44 agency or instrumentality, firm, partnership, limited partner-
45 ship, limited liability company or corporation;

46 (E) To, unless otherwise provided for in, and subject to the
47 provisions of any contracts or leases to operate, repair, manage,
48 and maintain buildings and structures and provide adequate
49 insurance of all types and in connection with the primary use
50 thereof and incidental thereto to provide services, such as retail
51 stores and restaurants, and to effectuate incidental purposes,
52 grant leases, permits, concessions or other authorizations to any
53 person or persons upon the terms and conditions for consider-
54 ation and for the term of duration as agreed upon by the district
55 board and any person, agency, governmental department, firm
56 or corporation;

57 (F) To delegate any authority given to it by law to any of its
58 officers, committees, agents or employees;

59 (G) To apply for, receive and use grants-in-aid, donations
60 and contributions from any source or sources and to accept and
61 use bequests, devises, gifts and donations from any person, firm
62 or corporation;

63 (H) To acquire real property by gift, purchase or construc-
64 tion or in any other lawful manner and hold title thereto in its
65 own name and to sell, lease or otherwise dispose of all or part
66 of any real property which it may own, either by contract or at
67 public auction, upon the approval by the district board;

68 (I) To purchase or otherwise acquire, own, hold, sell, lease
69 and dispose of all or part of any personal property which it may
70 own, either by contract or at public auction;

71 (J) Pursuant to a determination by the district board that
72 there exists a continuing need for redevelopment expenditures
73 and that moneys or funds of the district are necessary therefor,
74 to borrow money and execute and deliver the district's negotia-
75 ble notes and other evidences of indebtedness therefor, on the
76 terms as the district shall determine, and give security therefor

77 as is requisite, including, without limitation, a pledge of the
78 district's rights in its subaccount of the downtown district
79 redevelopment fund;

80 (K) To acquire (either directly or on behalf of the munici-
81 pality) an interest in any entity or entities that own any real
82 property situate in the district, to contribute capital to any entity
83 or entities and to exercise the rights of an owner with respect
84 thereto; and

85 (L) To expend its funds in the execution of the powers and
86 authority given in this section, which expenditures, by the
87 means authorized in this section, are hereby determined and
88 declared as a matter of legislative finding to be for a public
89 purpose and use, in the public interest and for the general
90 welfare of the people of West Virginia, to alleviate and prevent
91 economic deterioration and to relieve the existing critical
92 condition of unemployment existing within the state.

93 (b) *Additional contents of order.* — The municipality's
94 order shall also state the general intention of the municipality
95 to develop and increase services and to make capital improve-
96 ments within the district.

97 (c) *Mailing of certified copies of order.* — Upon entry of an
98 order establishing an economic opportunity development
99 district excise tax, a certified copy of the order shall be mailed
100 to the state auditor, as ex officio the chief inspector and
101 supervisor of public offices, the state treasurer and the tax
102 commissioner.

§8-38-11. District board; duties.

1 (a) *General.* — The council of a municipality that has been
2 authorized by the Legislature to establish an economic opportu-
3 nity development district, in accordance with this article, shall
4 provide, by order entered of record, for the appointment of a

5 district board to oversee the operations of the district: *Provided*,
6 That the municipality may, by order, in lieu of appointing a
7 separate district board, designate itself to act as the district
8 board.

9 (b) *Composition of board.* — If a separate district board is
10 to be appointed, it shall be made up of at least seven members,
11 two of which shall be owners, or representatives of owners, of
12 real property situated in the economic opportunity development
13 district and the other five shall be residents of the municipality
14 within which the district is located.

15 (c) *Annual report.* — The district board, in addition to the
16 duties prescribed by the order creating the district, shall submit
17 an annual report to the municipality and the council containing:

18 (1) An itemized statement of its receipts and disbursements
19 for the preceding fiscal year;

20 (2) A description of its activities for the preceding fiscal
21 year;

22 (3) A recommended program of services to be performed
23 and capital improvements to be made within the district for the
24 coming fiscal year; and

25 (4) A proposed budget to accomplish its objectives.

26 (d) *Conflict of interest exception.* — Nothing in this article
27 prohibits any member of the district board from also serving on
28 the board of directors of a nonprofit corporation with which the
29 municipality may contract to provide specified services within
30 the district.

31 (e) *Compensation of board members.* — Each member of
32 the district board may receive reasonable compensation for
33 services on the board in the amount determined by the municipi-

34 pality: *Provided*, That when a district board is not created for
35 the district but the work of the board is done by the municipal-
36 ity, the members shall receive no additional compensation.

§8-38-12. Special district excise tax authorized.

1 (a) *General*. — The council of a municipality, authorized by
2 the Legislature to levy a special district excise tax for the
3 benefit of an economic opportunity development district, may,
4 by order entered of record, impose that tax on the privilege of
5 selling tangible personal property and rendering select services
6 in the district in accordance with this section.

7 (b) *Tax base*. — The base of a special district excise tax
8 imposed pursuant to this section shall be identical to the base of
9 the consumers sales and service tax imposed pursuant to article
10 fifteen, chapter eleven of this code on sales made and services
11 rendered within the boundaries of the district: *Provided*, That
12 except for the exemption provided in section nine-f of said
13 article, all exemptions and exceptions from the consumers sales
14 and service tax also apply to the special district excise tax and
15 sales of gasoline and special fuel shall not be subject to special
16 district excise tax but remain subject to the tax levied by said
17 article.

18 (c) *Tax rate*. — The rate of a special district excise tax
19 levied pursuant to this section shall be stated in an order entered
20 of record by the municipality and equal to the general rate of
21 tax on each dollar of gross proceeds from sales of tangible
22 personal property and services subject to the tax levied by
23 section three, article fifteen, chapter eleven of this code. The tax
24 on fractional parts of a dollar shall be levied and collected in
25 conformity with the provision of section three of said article.

26 (d) *Collection by tax commissioner*. — The order of the
27 municipality imposing a special district excise tax shall provide

28 for the tax to be collected by the tax commissioner in the same
29 manner as the tax levied by section three, article fifteen, chapter
30 eleven of this code is administered, assessed, collected and
31 enforced.

32 (e) *Deposit of net tax collected.* —

33 (1) The order of the municipality imposing a special district
34 excise tax shall provide that the tax commissioner deposit the
35 net amount of tax collected in the special economic opportunity
36 development district fund to the credit of the municipality's
37 subaccount therein for the economic opportunity development
38 district and that the money in the subaccount may only be used
39 to pay for development expenditures as provided in this article
40 except as provided in subsection (f) of this section.

41 (2) The state treasurer shall withhold from the municipal-
42 ity's subaccount in the economic opportunity development
43 district fund and shall deposit in the general revenue fund of
44 this state, on or before the twentieth day of each calendar month
45 next following the effective date of a special district excise tax,
46 a sum equal to one twelfth of the base tax revenue amount last
47 certified by the council pursuant to section seven of this article.

48 (f) *Effective date of special district excise tax.* — Any taxes
49 imposed pursuant to the authority of this section shall be
50 effective on the first day of the calendar month that begins on
51 or after the date of adoption of an order entered of record
52 imposing the tax or at any later date expressly designated in the
53 ordinance that begins on the first day of a calendar month.

54 (g) *Copies of order.* — Upon entry of an order levying a
55 special district excise tax, a certified copy of the order shall be
56 mailed to the state auditor, as ex officio the chief inspector and
57 supervisor of public offices, the state treasurer and the tax
58 commissioner.

§8-38-13. Requisition of district subaccount funds.

1 Sixty days after collection of a special district excise tax
2 begins, the state auditor shall, upon receipt of a monthly
3 requisition from the district board, issue his or her warrant on
4 the state treasurer for the funds requested from the district's
5 subaccount, which funds are applied for the purposes described
6 in section five of this article and the state treasurer shall pay the
7 warrant out of funds in the subaccount.

§8-38-14. Modification of included area; notice; hearing.

1 (a) *General.* -- The order creating an economic opportunity
2 development district may not be amended to include additional
3 contiguous property until after the amendment is approved by
4 the council in the same manner as an application to approve the
5 establishment of the district is acted upon under section seven
6 of this article and the amendment is authorized by the Legisla-
7 ture.

8 (b) *Limitations.* -- Additional property may not be included
9 in the district unless it is situated within the boundaries of the
10 municipality and is contiguous to the then current boundaries of
11 the district.

12 (c) *Public hearing required.* --

13 (1) The council of any municipality desiring to amend its
14 order shall designate a time and place for a public hearing upon
15 the proposal to include additional property. The notice shall
16 meet the requirements set forth in section six of this article.

17 (2) At the time and place set forth in the notice, the munici-
18 pality shall afford the opportunity to be heard to any owners of
19 real property either currently included in or proposed to be
20 added to the existing district and to any other residents of the
21 municipality.

22 (d) *Application to council.* — Following the hearing, the
23 municipality may, by resolution, apply to the council to approve
24 inclusion of the additional property in the district.

25 (e) *Consideration by council.* — Before the council ap-
26 proves inclusion of the additional property in the district, the
27 council shall determine the amount of taxes levied by article
28 fifteen, chapter eleven of this code that were collected by
29 businesses located in the area the municipality proposes to add
30 to the district in the same manner as the base amount of tax was
31 determined when the district was first created. The state
32 treasurer shall also deposit one twelfth of this additional tax
33 base amount into the general revenue fund each month, as
34 provided in section twelve of this article.

35 (f) *Legislative action required.* — After the council ap-
36 proves amending the boundaries of the district, the Legislature
37 must amend section nine of this article to allow levy of the
38 special district excise tax on business located in geographic area
39 to be included in the district. After the Legislature amends said
40 section, the municipality may then amend its order: *Provided,*
41 That the order may not be effective any earlier than the first day
42 of the calendar month that begins thirty days after the effective
43 date of the act of the Legislature authorizing the levy on the
44 special district excise tax on businesses located in the geo-
45 graphic area to be added to the boundaries of the district for
46 which the tax is levied or a later date as set forth in the order of
47 the municipality.

48 (g) *Collection of special district excise tax.* — All busi-
49 nesses included in a district because of the boundary amend-
50 ment shall on the effective date of the order, determined as
51 provided in subsection (f) of this section, collect the special
52 district excise tax on all sales on tangible property or services
53 made from locations in the district on or after the effective date

54 of the municipality's order or a later date as set forth in the
55 order.

§8-38-15. Abolishment and dissolution of district; notice; hearing.

1 (a) *General.* -- Except upon the express written consent of
2 the council and of all the holders or obligees of any indebted-
3 ness or other instruments the proceeds of which were applied to
4 any development or redevelopment expenditures or any
5 indebtedness, the payment of which is secured by revenues
6 payable into the fund provided under section eight of this article
7 or by any public property, a district may only be abolished by
8 the municipality when there is no outstanding indebtedness the
9 proceeds of which were applied to any development or redevel-
10 opment expenditures or the payment of which is secured by
11 revenues payable into the fund provided under section eight of
12 this article, or by any public property, and following a public
13 hearing upon the proposed abolishment.

14 (b) *Notice of public hearing.* -- Notice of the public hearing
15 required by subsection (a) of this section shall be provided by
16 first-class mail to all owners of real property within the district
17 and shall be published as a Class I-0 legal advertisement in
18 compliance with article three, chapter fifty-nine of this code at
19 least twenty days prior to the public hearing.

20 (c) *Transfer of district assets and funds.* -- Upon the
21 abolishment of any economic opportunity development district,
22 any funds or other assets, contractual rights or obligations,
23 claims against holders of indebtedness or other financial
24 benefits, liabilities or obligations existing after full payment has
25 been made on all existing contracts, bonds, notes or other
26 obligations of the district are transferred to and assumed by the
27 municipality. Any funds or other assets transferred shall be used
28 for the benefit of the area included in the district being abol-
29 ished.

30 (d) *Reinstatement of district.* -- Following abolishment of
31 a district pursuant to this section, its reinstatement requires
32 compliance with all requirements and procedures set forth in
33 this article for the initial development, approval, establishment
34 and creation of an economic opportunity development district.

§8-38-16. Bonds issued to finance economic opportunity development district projects.

1 (a) *General.* -- The municipality that established the
2 economic opportunity development district may issue bonds or
3 notes for the purpose of financing development expenditures,
4 as described in section five of this article, with respect to one or
5 more projects within the economic opportunity development
6 district.

7 (b) *Limited obligations.* -- All bonds and notes issued by a
8 municipality under the authority of this article are limited
9 obligations of the municipality.

10 (c) *Term of obligations.* -- No municipality may issue
11 notes, bonds or other instruments for funding district projects
12 or improvements that exceed a repayment schedule of thirty
13 years.

14 (d) *Debt service.* -- The principal and interest on the bonds
15 shall be payable out of the funds on deposit in the subaccount
16 established for the economic opportunity development district
17 pursuant to section eight of this article, including, without
18 limitation, any funds derived from the special district excise tax
19 imposed by section twelve of this article or other revenues
20 derived from the economic opportunity development district to
21 the extent pledged for the purpose by the municipality in the
22 resolution authorizing the bonds.

23 (e) *Surplus funds.* -- To the extent that the average daily
24 amount on deposit in the subaccount established for a district

25 pursuant to section eight of this article exceeds, for more than
26 six consecutive calendar months, the sum of: (1) One hundred
27 thousand dollars; plus (2) the amount required to be kept on
28 deposit pursuant to the documents authorizing, securing or
29 otherwise relating to the bonds or notes issued under this
30 section, then the excess shall be used by the district either to
31 redeem the bonds or notes previously issued or remitted to the
32 general fund of this state.

33 (f) *Debt not general obligation of municipality.* — Neither
34 the notes or bonds and any interest coupons issued under the
35 authority of this article shall ever constitute an indebtedness of
36 the municipality issuing the notes or bonds within the meaning
37 of any constitutional provision or statutory limitation and shall
38 never constitute or give rise to a pecuniary liability of the
39 municipality issuing the notes or bonds.

40 (g) *Debt not a charge general credit or taxing powers of*
41 *municipality.* — Neither the bonds or notes, nor interest thereon,
42 is a charge against the general credit or taxing powers of the
43 municipality and that fact shall be plainly stated on the face of
44 each bond or note.

45 (h) *Issuance of bonds or notes.* —

46 (1) Bonds or notes allowed under this section may be
47 executed, issued and delivered at any time and from time to
48 time, may be in a form and denomination, may be of a tenor,
49 must be negotiable but may be registered as to the principal
50 thereof or as to the principal and interest thereof, may be
51 payable in any amounts and at any time or times, may be
52 payable at any place or places, may bear interest at any rate or
53 rates payable at any place or places and evidenced in any
54 manner and may contain any provisions therein not inconsistent
55 herewith, all as provided in the order or orders of the municipal-
56 ity whereunder the bonds or notes are authorized to be issued.

57 (2) The bonds may be sold by the municipality at public or
58 private sale at, above or below par as the municipality autho-
59 rizes.

60 (3) Bonds and notes issued pursuant to this article shall be
61 signed by the authorized representative of the municipality and
62 attested by the municipal clerk and be under the seal of the
63 municipality.

64 (4) Any coupons attached to the bonds shall bear the
65 facsimile signature of the authorized representative of the
66 municipality. In case any of the officials whose signatures
67 appear on the bonds, notes or coupons cease to be officers
68 before the delivery of the bonds or notes, their signatures shall,
69 nevertheless, be valid and sufficient for all purposes to the same
70 extent as if they had remained in office until the delivery.

71 (i) *Additional bonds or notes.* -- If the proceeds of the
72 bonds or notes, by error of calculation or otherwise, are less
73 than the cost of the economic opportunity development district
74 project, or if additional real or personal property is to be added
75 to the district project or if it is determined that financing is
76 needed for additional development or redevelopment expendi-
77 tures, additional bonds or notes may, in like manner, be issued
78 to provide the amount of the deficiency or to defray the cost of
79 acquiring or financing any additional real or personal property
80 or development or redevelopment expenditures and, unless
81 otherwise provided for in the trust agreement, mortgage or deed
82 of trust, are considered to be of the same issue and shall be
83 entitled to payment from the same fund, without preference or
84 priority, and shall be of equal priority as to any security.

§8-38-17. Security for bonds.

1 (a) *General.* -- Unless the municipality shall otherwise
2 determine in the resolution authorizing the issuance of the

3 bonds or notes under the authority of this article, there is hereby
4 created a statutory lien upon the subaccount created pursuant to
5 section eight of this article and all special district excise tax
6 revenues collected for the benefit of the district pursuant to
7 section eleven-a, article ten, chapter eleven of this code for the
8 purpose of securing the principal of the bonds or notes and the
9 interest thereon.

10 (b) *Security for debt service.* — The principal of and interest
11 on any bonds or notes issued under the authority of this article
12 shall be secured by a pledge of the special district excise tax
13 revenues derived from the economic opportunity development
14 district project by the municipality issuing the bonds or notes to
15 the extent provided in the resolution adopted by the municipal-
16 ity authorizing the issuance of the bonds or notes.

17 (c) *Trust indenture.* —

18 (1) In the discretion and at the option of the municipality,
19 the bonds and notes may also be secured by a trust indenture by
20 and between the municipality and a corporate trustee, which
21 may be a trust company or bank having trust powers, within or
22 without the state of West Virginia.

23 (2) The resolution authorizing the bonds or notes and fixing
24 the details thereof may provide that the trust indenture may
25 contain provisions for the protection and enforcing the rights
26 and remedies of the bondholders as are reasonable and proper,
27 not in violation of law, including covenants setting forth the
28 duties of the municipality in relation to the construction,
29 acquisition or financing of an economic opportunity develop-
30 ment district project, or part thereof or an addition thereto, and
31 the improvement, repair, maintenance and insurance thereof
32 and for the custody, safeguarding and application of all moneys
33 and may provide that the economic opportunity development
34 district project shall be constructed and paid for under the

35 supervision and approval of the consulting engineers or
36 architects employed and designated by the municipality or, if
37 directed by the municipality in the resolution, by the district
38 board, and satisfactory to the purchasers of the bonds or notes,
39 their successors, assigns or nominees who may require the
40 security given by any contractor or any depository of the
41 proceeds of the bonds or notes or the revenues received from
42 the district project be satisfactory to the purchasers, their
43 successors, assigns or nominees.

44 (3) The indenture may set forth the rights and remedies of
45 the bondholders, the municipality or trustee and the indenture
46 may provide for accelerating the maturity of the revenue bonds,
47 at the option of the bondholders or the municipality issuing the
48 bonds, upon default in the payment of the amounts due under
49 the bonds.

50 (4) The municipality may also provide by resolution and in
51 the trust indenture for the payment of the proceeds of the sale
52 of the bonds or notes and the revenues from the economic
53 opportunity development district project to any depository it
54 determines, for the custody and investment thereof and for the
55 method of distribution thereof, with safeguards and restrictions
56 it determines to be necessary or advisable for the protection
57 thereof and upon the filing of a certified copy of the resolution
58 or of the indenture for record with the clerk of the municipality
59 in which the economic opportunity development project is
60 located, the resolution has the same effect, as to notice, as the
61 recordation of a deed of trust or other recordable instrument.

62 (5) In the event that more than one certified resolution or
63 indenture is recorded, the security interest granted by the first
64 recorded resolution or indenture has priority in the same
65 manner as an earlier filed deed of trust except to the extent the
66 earlier recorded resolution or indenture provides otherwise.

67 (d) *Mortgage or deed of trust.* —

68 (1) In addition to or in lieu of the indenture provided for in
69 subsection (c) of this section, the principal of and interest on the
70 bonds or notes may, but need not, be secured by a mortgage or
71 deed of trust covering all or any part of the economic opportu-
72 nity development district project from which the revenues
73 pledged are derived and the same may be secured by an
74 assignment or pledge of the income received from the economic
75 opportunity development district project.

76 (2) The proceedings under which bonds or notes are
77 authorized to be issued, when secured by a mortgage or deed of
78 trust, may contain the same terms, conditions and provisions
79 provided for herein when an indenture is entered into between
80 the municipality and a trustee and any mortgage or deed of trust
81 may contain any agreements and provisions customarily
82 contained in instruments securing bonds or notes, including,
83 without limiting the generality of the foregoing, provisions
84 respecting the fixing and collection of revenues from the
85 economic opportunity development district project covered by
86 the proceedings or mortgage, the terms to be incorporated in
87 any lease, sale or financing agreement with respect to the
88 economic opportunity development district project, the im-
89 provement, repair, maintenance and insurance of the downtown
90 redevelopment district project, the creation and maintenance of
91 special funds from the revenues received from the economic
92 opportunity development district project and the rights and
93 remedies available in event of default to the bondholders or
94 note holders, the municipality, or to the trustee under an
95 agreement, indenture, mortgage or deed of trust, all as the
96 municipality considers advisable and shall not be in conflict
97 with the provisions of this article or any existing law: *Provided,*
98 That in making any agreements or provisions, a municipality
99 shall not have the power to incur original indebtedness by
100 indenture, ordinance, resolution, mortgage or deed of trust

101 except with respect to the economic opportunity development
102 district project and the application of the revenues therefrom
103 and shall not have the power to incur a pecuniary liability or a
104 charge upon its general credit or against its taxing powers
105 unless approved by the voters in accordance with article one,
106 chapter thirteen of this code or as otherwise permitted by the
107 constitution of this state.

108 (e) *Enforcement of obligations.* —

109 (1) The proceedings authorizing any bonds and any
110 indenture, mortgage or deed of trust securing the bonds may
111 provide that, in the event of default in payment of the principal
112 of or the interest on the bonds, or notes, or in the performance
113 of any agreement contained in the proceedings, indenture,
114 mortgage or deed of trust, payment and performance may be
115 enforced by the appointment of a receiver in equity with power
116 to charge and collect rents or other amounts and to apply the
117 revenues from the economic opportunity development district
118 project in accordance with the proceedings or the provisions of
119 the agreement, indenture, mortgage or deed of trust.

120 (2) Any agreement, indenture, mortgage or deed of trust
121 may provide also that, in the event of default in payment or the
122 violation of any agreement contained in the mortgage or deed
123 of trust, the agreement, indenture, mortgage or deed of trust
124 may be foreclosed either by sale at public outcry or by proceed-
125 ings in equity and may provide that the holder or holders of any
126 of the bonds secured thereby may become the purchaser at any
127 foreclosure sale, if the highest bidder therefor.

128 (f) *No pecuniary liability.* — No breach of any agreement,
129 indenture, mortgage or deed of trust shall impose any pecuniary
130 liability upon a municipality or any charge upon its general
131 credit or against its taxing powers.

§8-38-18. Redemption of bonds.

1 The revenue bonds issued pursuant to this article may
2 contain a provision therein to the effect that they, or any of
3 them, may be called for redemption at any time prior to
4 maturity by the municipality and at the redemption prices or
5 premiums, which terms shall be stated in the bond.

§8-38-19. Refunding bonds.

1 (a) Any bonds issued under this article and at any time
2 outstanding may at any time, and from time to time, be re-
3 funded by a municipality by the issuance of its refunding bonds
4 in amount as the municipality considers necessary to refund the
5 principal of the bonds to be refunded, together with any unpaid
6 interest thereon; to make any improvements or alterations in the
7 downtown redevelopment district project; and any premiums
8 and commissions necessary to be paid in connection therewith.

9 (b) Any refunding may be effected whether the bonds to be
10 refunded shall have then matured or shall thereafter mature,
11 either by sale of the refunding bonds and the application of the
12 proceeds thereof for the redemption of the bonds to be refunded
13 thereby, or by exchange of the refunding bonds for the bonds to
14 be refunded thereby: *Provided*, That the holders of any bonds
15 to be refunded shall not be compelled without their consent to
16 surrender their bonds for payment or exchange prior to the date
17 on which they are payable or, if they are called for redemption,
18 prior to the date on which they are by their terms subject to
19 redemption.

20 (c) Any refunding bonds issued under the authority of this
21 article is subject to the provisions contained in section sixteen
22 of this article and shall be secured in accordance with the
23 provisions of section seventeen of this article.

§8-38-20. Use of proceeds from sale of bonds.

1 (a) *General.* -- The proceeds from the sale of any bonds
2 issued under authority of this article shall be applied only for
3 the purpose for which the bonds were issued: *Provided,* That
4 any accrued interest received in any sale shall be applied to the
5 payment of the interest on the bonds sold: *Provided, however,*
6 That if for any reason any portion of the proceeds may not be
7 needed for the purpose for which the bonds were issued, then
8 the unneeded portion of the proceeds may be applied to the
9 purchase of bonds for cancellation or payment of the principal
10 of or the interest on the bonds, or held in reserve for the
11 payment thereof.

12 (b) *Payment of costs.* -- The costs that may be paid with the
13 proceeds of the bonds include all development and redevelop-
14 ment costs described in section five of this article and may also
15 include, but not be limited to, the following:

16 (1) The cost of acquiring any real estate determined
17 necessary;

18 (2) The actual cost of the construction of any part of an
19 economic opportunity development district project which may
20 be constructed, including architects', engineers', financial or
21 other consultants' and legal fees;

22 (3) The purchase price or rental of any part of an economic
23 opportunity development district project that may be acquired
24 by purchase or lease;

25 (4) All expenses incurred in connection with the authoriza-
26 tion, sale and issuance of the bonds to finance the acquisition
27 and the interest on the bonds for a reasonable time prior to
28 construction during construction and for not exceeding twelve
29 months after completion of construction; and

30 (5) Any other costs and expenses reasonably necessary in
31 the establishment and acquisition of an economic opportunity
32 development district project and the financing thereof.

§8-38-21. Bonds made legal investments.

1 Bonds issued under the provisions of this article are legal
2 investments for banks, building and loan associations and
3 insurance companies organized under the laws of this state and
4 for a business development corporation organized pursuant to
5 chapter thirty-one, article fourteen of this code.

§8-38-22. Exemption from taxation.

1 The revenue bonds and notes issued pursuant to this article
2 and the income therefrom are exempt from taxation except
3 inheritance, estate and transfer taxes; and the real and personal
4 property which a municipality or district board acquires
5 pursuant to the provisions of this article are exempt from
6 taxation by the state, or any county, municipality or other
7 levying body, as public property so long as the property is
8 owned by the municipality or district board.

CHAPTER 11. TAXATION.

Article

10. Procedure and Administration.

11. Consumers Sales and Service Tax.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

**§11-10-11a. Administration of special district excise tax; commis-
sion authorized.**

1 (a) Any municipality or county commission which, pursu-
2 ant to section twelve, article twenty-two, chapter seven of this
3 code, section eleven, article thirteen-b, chapter eight of this
4 code, or section twelve, article thirty-eight, chapter eight of this

5 code imposes a special district excise tax shall, by express
6 provision in the order imposing that tax, authorize the state tax
7 commissioner to administer, assess, collect and enforce that tax
8 on behalf of and as its agent.

9 (1) The county commission shall make such authorization
10 by the adoption of a provision in its order levying a special
11 district excise tax stating its purpose and referring to this
12 section and providing that the order shall be effective on the
13 first day of a month at least sixty days after its adoption.

14 (2) A certified copy of the order shall be forwarded to the
15 state auditor, the state treasurer and the tax commissioner so
16 that it will be received within five days after its adoption.

17 (b) Any special district excise tax administered under this
18 section shall be administered and collected by the tax commis-
19 sioner in the same manner and subject to the same interest,
20 additions to tax and penalties as provided for the tax imposed
21 in article fifteen of this chapter.

22 (c) All special district excise tax moneys collected by the
23 tax commissioner under this section shall be paid into the state
24 treasury to the credit of each county commission's subaccount
25 in the economic opportunity development district fund created
26 pursuant to section nine, article twenty-two, chapter seven of
27 this code for the particular economic opportunity development
28 district. The special district excise tax moneys shall be credited
29 to the subaccount of each particular county commission levying
30 a special district excise tax being administered under this
31 section. The credit shall be made to the subaccount of the
32 county commission for the economic opportunity development
33 district in which the taxable sales were made and services
34 rendered as shown by the records of the tax commissioner and
35 certified by him or her monthly to the state treasurer, namely,
36 the location of each place of business of every vendor collecting

37 and paying the tax to the tax commissioner without regard to
38 the place of possible use by the purchaser.

39 (d) As soon as practicable after the special district excise
40 tax moneys have been paid into the state treasury in any month
41 for the preceding reporting period, the district board may issue
42 a requisition to the auditor requesting issuance of a state
43 warrant for the proper amount in favor of each county commis-
44 sion entitled to the monthly remittance of its special district
45 excise tax moneys.

46 (1) Upon receipt of the requisition, the auditor shall issue
47 his or her warrant on the state treasurer for the funds requested
48 and the state treasurer shall pay the warrant out of the
49 subaccount.

50 (2) If errors are made in any payment, or adjustments are
51 otherwise necessary, whether attributable to refunds to taxpay-
52 ers or to some other fact, the errors shall be corrected and
53 adjustments made in the payments for the next six months as
54 follows: One sixth of the total adjustment shall be included in
55 the payments for the next six months. In addition, the payment
56 shall include a refund of amounts erroneously not paid to the
57 county commission and not previously remitted during the three
58 years preceding the discovery of the error.

59 (3) A correction and adjustment in payments described in
60 this subsection due to the misallocation of funds by the vendor
61 shall be made within three years of the date of the payment
62 error.

63 (e) Notwithstanding any other provision of this code to the
64 contrary, the tax commissioner shall deduct and retain for the
65 benefit of his or her office for expenditure pursuant to appropri-
66 ation of the Legislature from each payment into the state
67 treasury, as provided in subsection (c) of this section, one

68 percent thereof as a commission to compensate his or her office
69 for the discharge of the duties described in this section.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

***§11-15-9f. Exemption for sales and services subject to special district excise tax.**

1 Notwithstanding any provision of this article to the con-
2 trary, any sale or service upon which a special district excise tax
3 is paid, pursuant to the provisions of section twelve, article
4 twenty-two, chapter seven of this code, section eleven, article
5 thirteen-b, chapter eight of this code, or section twelve, article
6 thirty-eight, chapter eight of this code is exempt from the tax
7 imposed by this article: *Provided*, That the special district
8 excise tax does not apply to sales of gasoline and special fuel.



CHAPTER 89

(S. B. 443 — By Senators Chafin, Helmick and Bailey)



[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section three-e, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the selection and funding of economic and infrastructure projects under the direction of the director of the West Virginia development office.

Be it enacted by the Legislature of West Virginia:

* **CLERK'S NOTE:** This section was also amended by HB 3014 (Chapter 146), which passed prior to this act.

That section three-e, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3e. Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.

1 (a) The Legislature hereby finds and declares the follow-
2 ing:

3 (1) That some mining operations in this state process coal
4 to create a saleable clean coal product;

5 (2) That the by-product, waste or residue created from
6 processing coal is commonly deposited in what are known as
7 refuse or gob piles;

8 (3) That, as a result of technological developments and
9 other factors, the material contained in some refuse or gob piles
10 located in this state can be recovered and further processed to
11 produce saleable clean coal; and

12 (4) That, under the existing laws of this state, coal produced
13 from processing material contained in refuse, gob piles, slurry
14 ponds, pond fines or other sources of waste coal would be
15 subject to the annual privilege tax imposed on the severance of
16 coal pursuant to section three of this article and the minimum
17 severance tax imposed by section three, article twelve-b of this
18 chapter.

19 Based on the findings in this subsection, the Legislature
20 concludes that an incentive to extracting and recovering
21 material contained in refuse, gob piles and other sources of
22 waste coal located in this state and subsequently processing,
23 washing and preparing this material to produce coal should be

24 implemented to encourage the production of this coal from
25 refuse or gob piles located in this state.

26 (b) *Imposition of tax.* — In lieu of: (i) The annual privilege
27 tax imposed on the severance of coal imposed by section three
28 of this article; (ii) the additional tax on severance, extraction
29 and production of coal imposed by section six of this article;
30 and (iii) the minimum severance tax imposed by section three,
31 article twelve-b of this chapter for the privilege of engaging or
32 continuing within this state in the business of extracting and
33 recovering material from a refuse, gob pile or other sources of
34 waste coal and subsequently processing, washing and preparing
35 this extracted or recovered material to produce coal for sale,
36 profit or commercial use, there is hereby levied and shall be
37 collected from every person exercising that privilege an annual
38 privilege tax.

39 (c) *Rate and measure of tax.* — The tax imposed in subsec-
40 tion (b) of this section is two and one-half percent of the gross
41 value of the coal produced, as shown by the gross proceeds
42 derived from the sale of the coal by the producer, except as
43 otherwise provided in this article.

44 (d) *Tax in addition to other taxes.* — The tax imposed by
45 this section applies to all persons extracting and recovering
46 material from refuse, gob piles or other sources of waste coal
47 located in this state and subsequently processing, washing and
48 preparing this extracted and recovered material to produce coal
49 for sale, profit or commercial use and shall be in addition to all
50 other taxes imposed by law: *Provided*, That the tax imposed by
51 this section is in lieu of the tax imposed by sections three and
52 six of this article and section three, article twelve-b of this
53 chapter.

54 (e) *Exemption.* — The tax imposed in subsection (b) of this
55 section shall not apply to any electrical power cogeneration

56 plant burning material from its wholly owned refuse or gob
57 pile.

58 (f) *Dedication of taxes collected, creation of fund.* --

59 (1) There is continued in the state treasury a fund entitled
60 the "waste coal-producing counties fund" which shall be a
61 revolving fund that shall carry over each fiscal year. The taxes
62 collected under the provisions of this section shall be deposited
63 in the waste coal-producing counties fund and are dedicated to
64 the county commissions of the counties in which the refuse, gob
65 piles or other sources of waste coal are located from which
66 taxable waste coal production has occurred during the year for
67 use in economic development and infrastructure improvements.
68 The economic and infrastructure projects are to be in accor-
69 dance with the rules promulgated under the synthetic fuel-
70 producing counties grant fund program, as determined by the
71 director of the West Virginia development office: *Provided,*
72 That the county shall use ninety percent of the funds for
73 infrastructure improvement and ten percent of the funds for
74 economic development.

75 (2) Moneys in the waste coal-producing counties fund shall
76 be distributed by the state treasurer annually to the counties in
77 which the refuse, gob piles or other sources of waste coal are
78 located, from which taxable waste coal production has occurred
79 during the year, in an amount prorated to the number of tons of
80 taxable waste coal produced in each county during the preced-
81 ing year. The distribution shall be paid separate from any other
82 payment of moneys to the county by the treasurer. For purposes
83 of this subdivision, the term "ton" means two thousand pounds.

84 (3) The office of chief inspector shall annually determine
85 that counties' expenditures of moneys distributed under this
86 section is in compliance with the requirements of this section.

CHAPTER 90

(H. B. 2961 — By Delegates Perry, Shaver,
Beach and Fleischauer)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school buses generally; and requiring the state board of education develop a policy concerning idling of school buses.

Be it enacted by the Legislature of West Virginia:

That section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways; limitation on idling.

- 1 (a) The driver of a vehicle, upon meeting or overtaking
- 2 from either direction any school bus which has stopped for the
- 3 purpose of receiving or discharging any school children, shall
- 4 stop the vehicle before reaching the school bus when there is in
- 5 operation on the school bus flashing warning signal lights, as
- 6 referred to in section eight of this article, and the driver shall
- 7 not proceed until the school bus resumes motion, or is signaled
- 8 by the school bus driver to proceed or the visual signals are no

9 longer actuated. This section applies wherever the school bus is
10 receiving or discharging children including, but not limited to,
11 any street, highway, parking lot, private road or driveway:
12 *Provided*, That the driver of a vehicle upon a controlled access
13 highway need not stop upon meeting or passing a school bus
14 which is on a different roadway or adjacent to the highway and
15 where pedestrians are not permitted to cross the roadway. Any
16 driver acting in violation of this subsection is guilty of a
17 misdemeanor and, upon conviction, shall be fined not less than
18 fifty nor more than two hundred dollars, or imprisoned in the
19 county jail not more than six months, or both fined and impris-
20 oned. If the identity of the driver cannot be ascertained, then
21 any owner or lessee of the vehicle in violation of this subsection
22 is guilty of a misdemeanor and, upon conviction, shall be fined
23 not less than twenty-five nor more than one hundred dollars.
24 The conviction shall not subject the owner or lessee to further
25 administrative or other penalties for the offense, notwithstand-
26 ing other provisions of this code to the contrary.

27 (b) Every bus used for the transportation of school children
28 shall bear upon the front and rear of the bus a plainly visible
29 sign containing the words "school bus" in letters not less than
30 eight inches in height. When a contract school bus is being
31 operated upon a highway for purposes other than the actual
32 transportation of children either to or from school, all markings
33 on the contract school bus indicating "school bus" shall be
34 covered or concealed. Any school bus sold or transferred to
35 another owner by a county board of education, agency or
36 individual shall have all flashing warning lights disconnected
37 and all lettering removed or permanently obscured, except
38 when sold or transferred for the transportation of school
39 children.

40 (c) The state board of education shall write a policy
41 governing the idling of school buses.

CHAPTER 91

(Com. Sub. for S. B. 522 — By Senators Oliverio, Prezioso, Plymale, Edgell, Hunter, Guills, Bowman, Rowe and Love)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article two of said chapter; to further amend said article by adding thereto a new section, designated section five-g; to amend and reenact section seven, article two-e of said chapter; to amend and reenact section one, article three of said chapter; to amend and reenact sections one and two, article four of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact sections ten and eleven of said article; to amend and reenact sections one-a, one-c, four, seven, thirteen, fourteen, twenty-five and forty-five, article five of said chapter; to amend and reenact sections two and five, article five-a of said chapter; and to amend and reenact section four, article eight of said chapter, all relating to public education generally; definitions; allowing state board president to serve an unlimited number of terms, but no more than two consecutive terms; requiring county boards to provide certain policies, summaries of any modifications to those policies and copies of annual reports to state board; requiring state board to submit copies of summaries and annual reports to the legislative oversight commission on education accountability; allowing, with state board approval, certain appropriations to be expended directly or through contractual agreements with county boards and regional education service agencies for materials and other

costs associated with installation, set-up, internet hook-up and wiring of the computer hardware and software; clarifying that state superintendent serves at the will and pleasure of the state board; requiring the state board to annually evaluate the performance of the state superintendent and publicly announce the results of the evaluation; clarifying appointment of county superintendents; modifying authorization for county superintendent to transfer to a teaching position at the end of his or her term; extending the date before which the county superintendent is required to be appointed; requiring county superintendent to be a resident of the county, or of a contiguous county in this state, in which he or she serves; modifying requirements for permanent administrative certificate and county superintendent license; requiring state board to define three years of experience in management or supervision in rule; modifying health-related conditions of employment for county superintendents; providing for discontinuing or suspending employment of county superintendent under certain circumstances; requiring that county superintendents be evaluated at least annually; providing criteria for evaluation; providing for evaluation to take place in executive session; directing county board to release general statement to the public and provide additional information only by mutual consent of county board and county superintendent; delineating authorized uses of evaluation results; allowing contract or written agreement to delineate a county superintendent acting as chief executive officer; removing county superintendent duty to organize and attend district institutes and organize and direct reading circles and boys' and girls' clubs; requiring county superintendent to report promptly to the county board whenever any school in the district appears to be failing to meet the standards for improving education; requiring county superintendent to keep county board apprised of certain issues in the district; removing requirement for county superintendent to direct the taking of school census; allowing county board members to serve on certain boards; allowing request of ethics commission for an

advisory opinion; requiring ethics commission to issue advisory opinion within thirty days; entitling county board member who relies on opinion to reimbursement for attorney's fees and court costs incurred in certain proceedings; prohibiting vote cast from being invalidated due to subsequent finding that holding particular office or committee is a bar to membership on the board; providing that good faith reliance on a written advisory opinion is an absolute defense to certain civil suits or criminal prosecutions; requiring county board member training to include school performance issues; allowing feasible and practicable extension of training time; requiring annual county board self-assessment; specifying focus of evaluation instrument; requiring summary of evaluation to be made public; allowing county boards to meet in facilities within the county other than the county board office; authorizing lease of school property subject to certain requirements; clarifying county board authority to employ, contract with or otherwise engage legal counsel; including service personnel in job-sharing arrangements; adding requirements for job sharing; limiting cost to retirement system; requiring filing of policies and summaries of policies that promote school board effectiveness; requiring annual meeting with a quorum of members from each local school improvement council; providing for meeting with less than a quorum under certain circumstances; allowing county board to schedule additional meeting for any low performing school in the district; requiring county board to develop agenda for required annual meeting with local school improvement council; requiring certain items to be addressed; requiring county boards to make written requests for information from local school improvement councils throughout the year or hold community forums to receive input from the affected community as the county board considers necessary; modifying time requirements for reporting to state board on meetings with local school improvement councils; authorizing county board to request assistance from local school improvement council members to facilitate development of report; requiring county boards to

review the policies to promote school board effectiveness each year; eliminating duty of county superintendent to make a tabular report to the county board annually; eliminating requirement that certain percentage of students be in attendance for a day to be considered instructional; including five instructional support and enhancement days within the instructional term that include instructional activities, professional activities and time for faculty senate meetings; requiring instructional activities for students to be scheduled by appointment; requiring school policy relating to use of time designated for instructional activities; providing that the presence of any certain number of students and the transportation of students is not required on instructional support and enhancement days; declaring instructional support and enhancement days a regular work day for all service personnel; providing that for one school year only, statewide assessment may not be prior to the fifteenth day of April; requiring professional development days to be used last when making up instructional days; allowing use of additional minutes of instruction each day for making up lost instructional days under certain circumstances; prohibiting more than one parent member of a local school improvement council from being employed at the school; requiring chair to appoint replacement of elected member of local school improvement council if position becomes vacant; requiring principal to appoint replacement if appointed position becomes vacant; requiring principal to provide certain information at the organizational meeting of the local school improvement council; requiring local school improvement council chair, or designee, to be prepared to address certain matters at annual meeting and in writing; allowing state board to enter into contracts to provide orientation training for local school improvement council members; requiring that any training meet guidelines established by the state board; requiring emergency meetings of faculty senates to be held during noninstructional time; requiring a two-hour block of time be scheduled for a faculty senate meeting on a day scheduled for the opening of school prior to the beginning

of the instructional term; requiring that a two-hour block of time be scheduled for a faculty senate meeting on each instructional support and enhancement day; and requiring state board rule excluding certain absences for accountability purposes.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section five-g; that section seven, article two-e of said chapter be amended and reenacted; that section one, article three of said chapter be amended and reenacted; that sections one and two, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six; that sections ten and eleven of said article be amended and reenacted; that sections one-a, one-c, four, seven, thirteen, fourteen, twenty-five and forty-five, article five of said chapter be amended and reenacted; that sections two and five, article five-a of said chapter be amended and reenacted; and that section four, article eight of said chapter be amended and reenacted, all to read as follows:

Article

1. **Definitions; Limitations of Chapter; Goals for Education.**
2. **State Board of Education.**
- 2E. **High Quality Educational Programs.**
3. **State Superintendent of Schools.**
4. **County Superintendent of Schools.**
5. **County Board of Education.**
- 5A. **Local School Involvement.**
8. **Compulsory School Attendance.**

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.

1 The following words used in this chapter and in any
2 proceedings pursuant thereto shall, unless the context clearly
3 indicates a different meaning, be construed as follows:

4 (a) "School" means the pupils and teacher or teachers
5 assembled in one or more buildings, organized as a unit;

6 (b) "District" means county school district;

7 (c) "State board" means the West Virginia board of
8 education;

9 (d) "County board" or "board" means the county board of
10 education;

11 (e) "State superintendent" means the state superintendent
12 of free schools;

13 (f) "County superintendent" or "superintendent" means the
14 county superintendent of schools;

15 (g) "Teacher" means teacher, supervisor, principal, superin-
16 tendent or public school librarian; registered professional nurse,
17 licensed by the West Virginia board of examiners for registered
18 professional nurses and employed by a county board of educa-
19 tion, who has a baccalaureate degree; or any other person
20 regularly employed for instructional purposes in a public school
21 in this state;

22 (h) "Service personnel" means all nonteaching school
23 employees not included in the above definition of "teacher";

24 (i) "Social worker" means a nonteaching school employee
25 who, at a minimum, possesses an undergraduate degree in
26 social work from an accredited institution of higher learning
27 and who provides various professional social work services,

28 activities or methods as defined by the state board for the
29 benefit of students;

30 (j) "Regular full-time employee" means any person
31 employed by a county board of education who has a regular
32 position or job throughout his or her employment term, without
33 regard to hours or method of pay;

34 (k) "Career clusters" means broad groupings of related
35 occupations;

36 (l) "Work-based learning" means a structured activity that
37 correlates with and is mutually supportive of the school-based
38 learning of the student and includes specific objectives to be
39 learned by the student as a result of the activity;

40 (m) "School-age juvenile" means any individual who is
41 entitled to attend or who, if not placed in a residential facility,
42 would be entitled to attend public schools in accordance with:
43 (1) Section five, article two of this chapter; (2) sections fifteen
44 and eighteen, article five of this chapter; or (3) section one,
45 article twenty of this chapter;

46 (n) "Student with a disability" means an exceptional child,
47 other than gifted, pursuant to section one, article twenty of this
48 chapter;

49 (o) "Low-density county" means a county whose ratio of
50 student population to square miles is less than or equal to the
51 state average ratio as computed by the state department of
52 education;

53 (p) "High-density county" means a county whose ratio of
54 student population to square miles is greater than the state
55 average ratio as computed by the state department of education;
56 and

57 (q) "Casual deficit" means a deficit of not more than three
58 percent of the approved levy estimate or a deficit that is
59 nonrecurring from year to year.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-4. Organization; appointment, compensation and duties of secretary.

§18-2-5g. Duty to receive and submit summary of policy modifications and annual reports.

§18-2-4. Organization; appointment, compensation and duties of secretary.

1 At its first regular meeting in every year the state board
2 shall elect one of its members as president, who may serve an
3 unlimited number of terms, but no more than two consecutive
4 terms, and one as vice president of the board. The state superin-
5 tendent shall be the chief executive officer of the state board
6 and, subject to its direction, shall execute its policies.

7 The state board shall appoint a secretary and fix the
8 secretary's salary to be paid out of the general school fund upon
9 warrants drawn by the state superintendent. The secretary shall
10 keep a record of the proceedings of the state board and shall
11 perform such other duties as it may prescribe.

§18-2-5g. Duty to receive and submit summary of policy modifications and annual reports.

1 In addition to filing each policy as required by section
2 fourteen, article five of this chapter, the state board shall require
3 each county board to provide a summary of any modifications
4 to the policies and copies of annual reports developed pursuant
5 to section fourteen, article five of this chapter. The state board
6 shall submit copies of these summaries of modifications to the
7 policies and annual reports, together with any comments and
8 recommendations, to the legislative oversight commission on

9 education accountability, no later than the thirty-first day of
10 December of each year.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.

1 (a) The Legislature finds that teachers must be provided the
2 support, assistance and teaching tools necessary to meet
3 individual student instructional needs on a daily basis in a
4 classroom of students who differ in learning styles, learning
5 rates and in motivation to learn. The Legislature further finds
6 that attaining a solid foundation in the basic skills of reading,
7 composition and arithmetic is essential for advancement in
8 higher education, occupational and avocational pursuits and that
9 computers are an effective tool for the teacher in corrective,
10 remedial and enrichment activities. Therefore, the state board
11 shall develop a plan which specifies the resources to be used to
12 provide services to students in the earliest grade level and
13 moving upward as resources become available based on a plan
14 developed by each individual school team.

15 This plan must provide for standardization of computer
16 hardware and software and for technology upgrade and replace-
17 ment for the purposes of achieving economies of scale, facilitat-
18 ing teacher training, permitting the comparison of achievement
19 of students in schools and counties utilizing the hardware and
20 software and facilitating the repair of equipment and ensuring
21 appropriate utilization of the hardware and software purchased
22 for remediation and basic skills development.

23 The state board shall determine the computer hardware and
24 software specifications after input from practicing teachers at
25 the appropriate grade levels and with the assistance of educa-
26 tion computer experts and the curriculum technology resource
27 center.

28 Computer hardware and software shall be purchased either
29 directly or through a lease-purchase arrangement pursuant to
30 the provisions of article three, chapter five-a of this code in the
31 amount equal to anticipated revenues being appropriated:
32 *Provided*, That, with the approval of the state board, the
33 revenues appropriated may be expended directly or through
34 contractual agreements with county boards and regional
35 education service agencies for materials and other costs
36 associated with installation, set-up, internet hook-up and wiring
37 of the computer hardware and software: *Provided, however*,
38 That nothing in this section shall be construed to require any
39 specific level of funding by the Legislature.

40 The state board shall develop and provide through the state
41 curriculum technology resource center a program to ensure
42 adequate teacher training, continuous teacher support and
43 updates.

44 To the extent practicable, such technology shall be utilized
45 to enhance student access to learning tools and resources
46 outside of the normal school day, such as: Before and after
47 school; in the evenings, on weekends and during vacations; and
48 for student use for homework, remedial work, independent
49 learning, career planning and adult basic education.

50 (b) The Legislature finds that the continued implementation
51 of computer utilization under this section for high quality basic
52 skills development and remediation in the middle schools,
53 junior high schools and high schools is necessary to meet the
54 goal that high school graduates will be prepared fully for
55 college, other post-secondary education or gainful employment.
56 Further, such implementation should provide a technology
57 infrastructure at the middle schools, junior high schools and
58 high schools that has multiple applications in enabling students
59 to achieve at higher academic levels. The technology infrastruc-

60 ture should facilitate student development in the following
61 areas:

62 (1) Attaining basic computer skills such as word process-
63 ing, spreadsheets, data bases, internet usage, telecommunica-
64 tions and graphic presentations;

65 (2) Learning critical thinking and decision-making skills;

66 (3) Applying academic knowledge in real life situations
67 through simulated workplace programs;

68 (4) Understanding the modern workplace environment,
69 particularly in remote areas of the state, by bringing the
70 workplace to the school;

71 (5) Making informed career decisions based upon informa-
72 tion on labor markets and the skills required for success in
73 various occupations;

74 (6) Gaining access to labor markets and job placement;

75 (7) Obtaining information and assistance about college and
76 other post-secondary education opportunities and financial aid;
77 and

78 (8) Other uses for acquiring the necessary skills and
79 information to make a smooth transition from high school to
80 college, other post-secondary education or gainful employment.

81 Therefore, the state board shall extend the plan as set forth
82 in subsection (a) of this section, and consistent with the terms
83 and conditions in said subsection, to address the findings of this
84 subsection regarding the continued implementation of computer
85 hardware and software and technical planning support in the
86 middle schools, junior high schools and high schools of the
87 state.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.**§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence; evaluation.**

1 There shall be appointed by the state board a state superin-
2 tendent of schools who shall serve at the will and pleasure of
3 the state board. He or she shall be a person of good moral
4 character, of recognized ability as a school administrator,
5 holding at least a master's degree in educational administration,
6 and shall have had not less than five years of experience in
7 public school work. He or she shall receive an annual salary set
8 by the state board, to be paid monthly: *Provided*, That the
9 annual salary may not exceed one hundred forty-six thousand
10 one hundred dollars. The state superintendent also shall receive
11 necessary traveling expenses incident to the performance of his
12 or her duties to be paid out of the general school fund upon
13 warrants of the state auditor. The state superintendent shall have
14 his or her office at the state capitol. The state board shall report
15 to the legislative oversight commission on education account-
16 ability upon request concerning its progress during any hiring
17 process for a state superintendent.

18 The state board annually shall evaluate the performance of
19 the state superintendent and publicly announce the results of the
20 evaluation.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

- §18-4-1. Election and term; interim superintendent.
- §18-4-2. Qualifications; health certificate; disability; acting superintendent.
- §18-4-6. Evaluation of county superintendent.
- §18-4-10. Duties of county superintendent.
- §18-4-11. Other powers and duties.

§18-4-1. Election and term; interim superintendent.

1 (a) The county superintendent shall be appointed by the
2 board upon a majority vote of the members thereof to serve for

3 a term of not less than one, nor more than four years. At the
4 expiration of the term or terms for which he or she shall have
5 been appointed, each county superintendent shall be eligible for
6 reappointment for additional terms of not less than one, nor
7 more than four years: *Provided*, That at the expiration of his or
8 her term or terms of service the county superintendent may
9 transfer to any teaching position in the county for which he or
10 she is qualified and has seniority, unless dismissed for statutory
11 reasons. The appointment of the county superintendent shall be
12 made on or before the first day of June for a term beginning on
13 the first day of July following the appointment.

14 (b) A county superintendent who fills a vacancy caused by
15 an incomplete term shall be appointed to serve until the
16 following first day of July: *Provided, however*, That the board
17 may appoint an interim county superintendent to serve for a
18 period not to exceed one hundred twenty days from the occur-
19 rence of the vacancy.

20 (c) The president of the county board, immediately upon
21 the appointment of the county superintendent, or the appoint-
22 ment of an interim county superintendent, shall certify the
23 appointment to the state superintendent.

24 (d) During his or her term of appointment, the county
25 superintendent shall be a resident of the county, or of a contigu-
26 ous county in this state, which he or she serves. The county
27 superintendent in office on the effective date of this section
28 shall continue in office until the expiration of his or her term.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 (a) Each county superintendent shall hold a professional
2 administrative certificate endorsed for superintendent, or a first
3 class permit endorsed for superintendent, subject to the follow-
4 ing:

5 (1) A superintendent who holds a first class permit may be
6 appointed for one year only, and may be reappointed two times
7 for an additional year each upon an annual evaluation by the
8 county board and a determination of satisfactory performance
9 and reasonable progress toward completion of the requirements
10 for a professional administrative certificate endorsed for
11 superintendent;

12 (2) Any candidate for superintendent who possesses an
13 earned doctorate from an accredited institution of higher
14 education and either has completed three successful years of
15 teaching in public education or has the equivalent of three years
16 of experience in management or supervision as defined by state
17 board rule, after employment by the county board shall be
18 granted a permanent administrative certificate and shall be a
19 licensed county superintendent;

20 (3) The state board shall promulgate a legislative rule in
21 accordance with article three-b, chapter twenty-nine-a of this
22 code, to address those cases where a county board finds that
23 course work needed by the county superintendent who holds a
24 first class permit is not available or is not scheduled at state
25 institutions of higher education in a manner which will enable
26 the county superintendent to complete normal requirements for
27 a professional administrative certificate within the three-year
28 period allowed under the permit; and

29 (4) Any person employed as assistant superintendent or
30 educational administrator prior to the twenty-seventh day of
31 June, one thousand nine hundred eighty-eight, and who was
32 previously employed as superintendent is not required to hold
33 the professional administrative certificate endorsed for superin-
34 tendent.

35 (b) In addition to other requirements set forth in this
36 section, a county superintendent shall meet the following
37 health-related conditions of employment:

38 (1) Before entering upon the discharge of his or her duties,
39 file with the president of the county board a certificate from a
40 licensed physician certifying the following:

41 (A) A tuberculin skin test, of the type Mantoux test (PPD
42 skin test), approved by the director of the department of health,
43 has been made within four months prior to the beginning of the
44 term of the county superintendent; and

45 (B) The county superintendent does not have tuberculosis
46 in a communicable state based upon the test results and any
47 further study;

48 (2) After completion of the initial test, the county superin-
49 tendent shall have an approved tuberculin skin test once every
50 two years or more frequently if medically indicated. Positive
51 reactors to the skin test are to be referred immediately to a
52 physician for evaluation and indicated treatment or further
53 studies;

54 (3) A county superintendent who is certified by a licensed
55 physician to have tuberculosis in a communicable stage shall
56 have his or her employment discontinued or suspended until the
57 disease has been arrested and is no longer communicable; and

58 (4) A county superintendent who fails to complete required
59 follow-up examinations as set forth in this subsection shall be
60 suspended from employment until a report of examination is
61 confirmed.

§18-4-6. Evaluation of county superintendent.

1 (a) At least annually, the county board shall evaluate the
2 performance of the county superintendent. The evaluation
3 process to be used shall be one authorized by the state board.
4 The West Virginia school board association shall maintain a
5 catalog of evaluation instruments which comply with this
6 section and shall make them available to county boards.

7 (b) At a minimum, the evaluation process shall require the
8 county superintendent and county board to establish written
9 goals or objectives for the county superintendent to accomplish
10 within a given period of time. Additionally, the county board
11 shall evaluate the county superintendent on his or her success
12 in improving student achievement generally across the county
13 and specifically as it relates to the management and administra-
14 tion of low performing schools.

15 (c) The evaluation also may cover the performance of a
16 county superintendent in the areas of community relations,
17 school finance, personnel relations, curricular standards and
18 programs and overall leadership of the school district as
19 indicated primarily by improvements in student achievement,
20 testing and assessment.

21 (d) The evaluation of a county superintendent shall occur in
22 executive session. At the conclusion of the evaluation, the
23 county board shall make available to the public a general
24 statement about the evaluation process and the overall result.
25 Additional information about the evaluation may be released
26 only by mutual consent of the county superintendent and the
27 county board. The county board may use the evaluation results
28 to determine:

29 (1) Whether to extend the contract of the county superinten-
30 dent;

31 (2) Whether to offer the county superintendent a new
32 contract; and

33 (3) The level of compensation or benefits to offer the
34 county superintendent in any new or extended contract.

§18-4-10. Duties of county superintendent.

1 The county superintendent shall:

2 (1) Act as the chief executive officer of the county board as
3 may be delineated in his or her contract or other written
4 agreement with the county board, and, under the direction of the
5 state board, execute all its education policies;

6 (2) Nominate all personnel to be employed; in case the
7 county board refuses to employ any or all of the persons
8 nominated, the county superintendent shall nominate others and
9 submit the same to the county board at a time the county board
10 may direct. No person or persons shall be employed except on
11 the nomination of the county superintendent;

12 (3) Assign, transfer, suspend or promote teachers and all
13 other school employees of the district, subject only to the
14 approval of the county board, and to recommend to the county
15 board their dismissal pursuant to the provisions of this chapter;

16 (4) Report promptly to the county board in such manner as
17 it directs whenever any school in the district appears to be
18 failing to meet the standards for improving education estab-
19 lished pursuant to section five, article two-e of this chapter;

20 (5) Close a school temporarily when conditions are detri-
21 mental to the health, safety or welfare of the pupils;

22 (6) Certify all expenditures and monthly payrolls of
23 teachers and employees;

24 (7) Serve as the secretary of the county board and attend all
25 meetings of the county board or its committees, except when
26 the tenure, salary or administration of the county superintendent
27 is under consideration;

28 (8) Administer oaths and examine witnesses under oath in
29 any proceedings pertaining to the schools of the district, and
30 have the testimony reduced to writing;

31 (9) Keep the county board apprised continuously of any
32 issues that affect the county board or its schools, programs and
33 initiatives. The county superintendent shall report to the county
34 board on these issues using any appropriate means agreeable to
35 both parties. When practicable, the reports shall be fashioned to
36 include a broad array of data and information that the county
37 board may consult to aid in making decisions;

38 (10) Exercise all other authority granted by this chapter or
39 required by the county board or state board; and

40 (11) In case of emergency, act as the best interests of the
41 school demand. An emergency, as contemplated in this section,
42 is limited to an unforeseeable, catastrophic event including
43 natural disaster or act of war and nothing in this section may be
44 construed as granting the county superintendent authority to
45 override any statutory or constitutional provision in the exercise
46 of his or her emergency power except where such authority is
47 specifically granted in the particular code section.

§18-4-11. Other powers and duties.

1 The county superintendent shall:

2 (1) Visit the schools as often as practicable; observe and
3 make suggestions concerning the instruction and classroom
4 management of the schools and their sanitary conditions;

5 (2) Report to the county board cases of incompetence,
6 neglect of duty, immorality or misconduct in office of any
7 teacher or employee;

8 (3) Recommend for condemnation buildings unfit for
9 school use;

10 (4) Call, at his or her discretion, conferences of principals
11 and teachers to discuss the work of the schools of the district;

12 (5) Report to the county board the progress and general
13 condition of the schools;

14 (6) Make reports as required by the state superintendent. In
15 case the county superintendent fails to report as required, the
16 state superintendent may direct that the salary of the county
17 superintendent be withheld until an acceptable report is
18 received; and

19 (7) Perform all other duties prescribed in this chapter or
20 required by the county board or the state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.

§18-5-1c. Organization of board; evaluation.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing;
compensation of members; affiliation with state and national associa-
tions.

§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural
communities; oil and gas leases; disposition of proceeds; lease of
school property.

§18-5-13. Authority of boards generally.

§18-5-14. Policies to promote school board effectiveness.

§18-5-25. Duties of superintendent as secretary of board.

§18-5-45. School calendar.

§18-5-1a. Eligibility of members; training requirements.

1 (a) No person shall be eligible for membership on any
2 county board who is not a citizen, resident in such county, or
3 who accepts a position as teacher or service personnel in the
4 school district in which he or she is a resident or who is an
5 elected or an appointed member of any political party executive
6 committee, or who becomes a candidate for any other office
7 than to succeed oneself.

8 (b) No member or member-elect of any board shall be
9 eligible for nomination, election or appointment to any public
10 office, other than to succeed oneself, or for election or appoint-
11 ment as a member of any political party executive committee,
12 unless and until after that membership on the board, or his
13 status as member-elect to the board, has been terminated at or
14 before the time of his filing for such nomination for, or appoint-
15 ment to, such public office or committee: *Provided*, That
16 "office" or "committee", as used in this subsection and subsec-
17 tion (a) of this section, does not include service on any board,
18 elected or appointed, profit or nonprofit, for which the person
19 does not receive compensation and whose primary scope is not
20 related to the public schools.

21 (c) A member or member-elect of a county board, or a
22 person desiring to become a member of a county board, may
23 make a written request to the West Virginia ethics commission
24 for an advisory opinion on whether another elected or appointed
25 position held or sought by the person is an office or public
26 office which would bar serving on the board pursuant to
27 subsections (a) and (b) of this section. Within thirty days of
28 receipt of the request, the ethics commission shall issue a
29 written advisory opinion in response to the request and shall
30 also publish such opinion in a manner which to the fullest
31 extent possible does not reveal the identity of the person
32 making the request. Any county board member who relied in
33 good faith upon an advisory opinion issued by the West
34 Virginia ethics commission that holding a particular office or

35 public office is not a bar from membership on a county board
36 of education and against whom proceedings are subsequently
37 brought for removal from the county board on the basis of
38 holding such office or offices shall be entitled to reimbursement
39 by the county board for reasonable attorney's fees and court
40 costs incurred by the member in defending against such
41 proceedings, regardless of the outcome of the proceedings.
42 Further, no vote cast by the member at a meeting of the board
43 shall be invalidated due to a subsequent finding that holding the
44 particular office or public is a bar to membership on the county
45 board. Good faith reliance on a written advisory opinion of the
46 West Virginia ethics commission that a particular office or
47 public office is not a bar to membership on a county board of
48 education is an absolute defense to any civil suit or criminal
49 prosecution arising from any proper action taken within the
50 scope of membership on the board, becoming a member-elect
51 of the board or seeking election to the board.

52 (d) Any person who is elected or appointed to a county
53 board on or after the fifth day of May, one thousand nine
54 hundred ninety-two, shall possess at least a high school diploma
55 or a general educational development (GED) diploma: *Pro-*
56 *vided*, That this provision shall not apply to members or
57 members-elect who have taken office prior to the fifth day of
58 May, one thousand nine hundred ninety-two, and who serve
59 continuously therefrom.

60 (e) No person elected to a county board after the first day
61 of July, one thousand nine hundred ninety, shall assume the
62 duties of board member unless he or she has first attended and
63 completed a course of orientation relating to boardsmanship and
64 governance effectiveness which shall be given between the date
65 of election and the beginning of the member's term of office:
66 *Provided*, That a portion or portions of subsequent training such
67 as that offered in orientation may be provided to members after
68 they have commenced their term of office: *Provided, however*,

69 That attendance at the session of orientation given between the
70 date of election and the beginning of the member's term of
71 office shall permit such member or members to assume the
72 duties of board member, as specified in this section. Members
73 appointed to the board shall attend and complete the next such
74 course offered following their appointment: *Provided further,*
75 That the provisions of this section relating to orientation shall
76 not apply to members who have taken office prior to the first
77 day of July, one thousand nine hundred eighty-eight, and who
78 serve continuously therefrom.

79 (f) Commencing on the effective date of this section,
80 members shall annually receive seven clock hours of training in
81 areas relating to boardsmanship, governance effectiveness, and
82 school performance issues including, but not limited to,
83 pertinent state and federal statutes such as the "Process for
84 Improving Education" set forth in section five, article two-e of
85 this chapter and the "No Child Left Behind Act" and their
86 respective administrative rules. Such orientation and training
87 shall be approved by the state board and conducted by the West
88 Virginia school board association or other organization or
89 organizations approved by the state board: *Provided,* That the
90 state board may exclude time spent in training on school
91 performance issues from the requisite seven hours herein
92 required: *Provided, however,* That if the state board elects to
93 exclude time spent in training on school performance issues
94 from the requisite seven hours, such training shall be limited by
95 the state board to a feasible and practicable amount of time.
96 Failure to attend and complete such an approved course of
97 orientation and training relating to boardsmanship and gover-
98 nance effectiveness without good cause as determined by
99 legislative rules of the state board shall constitute neglect of
100 duty.

101 (g) In the final year of any four-year term of office, a
102 member shall satisfy the annual training requirement before the

103 first day of January. The state board shall petition the circuit
104 court of Kanawha County to remove any county board member
105 who has failed to or who refuses to attend and complete the
106 approved course of orientation and training. If the county board
107 member fails to show good cause for not attending the approved
108 course of orientation and training, the court shall remove the
109 member from office.

§18-5-1c. Organization of board; evaluation.

1 (a) On the first Monday of July, following each biennial
2 primary election, each respective county board shall organize
3 and shall elect a president from its own membership for a two-
4 year term. The county board shall report promptly to the state
5 superintendent the name of the member elected as county board
6 president.

7 (b) Annually, each county board shall assess its own
8 performance using an instrument approved by the state board.
9 In developing or making determinations on approving evalua-
10 tion instruments, the state board may consult with the West
11 Virginia school board association or other appropriate organiza-
12 tions. The evaluation instrument selected shall focus on the
13 effectiveness of the county board in the following areas:

14 (1) Dealing with its various constituency groups and with
15 the general public;

16 (2) Providing a proper framework and the governance
17 strategies necessary to monitor and approve student achieve-
18 ment on a continuing basis; and

19 (3) Enhancing the effective utilization of the policy
20 approach to governance.

21 At the conclusion of the evaluation, the county board shall
22 make available to the public a summary of the evaluation,

23 including areas in which the board concludes improvement is
24 warranted.

**§18-5-4. Meetings; employment and assignment of teachers;
budget hearing; compensation of members; affilia-
tion with state and national associations.**

1 (a) The county board shall meet on the first Monday in
2 July, and upon the dates provided by law for the laying of
3 levies, and at any other times the county board fixes upon its
4 records. Subject to adequate public notice, nothing herein shall
5 prohibit the county board from conducting regular meetings in
6 facilities within the county other than the county board office.
7 At any meeting as authorized in this section and in compliance
8 with the provisions of article four of this chapter, the county
9 board may employ qualified teachers, or those who will qualify
10 by the time they enter upon their duties, necessary to fill
11 existing or anticipated vacancies for the current or next ensuing
12 school year. At a meeting of the county board, on or before the
13 first Monday in May, the county superintendent shall furnish in
14 writing to the county board a list of those teachers to be
15 considered for transfer and subsequent assignment for the next
16 ensuing school year. All other teachers not listed are considered
17 as reassigned to the positions held at the time of this meeting.
18 The list of those recommended for transfer shall be included in
19 the minute record and the teachers listed shall be notified in
20 writing. The notice shall be delivered in writing, by certified
21 mail, return receipt requested, to the teachers' last known
22 addresses within ten days following the board meeting, of their
23 having been recommended for transfer and subsequent assign-
24 ment.

25 (b) Special meetings may be called by the president or any
26 three members, but no business may be transacted other than
27 that designated in the call.

28 (c) In addition, a public hearing shall be held concerning
29 the preliminary operating budget for the next fiscal year not
30 fewer than ten days after the budget has been made available to
31 the public for inspection and within a reasonable time prior to
32 the submission of the budget to the state board for approval.
33 Reasonable time shall be granted at the hearing to any person
34 who wishes to speak regarding any part of the budget. Notice of
35 the hearing shall be published as a Class I legal advertisement
36 in compliance with the provisions of article three, chapter fifty-
37 nine of this code.

38 (d) A majority of the members of the county board consti-
39 tutes the quorum necessary for the transaction of official
40 business.

41 (e) Board members may receive compensation at a rate not
42 to exceed one hundred sixty dollars per meeting attended, but
43 they may not receive pay for more than fifty meetings in any
44 one fiscal year. Board members who serve on an administrative
45 council of a multicounty vocational center also may receive
46 compensation for attending up to twelve meetings of the
47 council at the same rate as for meetings of the county board.
48 Meetings of the council are not counted as board meetings for
49 purposes of determining the limit on compensable board
50 meetings.

51 (f) Members also shall be paid, upon the presentation of an
52 itemized sworn statement, for all necessary traveling expenses,
53 including all authorized meetings, incurred on official business,
54 at the order of the county board.

55 (g) When, by a majority vote of its members, a county
56 board considers it a matter of public interest, the county board
57 may join the West Virginia school board association and the
58 national school board association and may pay the dues
59 prescribed by the associations and approved by action of the

60 respective county boards. Membership dues and actual traveling
61 expenses incurred by board members for attending meetings of
62 the West Virginia school board association may be paid by their
63 respective county boards out of funds available to meet actual
64 expenses of the members, but no allowance may be made
65 except upon sworn itemized statements.

§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds; lease of school property.

1 (a) Except as set forth in subsection (b) of this section, if at
2 any time a county board determines that any building or any
3 land is no longer needed for school purposes, the county board
4 may sell, dismantle, remove or relocate the building and sell the
5 land on which it is located at public auction, after proper notice
6 and on such terms as it orders, to the highest responsible bidder.

7 (b) Notwithstanding the provisions of subsection (a) of this
8 section, in rural communities, the grantor of the lands or his or
9 her heirs or assigns has the right to purchase at the sale, the
10 land, exclusive of the buildings on the land and the mineral
11 rights, at the same price for which it was originally sold:
12 *Provided*, That the sale to the board was not a voluntary arms
13 length transaction for valuable consideration approximating the
14 fair market value of the property at the time of the sale to the
15 board: *Provided, however*, That the provisions of this section
16 may not operate to invalidate any provision of the deed to the
17 contrary.

18 (c) The county board, by the same method set forth in
19 subsection (a) of this section for the sale of school buildings
20 and lands, may, in lieu of offering the property for sale, enter
21 into a lease for oil or gas or other minerals any lands or school
22 sites owned in fee by it. The proceeds of the sales and rentals

23 shall be placed to the credit of the fund or funds of the district
24 as the county board may direct.

25 (d) The county board may make any sale of property
26 subject to the provision that all liability for hazards associated
27 with the premises are to be assumed by the purchaser. In
28 any sale by the county board of improved property in which the
29 actual consideration is less than ten thousand dollars or in any
30 sale of unimproved property in which the actual consideration
31 is less than one thousand dollars, the county board shall make
32 any sale of property subject to the provision that all liability for
33 hazards associated with the premises are to be assumed by the
34 purchaser. The county board shall inform any prospective
35 purchaser of known or suspected hazards associated with the
36 property.

37 (e) Except as provided by the provisions of subsection (b)
38 of this section, where a county board determines that any school
39 property is no longer needed for school purposes, the county
40 board may, upon determining that it will serve the best interests
41 of the school system and the community, offer the property for
42 lease. The procedure set forth in subsection (a) of this section
43 relating to sale of school buildings and lands shall apply to
44 leasing the school property. Any lease authorized by the
45 provisions of this subsection shall be in writing. The writing
46 shall include a recitation of all known or reasonably suspected
47 hazards associated with the property, an assumption by the
48 lessee of all liability related to all hazards, whether disclosed or
49 not, and provisions wherein the lessee assumes all liability for
50 any actions arising from the property during the term of the
51 lease.

52 (f) Notwithstanding any provision of this section to the
53 contrary, the provisions of this section concerning sale or lease
54 at public auction may not apply to a county board selling,
55 leasing or otherwise disposing of its property for a public use to

56 the state of West Virginia, or its political subdivisions, includ-
57 ing county commissions, for an adequate consideration without
58 considering alone the present commercial or market value of
59 the property.

***§18-5-13. Authority of boards generally.**

1 Each county board, subject to the provisions of this chapter
2 and the rules of the state board, has the authority:

3 (a) To control and manage all of the schools and school
4 interests for all school activities and upon all school property,
5 whether owned or leased by the county, including the authority
6 to require that records be kept of all receipts and disbursements
7 of all funds collected or received by any principal, teacher,
8 student or other person in connection with the schools and
9 school interests, any programs, activities or other endeavors of
10 any nature operated or carried on by or in the name of the
11 school, or any organization or body directly connected with the
12 school, to audit the records and to conserve the funds, which
13 shall be considered quasipublic moneys, including securing
14 surety bonds by expenditure of board moneys;

15 (b) To establish schools, from preschool through high
16 school, inclusive of vocational schools; and to establish schools,
17 programs or both, for post-high school instruction, subject to
18 approval of the state board;

19 (c) To close any school which is unnecessary and to assign
20 the pupils of the school to other schools: *Provided*, That the
21 closing shall be officially acted upon, and teachers and service
22 personnel involved notified on or before the first Monday in
23 April, in the same manner as provided in section four of this

* **CLERK'S NOTE:** This section was also amended by HB 2083 (Chapter 92),
which passed prior to this act.

24 article, except in an emergency, subject to the approval of the
25 state superintendent, or under subdivision (e) of this section;

26 (d) To consolidate schools;

27 (e) To close any elementary school whose average daily
28 attendance falls below twenty pupils for two months in succes-
29 sion and send the pupils to other schools in the district or to
30 schools in adjoining districts. If the teachers in the closed
31 school are not transferred or reassigned to other schools, they
32 shall receive one month's salary;

33 (f) (1) To provide at public expense adequate means of
34 transportation, including transportation across county lines for
35 students whose transfer from one district to another is agreed to
36 by both county boards as reflected in the minutes of their
37 respective meetings, for all children of school age who live
38 more than two miles distance from school by the nearest
39 available road; to provide at public expense, according to such
40 rules as the board may establish, adequate means of transporta-
41 tion for school children participating in county board-approved
42 curricular and extracurricular activities; to provide at public
43 expense, by rules and within the available revenues, transporta-
44 tion for those within two miles distance; and to provide, at no
45 cost to the county board and according to rules established by
46 the board, transportation for participants in projects operated,
47 financed, sponsored or approved by the commission on aging,
48 all subject to the following:

49 (A) All costs and expenses incident in any way to transpor-
50 tation for projects connected with the commission on aging
51 shall be borne by the commission or the local or county chapter
52 of the commission;

53 (B) In all cases, the school buses owned by the county
54 board shall be driven or operated only by drivers regularly
55 employed by the county board;

56 (C) The county board may provide, under rules established
57 by the state board, for the certification of professional employ-
58 ees as drivers of county board-owned vehicles with a seating
59 capacity of less than ten passengers used for the transportation
60 of pupils for school-sponsored activities other than transporting
61 students between school and home. The use of the vehicles shall
62 be limited to one for each school-sponsored activity; and

63 (D) Buses shall be used for extracurricular activities as
64 provided in this section only when the insurance provided for
65 by this section is in effect;

66 (2) To enter into agreements with one another as reflected
67 in the minutes of their respective meetings to provide, on a
68 cooperative basis, adequate means of transportation across
69 county lines for children of school age subject to the conditions
70 and restrictions of this subsection and subsection (h) of this
71 section;

72 (g) (1) To lease school buses operated only by drivers
73 regularly employed by the county board to public and private
74 nonprofit organizations or private corporations to transport
75 school-age children to and from camps or educational activities
76 in accordance with rules established by the county board. All
77 costs and expenses incurred by or incidental to the transporta-
78 tion of the children shall be borne by the lessee;

79 (2) To contract with any college or university or officially
80 recognized campus organizations to provide transportation for
81 college or university students, faculty or staff to and from the
82 college or university. Only college and university students,
83 faculty and staff may be transported pursuant to this section.

84 The contract shall include consideration and compensation for
85 bus operators, repairs and other costs of service, insurance and
86 any rules concerning student behavior;

87 (h) To provide at public expense for insurance against the
88 negligence of the drivers of school buses, trucks or other
89 vehicles operated by the board; and if the transportation of
90 pupils is contracted, then the contract for the transportation
91 shall provide that the contractor shall carry insurance against
92 negligence in an amount specified by the board;

93 (i) To provide solely from county board funds for all
94 regular full-time employees of the county board all or any part
95 of the cost of a group plan or plans of insurance coverage not
96 provided or available under the West Virginia public employees
97 insurance act;

98 (j) To employ teacher aides, to provide in-service training
99 for teacher aides, the training to be in accordance with rules of
100 the state board and, in the case of service personnel assuming
101 duties as teacher aides in exceptional children programs, to
102 provide a four-clock-hour program of training prior to the
103 assignment which shall, in accordance with rules of the state
104 board, consist of training in areas specifically related to the
105 education of exceptional children;

106 (k) To establish and conduct a self-supporting dormitory for
107 the accommodation of the pupils attending a high school or
108 participating in a post high school program and of persons
109 employed to teach in the high school or post high school
110 program;

111 (l) At the board's discretion, to employ, contract with or
112 otherwise engage legal counsel in lieu of utilizing the prosecut-
113 ing attorney to advise, attend to, bring, prosecute or defend, as

114 the case may be, any matters, actions, suits and proceedings in
115 which the board is interested;

116 (m) To provide appropriate uniforms for school service
117 personnel;

118 (n) To provide at public expense and under rules as
119 established by any county board for the payment of traveling
120 expenses incurred by any person invited to appear to be
121 interviewed concerning possible employment by the county
122 board;

123 (o) To allow or disallow their designated employees to use
124 publicly provided carriage to travel from their residences to
125 their workplace and return: *Provided*, That the usage is subject
126 to the supervision of the county board and is directly connected
127 with and required by the nature and in the performance of the
128 employee's duties and responsibilities;

129 (p) To provide, at public expense, adequate public liability
130 insurance, including professional liability insurance for county
131 board employees;

132 (q) To enter into agreements with one another to provide,
133 on a cooperative basis, improvements to the instructional needs
134 of each district. The cooperative agreements may be used to
135 employ specialists in a field of academic study or support
136 functions or services, for the academic study. The agreements
137 are subject to approval by the state board;

138 (r) To provide information about vocational or higher
139 education opportunities to students with handicapping condi-
140 tions. The county board shall provide in writing to the students
141 and their parents or guardians information relating to programs
142 of vocational education and to programs available at state
143 funded institutions of higher education. The information may
144 include sources of available funding, including grants,

145 mentorships and loans for students who wish to attend classes
146 at institutions of higher education;

147 (s) To enter into agreements with one another, with the
148 approval of the state board, for the transfer and receipt of any
149 and all funds determined to be fair when students are permitted
150 or required to attend school in a district other than the district
151 of their residence; and

152 (t) To enter into job-sharing arrangements, as defined in
153 section one, article one, chapter eighteen-a of this code, with its
154 employees, subject to the following provisions:

155 (1) A job-sharing arrangement shall meet all the require-
156 ments relating to posting, qualifications and seniority, as
157 provided for in article four, chapter eighteen-a of this code;

158 (2) Notwithstanding any provisions of this code or legisla-
159 tive rule and specifically the provisions of article sixteen,
160 chapter five of this code to the contrary, a county board which
161 enters into a job-sharing arrangement in which two or more
162 employees voluntarily share an authorized full-time position
163 shall provide the mutually agreed upon employee coverage but
164 shall not offer insurance coverage to more than one of the job-
165 sharing employees, including any group plan or group plans
166 available under the state public employees insurance act;

167 (3) Each job-sharing agreement shall be in writing on a
168 form prescribed and furnished by the county board. The
169 agreement shall designate specifically one employee only who
170 is entitled to the insurance coverage. Any employee who is not
171 so designated is not eligible for state public employees insur-
172 ance coverage regardless of the number of hours he or she
173 works;

174 (4) All employees involved in the job-sharing agreement
175 meet the requirements of subdivision (3), section two, article
176 sixteen, chapter five of this code; and

177 (5) When entering into a job-sharing agreement, the county
178 board and the employees involved in the job-sharing agreement
179 shall consider issues such as retirement benefits, termination of
180 the job-sharing agreement and any other issue the parties to the
181 agreement consider appropriate. Any provision in the agree-
182 ment relating to retirement benefits shall not cause any cost to
183 be incurred by the retirement system that is more than the cost
184 that would be incurred if a single employee were filling the
185 position.

186 “Quasipublic funds” as used in this section means any
187 money received by any principal, teacher, student or other
188 person for the benefit of the school system as a result of
189 curricular or noncurricular activities.

190 Each county board shall expend under rules it establishes
191 for each child an amount not to exceed the proportion of all
192 school funds of the district that each child would be entitled to
193 receive if all the funds were distributed equally among all the
194 children of school age in the district upon a per capita basis.

§18-5-14. Policies to promote school board effectiveness.

1 (a) No later than the first day of August, two thousand
2 three, each county board shall adopt and file with the state
3 board copies of policies and summaries of policies that promote
4 school board effectiveness. These policies may be modified by
5 the county board as necessary, but shall be refiled with the state
6 board following each modification. The policies shall address
7 the following objectives:

8 (1) Establishing direct links between the county board and
9 its local school improvement councils and between the county

10 board and its faculty senates for the purpose of enabling the
11 county board to receive information, comments and suggestions
12 directly from the councils and faculty senates regarding the
13 broad guidelines for oversight procedures, standards of account-
14 ability and planning for future needs as required by this section.
15 To further development of these linkages, each county board
16 shall:

17 (A) Meet at least annually with a quorum of members from
18 each local school improvement council in the district, at a time
19 and in a manner to be determined by the county board, except,
20 in order to facilitate scheduling, the county board may adopt an
21 alternate procedure allowing it to conduct the required annual
22 meeting with each council in the absence of a quorum of
23 council members if the alternate procedure has received prior
24 approval from the state board and if the school district serves
25 more than twenty thousand students or has more than twelve
26 public schools.

27 Nothing in this section prohibits a county board from
28 meeting with representatives of a local school improvement
29 council, but at least one annual meeting shall be held, as
30 specified in this section.

31 At any time and with reasonable advance notice, county
32 boards may schedule additional meetings with the council for
33 any low performing school in the district;

34 (B) At least thirty days before an annual meeting with each
35 local school improvement council, develop and submit to the
36 council an agenda for the annual meeting which requires the
37 council chair or a member designated by the chair, to address
38 items designated by the county board from the report created
39 pursuant to this section, and one or more of the following
40 issues:

41 (i) School performance;

42 (ii) Curriculum;

43 (iii) Status of the school in meeting the unified school
44 improvement plan established pursuant to section five, article
45 two-e of this chapter; and

46 (iv) Status of the school in meeting the county plan
47 established pursuant to section five, article two-e of this
48 chapter;

49 (C) Make written requests for information from the local
50 school improvement council throughout the year or hold
51 community forums to receive input from the affected commu-
52 nity as the county board considers necessary; and

53 (D) Report details to the state board concerning the meeting
54 or meetings held with councils, as specified in this section. The
55 information shall be provided to the state board at the conclu-
56 sion of the school year, but no later than the first day of
57 September of each year, and shall become an indicator in the
58 performance accreditation process for each county. In order to
59 facilitate development of this report, a county board may
60 consult with and request assistance from members of the
61 councils.

62 (2) Providing for the development of direct links between
63 the county board and the community at large allowing for
64 community involvement at regular county board meetings and
65 specifying how the county board will communicate regularly
66 with the public regarding important issues;

67 (3) Providing for the periodic review of personnel policies
68 of the district in order to determine their effectiveness;

69 (4) Setting broad guidelines for the school district, includ-
70 ing the establishment of specific oversight procedures, develop-
71 ment and implementation of standards of accountability and
72 development of long-range plans to meet future needs as
73 required by this section; and

74 (5) Using school-based accreditation and performance data
75 provided by the state board and other available data in county
76 board decisionmaking to meet the education goals of the state
77 and other goals as the county board may establish.

78 (b) On or before the first day of August of each year,
79 county school boards shall review the policies listed in subsec-
80 tion (a) of this section and may modify these policies as
81 necessary.

§18-5-25. Duties of superintendent as secretary of board.

1 The county superintendent as secretary of the board shall:

2 (1) Take the oath prescribed in the constitution before
3 performing any of the duties of his office;

4 (2) Attend all board meetings and record its official
5 proceedings in a book kept for that purpose;

6 (3) Record the number of each order issued, the name of the
7 payee, the purpose for which the order was issued and the
8 amount thereof. Every order shall be signed by the secretary
9 and the president of the board;

10 (4) Care for and keep all papers belonging to the board,
11 including evidences of title, contracts and obligations. They
12 shall be kept in the secretary's office, accessibly arranged for
13 reference;

14 (5) Record and keep on file all papers and documents
15 pertaining to the business of the board;

16 (6) Keep the accounts and certify the reports required by
17 law or requested by the board;

18 (7) Administer oaths to school officers, teachers and others
19 making reports;

20 (8) Deliver in proper condition to his successor all records
21 and property pertaining to his office; and

22 (9) Exercise such other duties as are prescribed by law.

§18-5-45. School calendar.

1 (a) As used in this section, the following terms have the
2 following meanings:

3 (1) "Instructional day" means a day within the instructional
4 term which meets the following criteria:

5 (A) Instruction is offered to students for the amounts of
6 time provided by state board rule;

7 (B) Instructional time is used for instruction, cocurricular
8 activities and approved extracurricular activities and pursuant
9 to the provisions of subdivision (12), subsection (b), section
10 five, article five-a of this chapter, faculty senates; and

11 (C) Such other criteria as the state board determines
12 appropriate.

13 (2) "Bank time" means time added beyond the required
14 instructional day which may be accumulated and used in larger
15 blocks of time during the school year for instructional or
16 noninstructional activities, as further defined by the state board.

17 (3) "Extracurricular activities" are activities under the
18 supervision of the school such as athletics, noninstructional
19 assemblies, social programs, entertainment and other similar
20 activities, as further defined by the state board.

21 (4) "Cocurricular activities" are activities that are closely
22 related to identifiable academic programs or areas of study that
23 serve to complement academic curricula as further defined by
24 the state board.

25 (b) *Findings.* –

26 (1) The primary purpose of the school system is to provide
27 instruction for students.

28 (2) The school calendar, as defined in this section, is
29 designed to define the school term both for employees and for
30 instruction.

31 (3) The school calendar traditionally has provided for one
32 hundred eighty actual days of instruction but numerous circum-
33 stances have combined to cause the actual number of instruc-
34 tional days to be less than one hundred eighty.

35 (4) The quality and amount of instruction offered during the
36 instructional term is affected by the extracurricular and
37 cocurricular activities allowed to occur during scheduled
38 instructional time.

39 (5) Within reasonable guidelines, the school calendar
40 should be designed at least to guarantee that one hundred eighty
41 actual days of instruction are possible.

42 (c) The county board shall provide a school term for its
43 schools that contains the following:

44 (1) An employment term for teachers of no less than two
45 hundred days, exclusive of Saturdays and Sundays; and

46 (2) Within the employment term, an instructional term for
47 students of no less than one hundred eighty separate instruc-
48 tional days.

49 (d) The instructional term for students shall include, one
50 instructional day in each of the months of October, December,
51 February, April and June which is an instructional support and
52 enhancement day scheduled by the board to include both
53 instructional activities for students and professional activities
54 for teachers to improve student instruction. The instructional
55 activities for students may include, but are not limited to, both
56 in-school and outside of school activities such as student
57 mentoring, tutoring, counseling, student research and other
58 projects or activities of an instructional nature, community
59 service, career exploration, parent and teacher conferences,
60 visits to the homes of students, college and financial aid
61 workshops and college visits. The instructional activities for
62 students shall be determined and scheduled at the local school
63 level. The first two hours of the instructional day shall be used
64 for instructional activities for students which require the direct
65 supervision or involvement by teachers, and such activities
66 shall be limited to two hours. To ensure that the students who
67 attend are properly supervised, the instructional activities for
68 students shall be arranged by appointment with the individual
69 school through the principal, a teacher or other professional
70 personnel at the school. The school shall establish a policy
71 relating to the use of the two-hour block scheduled for instruc-
72 tional activities for students. The professional activities for
73 teachers shall include a two-hour block of time immediately
74 following the first two hours of instructional activities for
75 students during which the faculty senate shall have the opportu-
76 nity to meet. Any time not used by the faculty senate and the
77 remainder of the school day, not including the duty free lunch

78 period, shall be used for other professional activities for
79 teachers to improve student instruction which may include, but
80 are not limited to, professional staff development, curriculum
81 team meetings, individualized education plan meetings and
82 other meetings between teachers, principals, aides and
83 paraprofessionals to improve student instruction as determined
84 and scheduled at the local school level. Notwithstanding any
85 other provision of law or policy to the contrary, the presence of
86 any specific number of students in attendance at the school for
87 any specific period of time shall not be required on instructional
88 support and enhancement days and the transportation of
89 students to the school shall not be required. Instructional
90 support and enhancement days are also a scheduled work day
91 for all service personnel and shall be used for training or other
92 tasks related to their job classification if their normal duties are
93 not required.

94 (e) The instructional term shall commence no earlier than
95 the twenty-sixth day of August and terminate no later than the
96 eighth day of June.

97 (f) Noninstructional days shall total twenty and shall be
98 comprised of the following:

99 (1) Seven holidays as specified in section two, article five,
100 chapter eighteen-a of this code;

101 (2) Election day as specified in section two, article five,
102 chapter eighteen-a of this code;

103 (3) Six days to be designated by the county board to be used
104 by the employees outside the school environment; and

105 (4) Six days to be designated by the county board for any
106 of the following purposes:

107 (A) Curriculum development;

- 108 (B) Preparation for opening and closing school;
- 109 (C) Professional development;
- 110 (D) Teacher-pupil-parent conferences;
- 111 (E) Professional meetings; and
- 112 (F) Making up days when instruction was scheduled but not
113 conducted.
- 114 (g) Three of the days described in subdivision (4), subsec-
115 tion (f) of this section shall be scheduled prior to the twenty-
116 sixth day of August for the purposes of preparing for the
117 opening of school and staff development.
- 118 (h) At least one of the days described in subdivision (4),
119 subsection (f) of this section shall be scheduled after the eighth
120 day of June for the purpose of preparing for the closing of
121 school. If one hundred eighty separate instruction days occur
122 prior to the eighth day of June, this day may be scheduled on or
123 before the eighth day of June.
- 124 (i) At least four of the days described in subdivision (3),
125 subsection (f) of this section shall be scheduled after the first
126 day of March.
- 127 (j) At least two of the days described in subdivision (4),
128 subsection (f) of this section, will be scheduled for professional
129 development. The professional development conducted on these
130 days will be consistent with the goals established by the state
131 board pursuant to the provisions of section twenty-three-a,
132 article two, chapter eighteen of this code.
- 133 (k) Subject to the provisions of subsection (h) of this
134 section, all noninstructional days will be scheduled prior to the
135 eighth day of June.

136 (l) Except as otherwise provided in this subsection, the state
137 board may not schedule the primary statewide assessment
138 program prior to the fifteenth day of May of the instructional
139 year, unless the state board determines that the nature of the test
140 mandates an earlier testing date. For the school year beginning
141 two thousand three only, the state board may not schedule the
142 primary statewide assessment program prior to the fifteenth day
143 of April of the instructional year.

144 (m) If, on or after the first day of March, the county board
145 determines that it is not possible to complete one hundred
146 eighty separate days of instruction, the county board shall
147 schedule instruction on any available noninstructional day,
148 regardless of the purpose for which the day originally was
149 scheduled, and the day will be used for instruction: *Provided,*
150 That the noninstructional days scheduled for professional
151 development shall be the last available noninstructional days to
152 be rescheduled as instructional days: *Provided, however,* That
153 on or after the first day of March, the county board also may
154 require additional minutes of instruction in the school day to
155 make up for lost instructional days in excess of the days
156 available through rescheduling and, if in its judgment it is
157 reasonable and necessary to improve student performance, to
158 avoid scheduling instruction on noninstructional days previ-
159 ously scheduled for professional development. The provisions
160 of this subsection do not apply to: (1) Holidays; and (2) election
161 day.

162 (n) The following applies to bank time:

163 (1) Except as provided in subsection (m) of this section,
164 bank time may not be used to avoid one hundred eighty separate
165 days of instruction;

166 (2) Bank time may not be used to lengthen the time
167 provided in law for faculty senates;

168 (3) The use of bank time for extracurricular activities will
169 be limited by the state board; and

170 (4) Such other requirements or restrictions as the state
171 board may provide in the rule required to be promulgated by
172 this section.

173 (o) The following applies to cocurricular activities:

174 (1) The state board shall determine what activities may be
175 considered cocurricular;

176 (2) The state board shall determine the amount of instruc-
177 tional time that may be consumed by cocurricular activities; and

178 (3) Such other requirements or restrictions as the state
179 board may provide in the rule required to be promulgated by
180 this section.

181 (p) The following applies to extracurricular activities:

182 (1) Except as provided by subdivision (3) of this subsec-
183 tion, extracurricular activities may not be scheduled during
184 instructional time;

185 (2) The use of bank time for extracurricular activities will
186 be limited by the state board; and

187 (3) The state board shall provide for the attendance by
188 students of certain activities sanctioned by the secondary
189 schools activities commission when those activities are related
190 to statewide tournaments or playoffs or are programs required
191 for secondary schools activities commission approval.

192 (q) Noninstructional interruptions to the instructional day
193 shall be minimized to allow the classroom teacher to teach.

194 (r) Nothing in this section prohibits establishing year-round
195 schools in accordance with rules to be established by the state
196 board.

197 (s) Prior to implementing the school calendar, the county
198 board shall secure approval of its proposed calendar from the
199 state board or, if so designated by the state board, from the state
200 superintendent.

201 (t) The county board may contract with all or part of the
202 personnel for a longer term.

203 (u) The minimum instructional term may be decreased by
204 order of the state superintendent in any county declared a
205 federal disaster area and where the event causing the declara-
206 tion is substantially related to a reduction of instructional days.

207 (v) Where the employment term overlaps a teacher's or
208 service personnel's participation in a summer institute or
209 institution of higher education for the purpose of advancement
210 or professional growth, the teacher or service personnel may
211 substitute, with the approval of the county superintendent, the
212 participation for up to five of the noninstructional days of the
213 employment term.

214 (w) The state board shall promulgate a rule in accordance
215 with the provisions of article three-b, chapter twenty-nine-a of
216 this code for the purpose of implementing the provisions of this
217 section.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2. Local school improvement councils; election.

§18-5A-5. Public school faculty senates established; election of officers; powers
and duties.

§18-5A-2. Local school improvement councils; election.

1 (a) A local school improvement council shall be established
2 at every school consisting of the following:

3 (1) The principal, who shall serve as an ex officio member
4 of the council and be entitled to vote;

5 (2) Three teachers elected by the faculty senate of the
6 school;

7 (3) Two school service personnel elected by the school
8 service personnel employed at the school;

9 (4) Three parent(s), guardian(s) or custodian(s) of students
10 enrolled at the school elected by the parent(s), guardian(s) or
11 custodian(s) members of the school's parent teacher organiza-
12 tion: *Provided*, That if there is no parent teacher organization,
13 the parent(s), guardian(s) or custodian(s) members shall be
14 elected by the parent(s), guardian(s) or custodian(s) of students
15 enrolled at the school in such manner as may be determined by
16 the principal;

17 (5) Two at-large members appointed by the principal, one
18 of whom resides in the school's attendance area and one of
19 whom represents business or industry, neither of whom is
20 eligible for membership under any of the other elected classes
21 of members;

22 (6) In the case of vocational-technical schools, the voca-
23 tional director: *Provided*, That if there is no vocational director,
24 then the principal may appoint no more than two additional
25 representatives, one of whom represents business and one of
26 whom represents industry;

27 (7) In the case of a school with students in grade seven or
28 higher, the student body president or other student in grade
29 seven or higher elected by the student body in those grades.

30 (b) Under no circumstances may more than one parent
31 member of the council be then employed at that school in any
32 capacity.

33 (c) The principal shall arrange for such elections to be held
34 prior to the fifteenth day of September of each school year to
35 elect a council and shall give notice of the elections at least one
36 week prior to the elections being held. To the extent practicable,
37 all elections to select council members shall be held within the
38 same week.

39 (d) Parent(s), guardian(s) or custodian(s), teachers and
40 service personnel elected to the council shall serve a two-year
41 term and elections shall be arranged in such a manner that no
42 more than two teachers, no more than two parent(s), guardian(s)
43 or custodian(s) and no more than one service person are elected
44 in a given year. All other non-ex officio members shall serve
45 one-year terms.

46 (e) Council members may only be replaced upon death,
47 resignation, failure to appear at three consecutive meetings of
48 the council for which notice was given, or a change in personal
49 circumstances so that the person is no longer representative of
50 the class of members from which appointed. In the case of a
51 vacancy in an elected membership, the chair of the council shall
52 appoint another qualified person to serve the unexpired term of
53 the person being replaced or, in the case of an appointed
54 member of the council, the principal shall appoint a replace-
55 ment as soon as practicable.

56 (f) As soon as practicable after the election of council
57 members, and no later than the first day of October of each
58 school year, the principal shall convene an organizational
59 meeting of the school improvement council. The principal shall
60 notify each member in writing at least two employment days in

61 advance of the organizational meeting. At this meeting, the
62 principal shall provide each member with the following:

63 (1) A copy of the current applicable sections of this code;

64 (2) Any state board rule or regulation promulgated pursuant
65 to the operation of these councils; and

66 (3) Any information as may be developed by the depart-
67 ment of education on the operation and powers of local school
68 improvement councils and their important role in improving
69 student and school performance and progress.

70 (g) The council shall elect from its membership a chair and
71 two members to assist the chair in setting the agenda for each
72 council meeting. The chair shall serve a term of one year and no
73 person may serve as chair for more than two consecutive terms.
74 If the chair's position becomes vacant for any reason, the
75 principal shall call a meeting of the council to elect another
76 qualified person to serve the unexpired term. Once elected, the
77 chair is responsible for notifying each member of the school
78 improvement council in writing two employment days in
79 advance of any council meeting.

80 (h) School improvement councils shall meet at least once
81 every nine weeks or equivalent grading period at the call of the
82 chair or by three fourths of its members.

83 (i) The local school improvement council shall meet at least
84 annually with the county board, in accordance with the provi-
85 sions in section fourteen, article five of this chapter. At this
86 annual meeting, the local school improvement council chair, or
87 another member designated by the chair, shall be prepared to
88 address any matters as may be requested by the county board as
89 specified in the meeting agenda provided to the council and
90 may further provide any other information, comments or
91 suggestions the local school improvement council wishes to

92 bring to the county board's attention. Anything presented under
93 this subsection shall be submitted to the county board in
94 writing.

95 (j) School improvement councils shall be considered for the
96 receipt of school of excellence awards under section three of
97 this article and competitive grant awards under section twenty-
98 nine, article two of this chapter and may receive and expend
99 such grants for the purposes provided in such section. In any
100 and all matters which may fall within the scope of both the
101 school improvement councils and the school curriculum teams
102 authorized in section five of this article, the school curriculum
103 teams shall be deemed to have jurisdiction. In order to promote
104 innovations and improvements in the environment for teaching
105 and learning at the school, a school improvement council shall
106 receive cooperation from the school in implementing policies
107 and programs it may adopt to:

108 (1) Encourage the involvement of parent(s), guardian(s) or
109 custodian(s) in their child's educational process and in the
110 school;

111 (2) Encourage businesses to provide time for their employ-
112 ees who are parent(s), guardian(s) or custodian(s) to meet with
113 teachers concerning their child's education;

114 (3) Encourage advice and suggestions from the business
115 community;

116 (4) Encourage school volunteer programs and mentorship
117 programs; and

118 (5) Foster utilization of the school facilities and grounds for
119 public community activities.

120 (k) On or before the eighth day of June, one thousand nine
121 hundred ninety-five, each local school improvement council

122 shall develop and deliver a report to the countywide council on
123 productive and safe schools. The report shall include guidelines
124 for the instruction and rehabilitation of pupils who have been
125 excluded from the classroom, suspended from the school or
126 expelled from the school, the description and recommendation
127 of in-school suspension programs, a description of possible
128 alternative settings, schedules for instruction and alternative
129 education programs and an implementation schedule for such
130 guidelines. The guidelines shall include the following:

131 (1) A system to provide for effective communication and
132 coordination between school and local emergency services
133 agencies;

134 (2) A preventive discipline program which may include the
135 responsible students program devised by the West Virginia
136 board of education as adopted by the county board of education,
137 pursuant to the provisions of subsection (e), section one, article
138 five, chapter eighteen-a of this code; and

139 (3) A student involvement program, which may include the
140 peer mediation program or programs devised by the West
141 Virginia board of education as adopted by the county board of
142 education, pursuant to the provisions of subsection (e), section
143 one, article five, chapter eighteen-a of this code.

144 (l) The council may include in its report to the county-wide
145 council on productive and safe schools provisions of the state
146 board of education policy 4373, student code of conduct, or any
147 expansion of such policy which increases the safety of students
148 in schools in this state and is consistent with the policies and
149 other laws of this state.

150 (m) Councils may adopt their own guidelines established
151 under this section. In addition, the councils may adopt all or any
152 part of the guidelines proposed by other local school improve-

153 ment councils, as developed under this section, which are not
154 inconsistent with the laws of this state, the policies of West
155 Virginia board of education or the policies of the county board
156 of education.

157 (n) The state board of education shall provide assistance to
158 a local school improvement council upon receipt of a reason-
159 able request for that assistance. The state board also may solicit
160 proposals from other parties or entities to provide orientation
161 training for local school improvement council members and
162 may enter into contracts or agreements for that purpose. Any
163 training for members shall meet the guidelines established by
164 the state board.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

1 (a) There is established at every public school in this state
2 a faculty senate which is comprised of all permanent, full-time
3 professional educators employed at the school who shall all be
4 voting members. Professional educators, as used in this section,
5 means professional educators as defined in chapter eighteen-a
6 of this code. A quorum of more than one half of the voting
7 members of the faculty shall be present at any meeting of the
8 faculty senate at which official business is conducted. Prior to
9 the beginning of the instructional term each year, but within the
10 employment term, the principal shall convene a meeting of the
11 faculty senate to elect a chair, vice chair and secretary and
12 discuss matters relevant to the beginning of the school year.
13 The vice chair shall preside at meetings when the chair is
14 absent. Meetings of the faculty senate shall be held during the
15 times provided in accordance with subdivision (12), subsection
16 (b) of this section as determined by the faculty senate. Emer-
17 gency meetings may be held during noninstructional time at the
18 call of the chair or a majority of the voting members by petition
19 submitted to the chair and vice chair. An agenda of matters to

20 be considered at a scheduled meeting of the faculty senate shall
21 be available to the members at least two employment days prior
22 to the meeting. For emergency meetings the agenda shall be
23 available as soon as possible prior to the meeting. The chair of
24 the faculty senate may appoint such committees as may be
25 desirable to study and submit recommendations to the full
26 faculty senate, but the acts of the faculty senate shall be voted
27 upon by the full body.

28 (b) In addition to any other powers and duties conferred by
29 law, or authorized by policies adopted by the state or county
30 board of education or bylaws which may be adopted by the
31 faculty senate not inconsistent with law, the powers and duties
32 listed in this subsection are specifically reserved for the faculty
33 senate. The intent of these provisions is neither to restrict nor to
34 require the activities of every faculty senate to the enumerated
35 items except as otherwise stated. Each faculty senate shall
36 organize its activities as it deems most effective and efficient
37 based on school size, departmental structure and other relevant
38 factors.

39 (1) Each faculty senate shall control funds allocated to the
40 school from legislative appropriations pursuant to section nine,
41 article nine-a of this chapter. From such funds, each classroom
42 teacher and librarian shall be allotted fifty dollars for expendi-
43 ture during the instructional year for academic materials,
44 supplies or equipment which, in the judgment of the teacher or
45 librarian, will assist him or her in providing instruction in his or
46 her assigned academic subjects or shall be returned to the
47 faculty senate: *Provided*, That nothing contained herein
48 prohibits the funds from being used for programs and materials
49 that, in the opinion of the teacher, enhance student behavior,
50 increase academic achievement, improve self-esteem and
51 address the problems of students at-risk. The remainder of
52 funds shall be expended for academic materials, supplies or
53 equipment in accordance with a budget approved by the faculty

54 senate. Notwithstanding any other provisions of the law to the
55 contrary, funds not expended in one school year are available
56 for expenditure in the next school year: *Provided, however,*
57 That the amount of county funds budgeted in a fiscal year may
58 not be reduced throughout the year as a result of the faculty
59 appropriations in the same fiscal year for such materials,
60 supplies and equipment. Accounts shall be maintained of the
61 allocations and expenditures of such funds for the purpose of
62 financial audit. Academic materials, supplies or equipment shall
63 be interpreted broadly, but does not include materials, supplies
64 or equipment which will be used in or connected with
65 interscholastic athletic events.

66 (2) A faculty senate may establish a process for faculty
67 members to interview new prospective professional educators
68 and paraprofessional employees at the school and submit
69 recommendations regarding employment to the principal, who
70 may also make independent recommendations, for submission
71 to the county superintendent: *Provided,* That such process shall
72 be chaired by the school principal and must permit the timely
73 employment of persons to perform necessary duties.

74 (3) A faculty senate may nominate teachers for recognition
75 as outstanding teachers under state and local teacher recognition
76 programs and other personnel at the school, including parents,
77 for recognition under other appropriate recognition programs
78 and may establish such programs for operation at the school.

79 (4) A faculty senate may submit recommendations to the
80 principal regarding the assignment scheduling of secretaries,
81 clerks, aides and paraprofessionals at the school.

82 (5) A faculty senate may submit recommendations to the
83 principal regarding establishment of the master curriculum
84 schedule for the next ensuing school year.

85 (6) A faculty senate may establish a process for the review
86 and comment on sabbatical leave requests submitted by
87 employees at the school pursuant to section eleven, article two
88 of this chapter.

89 (7) Each faculty senate shall elect three faculty representa-
90 tives to the local school improvement council established
91 pursuant to section two of this article.

92 (8) Each faculty senate may nominate a member for
93 election to the county staff development council pursuant to
94 section eight, article three, chapter eighteen-a of this code.

95 (9) Each faculty senate shall have an opportunity to make
96 recommendations on the selection of faculty to serve as mentors
97 for beginning teachers under beginning teacher internship
98 programs at the school.

99 (10) A faculty senate may solicit, accept and expend any
100 grants, gifts, bequests, donations and any other funds made
101 available to the faculty senate: *Provided*, That the faculty senate
102 shall select a member who has the duty of maintaining a record
103 of all funds received and expended by the faculty senate, which
104 record shall be kept in the school office and is subject to normal
105 auditing procedures.

106 (11) Any faculty senate may review the evaluation proce-
107 dure as conducted in their school to ascertain whether the
108 evaluations were conducted in accordance with the written
109 system required pursuant to section twelve, article two, chapter
110 eighteen-a of this code and the general intent of this Legislature
111 regarding meaningful performance evaluations of school
112 personnel. If a majority of members of the faculty senate
113 determine that such evaluations were not so conducted, they
114 shall submit a report in writing to the state board of education:

115 *Provided*, That nothing herein creates any new right of access
116 to or review of any individual's evaluations.

117 (12) A local board shall provide to each faculty senate a
118 two-hour block of time for a faculty senate meeting on a day
119 scheduled for the opening of school prior to the beginning of
120 the instructional term, and a two-hour block of time on each
121 instructional support and enhancement day scheduled by the
122 board for instructional activities for students and professional
123 activities for teachers pursuant to section forty-five, article five
124 of this chapter. A faculty senate may meet for an unlimited
125 block of time per month during noninstructional days to discuss
126 and plan strategies to improve student instruction and to
127 conduct other faculty senate business. A faculty senate meeting
128 scheduled on a noninstructional day shall be considered as part
129 of the purpose for which the noninstructional day is scheduled.
130 This time may be utilized and determined at the local school
131 level and includes, but is not limited to, faculty senate meetings.

132 (13) Each faculty senate shall develop a strategic plan to
133 manage the integration of special needs students into the regular
134 classroom at their respective schools and submit the strategic
135 plan to the superintendent of the county board of education
136 periodically pursuant to guidelines developed by the state
137 department of education. Each faculty senate shall encourage
138 the participation of local school improvement councils, parents
139 and the community at large in developing the strategic plan for
140 each school.

141 Each strategic plan developed by the faculty senate shall
142 include at least: (A) A mission statement; (B) goals; (C) needs;
143 (D) objectives and activities to implement plans relating to each
144 goal; (E) work in progress to implement the strategic plan; (F)
145 guidelines for placing additional staff into integrated class-
146 rooms to meet the needs of exceptional needs students without
147 diminishing the services rendered to the other students in

148 integrated classrooms; (G) guidelines for implementation of
149 collaborative planning and instruction; and (H) training for all
150 regular classroom teachers who serve students with exceptional
151 needs in integrated classrooms.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

**§18-8-4. Duties of attendance director and assistant directors;
complaints, warrants and hearings.**

1 (a) The county attendance director and the assistants shall
2 diligently promote regular school attendance. They shall
3 ascertain reasons for inexcusable absences from school of
4 pupils of compulsory school age and students who remain
5 enrolled beyond the sixteenth birthday as defined under this
6 article and shall take such steps as are, in their discretion, best
7 calculated to correct attitudes of parents and pupils which result
8 in absences from school even though not clearly in violation of
9 law.

10 (b) In the case of five consecutive or ten total unexcused
11 absences of a child during a school year, the attendance director
12 or assistant shall serve written notice to the parent, guardian or
13 custodian of such child that the attendance of such child at
14 school is required and that within ten days of receipt of the
15 notice the parent, guardian or custodian, accompanied by the
16 child, shall report in person to the school the child attends for
17 a conference with the principal or other designated representa-
18 tive of the school in order to discuss and correct the circum-
19 stances causing the inexcusable absences of the child; and if the
20 parent, guardian or custodian does not comply with the provi-
21 sions of this article, then the attendance director or assistant
22 shall make complaint against the parent, guardian or custodian
23 before a magistrate of the county. If it appears from the
24 complaint that there is probable cause to believe that an offense
25 has been committed and that the accused has committed it, a
26 summons or a warrant for the arrest of the accused shall issue

27 to any officer authorized by law to serve the summons or to
28 arrest persons charged with offenses against the state. More
29 than one summons or warrant may be issued on the same
30 complaint. The summons or warrant shall be executed within
31 ten days of its issuance.

32 (c) The magistrate court clerk, or the clerk of the circuit
33 court performing the duties of the magistrate court as autho-
34 rized in section eight, article one, chapter fifty of this code,
35 shall assign the case to a magistrate within ten days of execu-
36 tion of the summons or warrant. The hearing shall be held
37 within twenty days of the assignment to the magistrate, subject
38 to lawful continuance. The magistrate shall provide to the
39 accused at least ten days' advance notice of the date, time and
40 place of the hearing.

41 (d) When any doubt exists as to the age of a child absent
42 from school, the attendance director shall have authority to
43 require a properly attested birth certificate or an affidavit from
44 the parent, guardian or custodian of such child, stating age of
45 the child. The county attendance director or assistant shall, in
46 the performance of his or her duties, have authority to take
47 without warrant any child absent from school in violation of the
48 provisions of this article and to place such child in the school in
49 which such child is or should be enrolled.

50 (e) The county attendance director shall devote such time
51 as is required by section three of this article to the duties of
52 attendance director in accordance with this section during the
53 instructional term and at such other times as the duties of an
54 attendance director are required. All attendance directors hired
55 for more than two hundred days may be assigned other duties
56 determined by the superintendent during the period in excess of
57 two hundred days. The county attendance director shall be
58 responsible under direction of the county superintendent for the
59 efficient administration of school attendance in the county.

60 (f) In addition to those duties directly relating to the
61 administration of attendance, the county attendance director and
62 assistant directors shall also perform the following duties:

63 (1) Assist in directing the taking of the school census to see
64 that it is taken at the time and in the manner provided by law;

65 (2) Confer with principals and teachers on the comparison
66 of school census and enrollment for the detection of possible
67 nonenrollees;

68 (3) Cooperate with existing state and federal agencies
69 charged with enforcement of child labor laws;

70 (4) Prepare a report for submission by the county superin-
71 tendent to the state superintendent of schools on school
72 attendance, at such times and in such detail as may be required.
73 The state board shall promulgate a legislative rule pursuant to
74 article three-b, chapter twenty-nine-a of this code that sets forth
75 student absences that shall be excluded for accountability
76 purposes. The absences that shall be excluded by the rule shall
77 include, but not be limited to, excused student absences,
78 students not in attendance due to disciplinary measures and
79 absent students for whom the attendance director has pursued
80 judicial remedies to compel attendance to the extent of his or
81 her authority. The attendance director shall file with the county
82 superintendent and county board of education at the close of
83 each month a report showing activities of the school attendance
84 office and the status of attendance in the county at the time;

85 (5) Promote attendance in the county by the compilation of
86 data for schools and by furnishing suggestions and recommen-
87 dations for publication through school bulletins and the press,
88 or in such manner as the county superintendent may direct;

89 (6) Participate in school teachers' conferences with parents
90 and students;

91 (7) Assist in such other ways as the county superintendent
92 may direct for improving school attendance;

93 (8) Make home visits of students who have excessive
94 unexcused absences, as provided above, or if requested by the
95 chief administrator, principal or assistant principal; and

96 (9) Serve as the liaison for homeless children and youth.

CHAPTER 92

(Com. Sub. for H. B. 2083 — By Delegates Mezzatesta,
Stemple and Williams)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article one, chapter eighteen-a of said code, all relating to county boards of education generally and expanding job-sharing arrangements to include employees who are not professional employees; requiring written agreements for job-sharing arrangements; requiring agreements to specify which employee is eligible for insurance coverage; requiring certain issues be considered when entering into a job-sharing agreement; and limiting cost to retirement system.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article one, chapter

eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

***§18-5-13. Authority of boards generally.**

1 Each county board, subject to the provisions of this chapter
2 and the rules of the state board, has the authority:

3 (a) To control and manage all of the schools and school
4 interests for all school activities and upon all school property,
5 whether owned or leased by the county, including the authority
6 to require that records be kept of all receipts and disbursements
7 of all funds collected or received by any principal, teacher,
8 student or other person in connection with the schools and
9 school interests, any programs, activities or other endeavors of
10 any nature operated or carried on by or in the name of the
11 school, or any organization or body directly connected with the
12 school, to audit the records and to conserve the funds, which
13 shall be considered quasi-public moneys, including securing
14 surety bonds by expenditure of board moneys;

15 (b) To establish schools, from preschool through high
16 school, inclusive of vocational schools; and to establish schools,
17 programs or both, for post high school instruction, subject to
18 approval of the state board;

19 (c) To close any school which is unnecessary and to assign
20 the pupils of the school to other schools: *Provided*, That the

* **CLERK'S NOTE:** This section was also amended by SB 522 (Chapter 91),
which passed subsequent to this act.

21 closing shall be officially acted upon, and teachers and service
22 personnel involved notified on or before the first Monday in
23 April, in the same manner as provided in section four of this
24 article, except in an emergency, subject to the approval of the
25 state superintendent, or under subdivision (e) of this section;

26 (d) To consolidate schools;

27 (e) To close any elementary school whose average daily
28 attendance falls below twenty pupils for two months in succes-
29 sion and send the pupils to other schools in the district or to
30 schools in adjoining districts. If the teachers in the closed
31 school are not transferred or reassigned to other schools, they
32 shall receive one month's salary;

33 (f) (1) To provide at public expense adequate means of
34 transportation, including transportation across county lines for
35 students whose transfer from one district to another is agreed to
36 by both county boards as reflected in the minutes of their
37 respective meetings, for all children of school age who live
38 more than two miles distance from school by the nearest
39 available road; to provide at public expense, according to such
40 rules as the board may establish, adequate means of transporta-
41 tion for school children participating in county board-approved
42 curricular and extracurricular activities; to provide at public
43 expense, by rules and within the available revenues, transporta-
44 tion for those within two miles distance; and to provide, at no
45 cost to the county board and according to rules established by
46 the board, transportation for participants in projects operated,
47 financed, sponsored or approved by the commission on aging,
48 all subject to the following:

49 (A) All costs and expenses incident in any way to transpor-
50 tation for projects connected with the commission on aging
51 shall be borne by the commission, or the local or county chapter
52 of the commission;

53 (B) In all cases, the school buses owned by the county
54 board shall be driven or operated only by drivers regularly
55 employed by the county board;

56 (C) The county board may provide, under rules established
57 by the state board, for the certification of professional employ-
58 ees as drivers of county board-owned vehicles with a seating
59 capacity of less than ten passengers used for the transportation
60 of pupils for school-sponsored activities other than transporting
61 students between school and home. The use of the vehicles shall
62 be limited to one for each school-sponsored activity; and

63 (D) Buses shall be used for extracurricular activities as
64 provided in this section only when the insurance provided for
65 by this section is in effect.

66 (2) To enter into agreements with one another as reflected
67 in the minutes of their respective meetings to provide, on a
68 cooperative basis, adequate means of transportation across
69 county lines for children of school age subject to the conditions
70 and restrictions of this subsection and subsection (h) of this
71 section;

72 (g) (1) To lease school buses operated only by drivers
73 regularly employed by the county board to public and private
74 nonprofit organizations or private corporations to transport
75 school-age children to and from camps or educational activities
76 in accordance with rules established by the county board. All
77 costs and expenses incurred by or incidental to the transporta-
78 tion of the children shall be borne by the lessee;

79 (2) To contract with any college or university or officially
80 recognized campus organizations to provide transportation for
81 college or university students, faculty or staff to and from the
82 college or university. Only college and university students,
83 faculty and staff may be transported pursuant to this section.

84 The contract shall include consideration and compensation for
85 bus operators, repairs and other costs of service, insurance and
86 any rules concerning student behavior;

87 (h) To provide at public expense for insurance against the
88 negligence of the drivers of school buses, trucks or other
89 vehicles operated by the board; and if the transportation of
90 pupils is contracted, then the contract for the transportation
91 shall provide that the contractor shall carry insurance against
92 negligence in an amount specified by the board;

93 (i) To provide solely from county board funds for all
94 regular full-time employees of the county board all or any part
95 of the cost of a group plan or plans of insurance coverage not
96 provided or available under the West Virginia public employees
97 insurance act;

98 (j) To employ teacher aides, to provide in-service training
99 for teacher aides, the training to be in accordance with rules of
100 the state board and, in the case of service personnel assuming
101 duties as teacher aides in exceptional children programs, to
102 provide a four-clock-hour program of training prior to the
103 assignment which shall, in accordance with rules of the state
104 board, consist of training in areas specifically related to the
105 education of exceptional children;

106 (k) To establish and conduct a self-supporting dormitory for
107 the accommodation of the pupils attending a high school or
108 participating in a post high school program and of persons
109 employed to teach in the high school or post high school
110 program;

111 (l) To employ legal counsel;

112 (m) To provide appropriate uniforms for school service
113 personnel;

114 (n) To provide at public expense and under rules as
115 established by any county board for the payment of traveling
116 expenses incurred by any person invited to appear to be
117 interviewed concerning possible employment by the county
118 board;

119 (o) To allow or disallow their designated employees to use
120 publicly provided carriage to travel from their residences to
121 their workplace and return: *Provided*, That the usage is subject
122 to the supervision of the county board and is directly connected
123 with and required by the nature and in the performance of the
124 employee's duties and responsibilities;

125 (p) To provide, at public expense, adequate public liability
126 insurance, including professional liability insurance for county
127 board employees;

128 (q) To enter into agreements with one another to provide,
129 on a cooperative basis, improvements to the instructional needs
130 of each district. The cooperative agreements may be used to
131 employ specialists in a field of academic study or support
132 functions or services, for the academic study. The agreements
133 are subject to approval by the state board;

134 (r) To provide information about vocational or higher
135 education opportunities to students with handicapping condi-
136 tions. The county board shall provide in writing to the students
137 and their parents or guardians information relating to programs
138 of vocational education and to programs available at state
139 funded institutions of higher education. The information may
140 include sources of available funding, including grants,
141 mentorships and loans for students who wish to attend classes
142 at institutions of higher education;

143 (s) To enter into agreements with one another, with the
144 approval of the state board, for the transfer and receipt of any

145 and all funds determined to be fair when students are permitted
146 or required to attend school in a district other than the district
147 of their residence; and

148 (t) To enter into job-sharing arrangements, as defined in
149 section one, article one, chapter eighteen-a of this code, with its
150 employees, subject to the following provisions:

151 (1) A job-sharing arrangement shall meet all the require-
152 ments relating to posting, qualifications and seniority, as
153 provided for in article four, chapter eighteen-a of this code;

154 (2) Notwithstanding any provisions of this code or legisla-
155 tive rule and specifically the provisions of article sixteen,
156 chapter five of this code to the contrary, a county board which
157 enters into a job-sharing arrangement in which two or more
158 employees voluntarily share an authorized full-time position
159 shall provide the mutually agreed upon employee coverage but
160 shall not offer insurance coverage to more than one of the job-
161 sharing employees, including any group plan or group plans
162 available under the state public employees insurance act;

163 (3) Each job-sharing agreement shall be in writing on a
164 form prescribed and furnished by the county board. The
165 agreement shall designate specifically one employee only who
166 is entitled to the insurance coverage. Any employee who is not
167 so designated is not eligible for state public employees insur-
168 ance coverage regardless of the number of hours he or she
169 works;

170 (4) All employees involved in the job-sharing agreement
171 meet the requirements of subdivision (3), section two, article
172 sixteen, chapter five of this code; and

173 (5) When entering into a job-sharing agreement, the county
174 board and the employees involved in the job-sharing agreement
175 shall consider issues such as retirement benefits, termination of

176 the job-sharing agreement and any other issue the parties to the
177 agreement consider appropriate. Any provision in the agree-
178 ment relating to retirement benefits shall not cause any cost to
179 be incurred by the retirement system that is more than the cost
180 that would be incurred if a single employee were filling the
181 position.

182 “Quasi-public funds” as used in this section means any
183 money received by any principal, teacher, student or other
184 person for the benefit of the school system as a result of
185 curricular or noncurricular activities.

186 Each county board shall expend under rules it establishes
187 for each child an amount not to exceed the proportion of all
188 school funds of the district that each child would be entitled to
189 receive if all the funds were distributed equally among all the
190 children of school age in the district upon a per capita basis.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one,
2 chapter eighteen of this code apply to this chapter. In addition,
3 the following words used in this chapter and in any proceedings
4 pursuant to this chapter shall, unless the context clearly
5 indicates a different meaning, be construed as follows:

6 (a) “School personnel” means all personnel employed by a
7 county board whether employed on a regular full-time basis, an
8 hourly basis or otherwise. School personnel shall be comprised
9 of two categories: Professional personnel and service personnel;

10 (b) “Professional personnel” means persons who meet the
11 certification requirements of the state, licensing requirements

12 of the state or both and includes the professional educator and
13 other professional employees;

14 (c) "Professional educator" has the same meaning as
15 "teacher" as defined in section one, article one, chapter eighteen
16 of this code. Professional educators shall be classified as:

17 (1) "Classroom teacher" means a professional educator
18 who has direct instructional or counseling relationship with
19 pupils, spending the majority of his or her time in this capacity;

20 (2) "Principal" means a professional educator who, as
21 agent of the county board, has responsibility for the supervi-
22 sion, management and control of a school or schools within the
23 guidelines established by the county board. The major area of
24 the responsibility shall be the general supervision of all the
25 schools and all school activities involving pupils, teachers and
26 other school personnel;

27 (3) "Supervisor" means a professional educator who,
28 whether by this or other appropriate title, is responsible for
29 working primarily in the field with professional and other
30 personnel in instructional and other school improvement; and

31 (4) "Central office administrator" means a superintendent,
32 associate superintendent, assistant superintendent and other
33 professional educators, whether by these or other appropriate
34 titles, who are charged with the administering and supervising
35 of the whole or some assigned part of the total program of the
36 countywide school system;

37 (d) "Other professional employee" means that person from
38 another profession who is properly licensed and is employed to
39 serve the public schools and includes a registered professional
40 nurse, licensed by the West Virginia board of examiners for
41 registered professional nurses and employed by a county board,
42 who has completed either a two-year (sixty-four semester

43 hours) or a three-year (ninety-six semester hours) nursing
44 program;

45 (e) "Service personnel" means those who serve the school
46 or schools as a whole, in a nonprofessional capacity, including
47 such areas as secretarial, custodial, maintenance, transportation,
48 school lunch and as aides;

49 (f) "Principals academy" or "academy" means the academy
50 created pursuant to section two-b, article three-a of this chapter;

51 (g) "Center for professional development" means the center
52 created pursuant to section one, article three-a of this chapter;

53 (h) "Job-sharing arrangement" means a formal, written
54 agreement voluntarily entered into by a county board with two
55 or more of its employees who wish to divide between them the
56 duties and responsibilities of one authorized full-time position;

57 (i) "Prospective employable professional personnel" means
58 certified professional educators who:

59 (1) Have been recruited on a reserve list of a county board;

60 (2) Have been recruited at a job fair or as a result of contact
61 made at a job fair;

62 (3) Have not obtained regular employee status through the
63 job posting process provided for in section seven-a, article four
64 of this chapter; and

65 (4) Have obtained a baccalaureate degree from an accred-
66 ited institution of higher education within the past year;

67 (j) "Dangerous student" means a pupil who is substantially
68 likely to cause serious bodily injury to himself, herself or
69 another individual within that pupil's educational environment,

70 which may include any alternative education environment, as
71 evidenced by a pattern or series of violent behavior exhibited by
72 the pupil, and documented in writing by the school, with the
73 documentation provided to the student and parent or guardian
74 at the time of any offense; and

75 (k) "Alternative education" means an authorized departure
76 from the regular school program designed to provide educa-
77 tional and social development for students whose disruptive
78 behavior places them at risk of not succeeding in the traditional
79 school structures and in adult life without positive interven-
80 tions.

CHAPTER 93

(Com. Sub. for S. B. 206 — By Senators Caldwell and Rowe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and eleven, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article five, chapter eighteen-a of said code, all relating to compulsory school attendance; technical amendments; home school exemption; amending requirements to qualify for home school exemption; amending assessment requirements of home school exemption; eliminating exemption relating to residence more than two miles from school or school bus route; driver's license privilege; conditions for obtaining license; denial and revocation; limitation on reinstatement; and authorizing aides to supervise students who are undergoing in-school suspension.

Be it enacted by the Legislature of West Virginia:

That sections one and eleven, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight, article five, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

1 (a) Compulsory school attendance shall begin with the
2 school year in which the sixth birthday is reached prior to the
3 first day of September or upon enrolling in a publicly supported
4 kindergarten program and continue to the sixteenth birthday.
5 Exemption from the foregoing requirements of compulsory
6 public school attendance shall be made on behalf of any child
7 for the causes or conditions set forth in this section. Each cause
8 or condition set forth in this section shall be subject to confir-
9 mation by the attendance authority of the county.

10 (b) A child shall be exempt from the compulsory school
11 attendance requirement set forth in subsection (a) of this section
12 if the requirements of this subsection, relating to instruction in
13 a private, parochial or other approved school, are met. The
14 instruction shall be in a school approved by the county board
15 and for a time equal to the instructional term set forth in section

16 forty-five, article five of this chapter. In all private, parochial or
17 other schools approved pursuant to this subsection it shall be
18 the duty of the principal or other person in control, upon the
19 request of the county superintendent, to furnish to the county
20 board such information and records as may be required with
21 respect to attendance, instruction and progress of pupils
22 enrolled between the entrance age and sixteen years.

23 (c) A child shall be exempt from the compulsory school
24 attendance requirement set forth in subsection (a) of this section
25 if the requirements of either subdivision (1) of this subsection
26 or the requirements of subdivision (2) of this subsection, both
27 relating to home instruction, are met.

28 (1) The instruction shall be in the home of the child or
29 children or at some other place approved by the county board
30 and for a time equal to the instructional term set forth in section
31 forty-five, article five of this chapter. If the request for home
32 instruction is denied by the county board, good and reasonable
33 justification for the denial shall be furnished in writing to the
34 applicant by the county board. The instruction shall be con-
35 ducted by a person or persons who, in the judgment of the
36 county superintendent and county board, are qualified to give
37 instruction in subjects required to be taught in public elemen-
38 tary schools in the state. The person or persons providing the
39 instruction, upon request of the county superintendent, shall
40 furnish to the county board information and records as may be
41 required, from time to time, with respect to attendance, instruc-
42 tion and progress of pupils enrolled between the entrance age
43 and sixteen years receiving the instruction. The state board shall
44 develop guidelines for the home schooling of special education
45 students including alternative assessment measures to assure
46 that satisfactory academic progress is achieved.

47 (2) The child meets the requirements set forth in this
48 subdivision: *Provided*, That the county superintendent may seek

49 from the circuit court of the county an order denying home
50 instruction of the child. The order may be granted upon a
51 showing of clear and convincing evidence that the child will
52 suffer neglect in the child's education or that there are other
53 compelling reasons to deny home instruction.

54 (A) Annually, the person or persons providing home
55 instruction present to the county superintendent or county board
56 a notice of intent to provide home instruction and the name,
57 address, age and grade level of any child of compulsory school
58 age to be instructed: *Provided*, That if a child is enrolled in a
59 public school, notice of intent to provide home instruction shall
60 be given at least two weeks prior to withdrawing such child
61 from public school;

62 (B) The person or persons providing home instruction
63 submit satisfactory evidence of a high school diploma or
64 equivalent;

65 (C) The person or persons providing home instruction
66 outline a plan of instruction for the ensuing school year; and

67 (D) On or before the thirtieth day of June of each year the
68 person or persons providing home instruction shall obtain an
69 academic assessment of the child for the previous school year
70 and submit the results to the county superintendent. When the
71 academic assessment takes place outside of a public school, the
72 parent or legal guardian shall pay the cost. The requirement of
73 an academic assessment shall be satisfied in one of the follow-
74 ing ways:

75 (i) The child receiving home instruction takes a nationally
76 normed standardized achievement test to be administered under
77 standardized conditions as set forth by the published instruc-
78 tions of the selected test in the subjects of reading, language,
79 mathematics, science and social studies: *Provided*, That in no

80 event may the child's parent or legal guardian administer the
81 test. The publication date of the chosen test shall not be more
82 than ten years from the date of the administration of the test.
83 The child shall be considered to have made acceptable progress
84 when the mean of the child's test results in the required subject
85 areas for any single year meets or exceeds the fiftieth percentile
86 or, if below the fiftieth percentile, shows improvement from the
87 previous year's results;

88 (ii) The child participates in the testing program currently
89 in use in the state's public schools. The test shall be adminis-
90 tered to the child at a public school in the county of residence.
91 Determination of acceptable progress will be based on current
92 guidelines of the state testing program;

93 (iii) The county superintendent is provided with a written
94 narrative indicating that a portfolio of samples of the child's
95 work has been reviewed and that the child's academic progress
96 for the year is in accordance with the child's abilities. If the
97 narrative indicates that the child's academic progress for the
98 year is in accordance with the child's abilities, the child shall be
99 considered to have made acceptable progress. This narrative
100 shall be prepared by a certified teacher whose certification
101 number shall be provided. The narrative shall include a state-
102 ment about the child's progress in the areas of reading, lan-
103 guage, mathematics, science and social studies and shall note
104 any areas which, in the professional opinion of the reviewer,
105 show need for improvement or remediation; or

106 (iv) The child completes an alternative academic assess-
107 ment of proficiency that is mutually agreed upon by the parent
108 or legal guardian and the county superintendent. Criteria for
109 acceptable progress shall be mutually agreed upon by the same
110 parties; and

111 (E) When the annual assessment fails to show acceptable
112 progress as defined under the appropriate assessment option set
113 forth in paragraph (D) of this subdivision, the person or persons
114 providing home instruction shall initiate a remedial program to
115 foster acceptable progress and the county board shall notify the
116 parents or legal guardian of the child, in writing, of the services
117 available to assist in the assessment of the child's eligibility for
118 special education services: *Provided*, That the identification of
119 a disability shall not preclude the continuation of home school-
120 ing. In the event that the child does not achieve acceptable
121 progress as defined under the appropriate assessment option set
122 forth in paragraph (D) of this subdivision for a second consecu-
123 tive year, the person or persons providing instruction shall
124 submit to the county superintendent additional evidence that
125 appropriate instruction is being provided.

126 (3) This subdivision applies to both home instruction
127 exemptions set forth in subdivisions (1) and (2) of this subsec-
128 tion. The county superintendent or a designee shall offer such
129 assistance, including textbooks, other teaching materials and
130 available resources, as may assist the person or persons
131 providing home instruction subject to their availability. Any
132 child receiving home instruction may upon approval of the
133 county board exercise the option to attend any class offered by
134 the county board as the person or persons providing home
135 instruction may consider appropriate subject to normal registra-
136 tion and attendance requirements.

137 (d) A child shall be exempt from the compulsory school
138 attendance requirement set forth in subsection (a) of this section
139 if the requirements of this subsection, relating to physical or
140 mental incapacity, are met. Physical or mental incapacity
141 consists of incapacity for school attendance and the perfor-
142 mance of school work. In all cases of prolonged absence from
143 school due to incapacity of the child to attend, the written
144 statement of a licensed physician or authorized school nurse

145 shall be required under the provisions of this article: *Provided,*
146 That in all cases, incapacity shall be narrowly defined and in no
147 case shall the provisions of this article allow for the exclusion
148 of the mentally, physically, emotionally or behaviorally
149 handicapped child otherwise entitled to a free appropriate
150 education.

151 (e) A child shall be exempt from the compulsory school
152 attendance requirement set forth in subsection (a) of this section
153 if conditions rendering school attendance impossible or
154 hazardous to the life, health or safety of the child exist.

155 (f) A child shall be exempt from the compulsory school
156 attendance requirement set forth in subsection (a) of this section
157 upon regular graduation from a standard senior high school.

158 (g) A child shall be exempt from the compulsory school
159 attendance requirement set forth in subsection (a) of this section
160 if the child is granted a work permit pursuant to this subsection.
161 The county superintendent may, after due investigation, grant
162 work permits to youths under sixteen years of age, subject to
163 state and federal labor laws and regulations: *Provided,* That a
164 work permit may not be granted on behalf of any youth who has
165 not completed the eighth grade of school.

166 (h) A child shall be exempt from the compulsory school
167 attendance requirement set forth in subsection (a) of this section
168 if a serious illness or death in the immediate family of the pupil
169 has occurred. It is expected that the county attendance director
170 will ascertain the facts in all cases of such absences about
171 which information is inadequate and report the facts to the
172 county superintendent.

173 (i) A child shall be exempt from the compulsory school
174 attendance requirement set forth in subsection (a) of this section
175 if the requirements of this subsection, relating to destitution in

176 the home, are met. Exemption based on a condition of extreme
177 destitution in the home may be granted only upon the written
178 recommendation of the county attendance director to the county
179 superintendent following careful investigation of the case. A
180 copy of the report confirming the condition and school exemp-
181 tion shall be placed with the county director of public assis-
182 tance. This enactment contemplates every reasonable effort that
183 may properly be taken on the part of both school and public
184 assistance authorities for the relief of home conditions officially
185 recognized as being so destitute as to deprive children of the
186 privilege of school attendance. Exemption for this cause shall
187 not be allowed when the destitution is relieved through public
188 or private means.

189 (j) A child shall be exempt from the compulsory school
190 attendance requirement set forth in subsection (a) of this section
191 if the requirements of this subsection, relating to church
192 ordinances and observances of regular church ordinances, are
193 met. The county board may approve exemption for religious
194 instruction upon written request of the person having legal or
195 actual charge of a child or children: *Provided*, That the exemp-
196 tion shall be subject to the rules prescribed by the county
197 superintendent and approved by the county board.

198 (k) A child shall be exempt from the compulsory school
199 attendance requirement set forth in subsection (a) of this section
200 if the requirements of this subsection, relating to alternative
201 private, parochial, church or religious school instruction, are
202 met. Exemption shall be made for any child attending any
203 private school, parochial school, church school, school operated
204 by a religious order or other nonpublic school which elects to
205 comply with the provisions of article twenty-eight of this
206 chapter.

207 (l) The completion of the eighth grade shall not exempt any
208 child under sixteen years of age from the compulsory atten-
209 dance provision of this article.

**§18-8-11. School attendance as condition of licensing for privilege
of operation of motor vehicle.**

1 (a) In accordance with the provisions of sections three and
2 five, article two, chapter seventeen-b of this code, the division
3 of motor vehicles shall deny a license or instruction permit for
4 the operation of a motor vehicle to any person under the age of
5 eighteen who does not at the time of application present a
6 diploma or other certificate of graduation issued to the person
7 from a secondary high school of this state or any other state or
8 documentation that the person: (1) Is enrolled and making
9 satisfactory progress in a course leading to a general educa-
10 tional development certificate (GED) from a state-approved
11 institution or organization or has obtained the certificate; (2) is
12 enrolled in a secondary school of this state or any other state;
13 (3) is excused from the requirement due to circumstances
14 beyond his or her control; or (4) is enrolled in an institution of
15 higher education as a full-time student in this state or any other
16 state.

17 (b) The attendance director or chief administrator shall
18 provide documentation of enrollment status on a form approved
19 by the department of education to any student at least fifteen
20 but less than eighteen years of age upon request who is properly
21 enrolled in a school under the jurisdiction of the official for
22 presentation to the division of motor vehicles on application for
23 or reinstatement of an instruction permit or license to operate a
24 motor vehicle. Whenever a student at least fifteen but less than
25 eighteen years of age withdraws from school, except as
26 provided in subsection (d) of this section, the attendance
27 director or chief administrator shall notify the division of motor
28 vehicles of the withdrawal not later than five days from the

29 withdrawal date. Within five days of receipt of the notice, the
30 division of motor vehicles shall send notice to the licensee that
31 the license will be suspended under the provisions of section
32 three, article two, chapter seventeen-b of this code on the
33 thirtieth day following the date the notice was sent unless
34 documentation of compliance with the provisions of this section
35 is received by the division of motor vehicles before that time.
36 If suspended, the division may not reinstate a license before the
37 end of the semester following that in which the withdrawal
38 occurred.

39 (c) For the purposes of this section:

40 (1) Withdrawal is defined as more than ten consecutive or
41 fifteen total days unexcused absences during a school year;

42 (2) Suspension or expulsion from school or imprisonment
43 in a jail or a West Virginia correctional facility is not a circum-
44 stance beyond the control of the person.

45 (d) Whenever the withdrawal from school of the student, or
46 the student's failure to enroll in a course leading to or to obtain
47 a GED or high school diploma, is beyond the control of the
48 student, or is for the purpose of transfer to another school as
49 confirmed in writing by the student's parent or guardian, no
50 notice shall be sent to the division of motor vehicles to suspend
51 the student's motor vehicle operator's license and if the student
52 is applying for a license, the attendance director or chief
53 administrator shall provide the student with documentation to
54 present to the division of motor vehicles to excuse the student
55 from the provisions of this section. The school district superin-
56 tendent (or the appropriate school official of any private
57 secondary school) with the assistance of the county attendance
58 director and any other staff or school personnel shall be the sole
59 judge of whether withdrawal is due to circumstances beyond the
60 control of the person.

CHAPTER 18A. SCHOOL PERSONNEL.**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.****§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.**

1 (a) Within the limitations provided in this section, any aide
2 who agrees to do so shall stand in the place of the parent or
3 guardian and shall exercise such authority and control over
4 pupils as is required of a teacher as provided in section one of
5 this article. The principal shall designate aides in the school
6 who agree to exercise that authority on the basis of seniority as
7 an aide and shall enumerate the instances in which the authority
8 shall be exercised by an aide when requested by the principal,
9 assistant principal or professional employee to whom the aide
10 is assigned.

11 (b) The authority provided for in subsection (a) of this
12 section may not extend to suspending or expelling any pupil,
13 participating in the administration of corporal punishment or
14 performing instructional duties as a teacher or substitute
15 teacher. However, the authority shall extend to supervising
16 students undergoing in-school suspension if the instructional
17 duties required by the supervision are limited solely to handing
18 out class work and collecting class work. The authority to
19 supervise students undergoing in-school suspension may not
20 include actual instruction.

21 (c) An aide designated by the principal under subsection (a)
22 of this section shall receive a salary not less than one pay grade
23 above the highest pay grade held by the employee under section
24 eight-a, article four of this chapter and any county salary
25 schedule in excess of the minimum requirements of this article.

26 (d) An aide may not be required by the operation of this
27 section to perform noninstructional duties for an amount of time

28 which exceeds that required under the aide's contract of
29 employment or that required of other aides in the same school
30 unless the assignment of the duties is mutually agreed upon by
31 the aide and the county superintendent, or the superintendent's
32 designated representative, subject to board approval. The terms
33 and conditions of the agreement shall be in writing, signed by
34 both parties, and may include additional benefits. The agree-
35 ment shall be uniform as to aides assigned similar duties for
36 similar amounts of time within the same school. Aides shall
37 have the option of agreeing to supervise students and of
38 renewing related assignments annually. If an aide elects not to
39 renew the previous agreement to supervise students, the
40 minimum salary of the aide shall revert to the pay grade
41 specified in section eight-a, article four of this chapter for the
42 classification title held by the aide and any county salary
43 schedule in excess of the minimum requirements of this article.

44 (e) For the purposes of this section, aide means any aide
45 class title as defined in section eight, article four of this chapter
46 regardless of numeric classification.

47 (f) An aide may transfer to another position of employment
48 one time only during any one half of a school term, unless
49 otherwise mutually agreed upon by the aide and the county
50 superintendent, or the superintendent's designee, subject to
51 board approval: *Provided*, That during the first year of employ-
52 ment as an aide, an aide may not transfer to another position of
53 employment during the first one-half school term of employ-
54 ment unless mutually agreed upon by the aide and county
55 superintendent, subject to board approval.

56 (g) Regular service personnel employed in a category of
57 employment other than aide who seek employment as an aide
58 shall hold a high school diploma or shall have received a
59 general educational development certificate and shall have the
60 opportunity to receive appropriate training pursuant to subsec-

61 tion (10), section thirteen, article five, chapter eighteen of this
62 code and section two, article twenty of said chapter.

CHAPTER 94

(Com. Sub. for S. B. 180 — By Senator Tomblin, Mr. President)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, fifteen, sixteen and nineteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article ten-h of said chapter, all relating to public education; authorizing school building authority to require flood insurance for certain facilities; authorizing authority to accept gift, grant, contribution, bequest or endowment for authority or projects, including equipment; authorizing authority to encourage work-based learning opportunities for students on funded projects and outlining conditions; authorizing use of certain authority funds to finance construction and improvements on a cash basis when certain conditions are met; allowing authority to reserve certain funds for priority use for certain multiuse vocational-technical educational facilities; authorizing use of reserved funds for equipment and updates; specifying bodies that may propose projects; authorizing reserve of certain project funds for certain period to complete budget; requiring approved comprehensive educational facility plan as prior condition for distribution of funds; prohibiting distribution of funds to county not prepared to commence expenditure during fiscal year; requiring up-to-date enrollment projections in facility plans and updates; authorizing inclusion of facilities for community and technical college education in plans to construct compre-

hensive vocational facilities at existing high schools; providing that counties served by a multicounty vocational-technical facility are not required to include the construction of a comprehensive vocational facility in the plan for construction of a new high school; requiring board to include multicounty vocational-technical facility director and board in planning programs; prohibiting programs at the vocational facility from replacing the programs at the multicounty vocational-technical facility without the consent of the center board; authorizes a county served by a comprehensive vocational center to eliminate any vocational offering from a new comprehensive high school under certain circumstances; and including introductory vocational-technical courses in middle school grades as part of effective schools for vocational-technical education.

Be it enacted by the Legislature of West Virginia:

That sections three, six, fifteen, sixteen and nineteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section six, article ten-h of said chapter be amended and reenacted, all to read as follows:

Article

9D. School Building Authority.

10H. Albert Yanni Programs of Excellence in Vocational-Technical Education.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-3. Powers of authority.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on cash basis.

§18-9D-15. Legislative intent; distribution of money.

§18-9D-16. Facilities and major improvement plans generally; need-based eligibility.

§18-9D-19. Comprehensive high schools.

§18-9D-3. Powers of authority.

1 The school building authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name of the
5 authority, by purchase, lease-purchase not to exceed a term of
6 twenty-five years, or otherwise, real property or rights or
7 easements necessary or convenient for its corporate purposes
8 and to exercise the power of eminent domain to accomplish
9 those purposes;

10 (4) To acquire, hold and dispose of real and personal
11 property for its corporate purposes;

12 (5) To make bylaws for the management and rule of its
13 affairs;

14 (6) To appoint, contract with and employ attorneys, bond
15 counsel, accountants, construction and financial experts,
16 underwriters, financial advisers, trustees, managers, officers
17 and such other employees and agents as may be necessary in the
18 judgment of the authority and to fix their compensation:
19 *Provided*, That contracts entered into by the school building
20 authority in connection with the issuance of bonds under this
21 article to provide professional and technical services, including,
22 without limitation, accounting, actuarial, underwriting, consult-
23 ing, trustee, bond counsel, legal services and contracts relating
24 to the purchase or sale of bonds are subject to the provisions of
25 article three, chapter five-a of this code: *Provided, however*,
26 That notwithstanding any other provisions of this code, any
27 authority of the attorney general of this state relating to the
28 review of contracts and other documents to effectuate the
29 issuance of bonds under this article shall be exclusively limited

30 to the form of the contract and document: *Provided further,*
31 That the attorney general of this state shall complete all reviews
32 of contracts and documents relating to the issuance of bonds
33 under this article within ten calendar days of receipt of the
34 contract and document for review;

35 (7) To make contracts and to execute all instruments
36 necessary or convenient to effectuate the intent of and to
37 exercise the powers granted to it by this article;

38 (8) To renegotiate all contracts entered into by it whenever,
39 due to a change in situation, it appears to the authority that its
40 interests will be best served;

41 (9) To acquire by purchase, eminent domain or otherwise
42 all real property or interests in the property necessary or
43 convenient to accomplish the purposes of this article;

44 (10) To require proper maintenance and insurance of any
45 project authorized under this section, including flood insurance
46 for any facility within the one hundred year flood plain at which
47 authority funds are expended;

48 (11) To charge rent for the use of all or any part of a project
49 or buildings at any time financed, constructed, acquired or
50 improved, in whole or in part, with the revenues of the author-
51 ity;

52 (12) To assist any county board of education that chooses
53 to acquire land, buildings and capital improvements to existing
54 school buildings and property for use as public school facilities,
55 by lease from a private or public lessor for a term not to exceed
56 twenty-five years with an option to purchase pursuant to an
57 investment contract with the lessor on such terms and condi-
58 tions as may be determined to be in the best interests of the
59 authority, the state board of education and the county board of
60 education, consistent with the purposes of this article, by

61 transferring funds to the state board of education as provided in
62 subsection (d), section fifteen of this article for the use of the
63 county board of education;

64 (13) To accept and expend any gift, grant, contribution,
65 bequest or endowment of money and equipment to, or for the
66 benefit of, the authority or any project under this article, from
67 the state of West Virginia or any other source for any or all of
68 the purposes specified in this article or for any one or more of
69 such purposes as may be specified in connection with the gift,
70 grant, contribution, bequest or endowment;

71 (14) To enter on any lands and premises for the purpose of
72 making surveys, soundings and examinations;

73 (15) To contract for architectural, engineering or other
74 professional services considered necessary or economical by
75 the authority to provide consultative or other services to the
76 authority or to any regional educational service agency or
77 county board requesting professional services offered by the
78 authority, to evaluate any facilities plan or any project encom-
79 passed in the plan, to inspect existing facilities or any project
80 that has received or may receive funding from the authority or
81 to perform any other service considered by the authority to be
82 necessary or economical. Assistance to the region or district
83 may include the development of pre-approved systems, plans,
84 designs, models or documents; advice or oversight on any plan
85 or project; or any other service that may be efficiently provided
86 to regional educational service agencies or county boards by the
87 authority;

88 (16) To provide funds on an emergency basis to repair or
89 replace property damaged by fire, flood, wind, storm, earth-
90 quake or other natural occurrence, the funds to be made
91 available in accordance with guidelines of the school building
92 authority;

93 (17) To transfer moneys to custodial accounts maintained
94 by the school building authority with a state financial institution
95 from the school construction fund and the school improvement
96 fund created in the state treasury pursuant to the provisions of
97 section six of this article, as necessary to the performance of
98 any contracts executed by the school building authority in
99 accordance with the provisions of this article;

100 (18) To enter into agreements with county boards and
101 persons, firms or corporations to facilitate the development of
102 county board projects and county board facilities plans. The
103 county board participating in an agreement shall pay at least
104 twenty-five percent of the cost of the agreement. Nothing in this
105 section shall be construed to supersede, limit or impair the
106 authority of county boards to develop and prepare their projects
107 or plans;

108 (19) To encourage any project or part thereof to provide
109 opportunities for students to participate in supervised, unpaid
110 work-based learning experiences related to the student's
111 program of study approved by the county board. The work-
112 based learning experience must be conducted in accordance
113 with a formal training plan approved by the instructor, the
114 employer and the student and which sets forth at a minimum the
115 specific skills to be learned, the required documentation of
116 work-based learning experiences, the conditions of the place-
117 ment, including duration and safety provisions, and provisions
118 for supervision and liability insurance coverage as applicable.
119 Projects involving the new construction and renovation of
120 vocational-technical and adult education facilities should
121 provide opportunities for students to participate in supervised
122 work-based learning experiences, to the extent practical, which
123 meet the requirements of this subdivision. Nothing in this
124 subdivision may be construed to affect registered youth
125 apprenticeship programs or the provisions governing those
126 programs; and

127 (20) To do all things necessary or convenient to carry out
128 the powers given in this article.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

1 (a) There is continued in the state treasury a school building
2 capital improvements fund to be expended by the authority as
3 provided in this article. The school building capital improve-
4 ments fund shall be an interest-bearing account with interest
5 credited to and deposited in the school building capital im-
6 provements fund and expended in accordance with the provi-
7 sions of this article.

8 The school building authority may pledge all or any part of
9 the revenues paid into the school building capital improvements
10 fund that are needed to meet the requirements of any revenue
11 bond issue or issues authorized by this article prior to the
12 twentieth day of July, one thousand nine hundred ninety-three,
13 or revenue bonds issued to refund revenue bonds issued prior to
14 that date, including the payment of principal of, interest and
15 redemption premium, if any, on the revenue bonds and the
16 establishing and maintaining of a reserve fund or funds for the
17 payment of the principal of, interest and redemption premium,
18 if any, on the revenue bond issue or issues when other moneys
19 pledged may be insufficient for the payment of the principal,
20 interest and redemption premium, including any additional
21 protective pledge of revenues that the authority in its discretion
22 has provided by resolution authorizing the issuance of the
23 bonds or in any trust agreement made in connection with the
24 bond issue. Additionally, the authority may provide in the

25 resolution and in the trust agreement for priorities on the
26 revenues paid into the school building capital improvements
27 fund that are necessary for the protection of the prior rights of
28 the holders of bonds issued at different times under the provi-
29 sions of this article.

30 Any balance remaining in the school building capital
31 improvements fund after the authority has issued bonds
32 authorized by this article and after the requirements of all funds
33 including reserve funds established in connection with the
34 bonds issued prior to the twentieth day of July, one thousand
35 nine hundred ninety-three, pursuant to this article have been
36 satisfied may be used for the redemption of any of the outstand-
37 ing bonds issued under this article which by their terms are then
38 redeemable, or for the purchase of the bonds at the market
39 price, but not exceeding the price, if any, at which the bonds are
40 in the same year redeemable and all bonds redeemed or
41 purchased shall immediately be canceled and shall not again be
42 issued.

43 The school building authority, in its discretion, may use the
44 moneys in the school building capital improvements fund to
45 finance the cost of projects on a cash basis. Any pledge of
46 moneys in the fund for revenue bonds issued prior to the
47 twentieth day of July, one thousand nine hundred ninety-three,
48 is a prior and superior charge on the fund over the use of any of
49 the moneys in the fund to pay for the cost of any project on a
50 cash basis: *Provided*, That any expenditures from the fund,
51 other than for the retirement of revenue bonds, may only be
52 made by the authority in accordance with the provisions of this
53 article.

54 (b) There is continued in the state treasury a special revenue
55 fund named the school building debt service fund into which
56 shall be deposited the amounts specified in section eighteen,
57 article twenty-two, chapter twenty-nine of this code. All

58 amounts deposited in the fund shall be pledged to the repay-
59 ment of the principal, interest and redemption premium, if any,
60 on any revenue bonds or refunding revenue bonds authorized by
61 this article: *Provided*, That deposited moneys may not be
62 pledged to the repayment of any revenue bonds issued prior to
63 the first day of January, one thousand nine hundred ninety-four,
64 or with respect to revenue bonds issued for the purpose of
65 refunding revenue bonds issued prior to the first day of January,
66 one thousand nine hundred ninety-four. Additionally, the
67 authority may provide in the resolution and in the trust agree-
68 ment for priorities on the revenues paid into the school building
69 debt service fund that are necessary for the protection of the
70 prior rights of the holders of bonds issued at different times
71 under the provisions of this article. On or prior to the first day
72 of May of each year, the authority shall certify to the state
73 lottery director the principal and interest and coverage ratio
74 requirements for the following fiscal year on any revenue bonds
75 issued on or after the first day of January, one thousand nine
76 hundred ninety-four, and for which moneys deposited in the
77 school building debt service fund have been pledged, or will be
78 pledged, for repayment pursuant to this section.

79 After the authority has issued bonds authorized by this
80 article and after the requirements of all funds have been
81 satisfied, including coverage and reserve funds established in
82 connection with the bonds issued pursuant to this article, any
83 balance remaining in the school building debt service fund may
84 be used for the redemption of any of the outstanding bonds
85 issued under this article which, by their terms, are then redeem-
86 able or for the purchase of the outstanding bonds at the market
87 price, but not to exceed the price, if any, at which the bonds are
88 redeemable and all bonds redeemed or purchased shall be
89 immediately canceled and shall not again be issued: *Provided*,
90 That after the authority has issued bonds authorized by this
91 article and after the requirements of debt service and all
92 associated funds have been satisfied for the fiscal year, includ-

93 ing coverage and reserve funds established in connection with
94 the bonds issued pursuant to this article, any remaining balance
95 in the school building debt service fund may be transferred to
96 the school construction fund created in subsection (c) of this
97 section and used by the school building authority in its discre-
98 tion to finance the cost of school construction or improvement
99 projects on a cash basis.

100 (c) There is continued in the state treasury a special revenue
101 fund named the school construction fund into which shall be
102 deposited the amounts specified in section thirty, article fifteen,
103 chapter eleven of this code, together with any moneys appropri-
104 ated to the fund by the Legislature. Expenditures from the
105 school construction fund shall be for the purposes set forth in
106 this article, including lease-purchase payments under agree-
107 ments made pursuant to subsection (e), section fifteen of this
108 article and section nine, article five of this chapter and are
109 authorized from collections in accordance with the provisions
110 of article three, chapter twelve of this code and from other
111 revenues annually appropriated by the Legislature from lottery
112 revenues as authorized by section eighteen, article twenty-two,
113 chapter twenty-nine of this code pursuant to the provisions set
114 forth in article two, chapter five-a of this code. Amounts
115 collected which are found, from time to time, to exceed the
116 funds needed for purposes set forth in this article may be
117 transferred to other accounts or funds and redesignated for other
118 purposes by appropriation of the Legislature. The school
119 construction fund shall be an interest-bearing account, with the
120 interest credited to and deposited in the school construction
121 fund and expended in accordance with the provisions of this
122 article. Deposits to and expenditures from the school construc-
123 tion fund are subject to the provisions of subsection (i), section
124 fifteen of this article.

125 (d) There is continued in the state treasury a special revenue
126 fund named the school major improvement fund into which

127 shall be deposited the amounts specified in section thirty, article
128 fifteen, chapter eleven of this code, together with any moneys
129 appropriated to the fund by the Legislature. Expenditures from
130 the school major improvement fund shall be for the purposes set
131 forth in this article and are authorized from collections in
132 accordance with the provisions of article three, chapter twelve
133 of this code and from other revenues annually appropriated by
134 the Legislature from lottery revenues as authorized by section
135 eighteen, article twenty-two, chapter twenty-nine of this code
136 pursuant to the provisions set forth in article two, chapter five-a
137 of this code. Amounts collected which are found, from time to
138 time, to exceed the funds needed for purposes set forth in this
139 article may be transferred to other accounts or funds and
140 redesignated for other purposes by appropriation of the Legisla-
141 ture. The school major improvement fund shall be an interest-
142 bearing account, with interest being credited to and deposited
143 in the school major improvement fund and expended in
144 accordance with the provisions of this article.

145 (e) The Legislature finds and declares that the supreme
146 court of appeals of West Virginia has held that the issuance of
147 additional revenue bonds authorized under the school building
148 authority act, as enacted in this article prior to the twentieth day
149 of July, one thousand nine hundred ninety-three, constituted an
150 indebtedness of the state in violation of section four, article X
151 of the constitution of West Virginia, but that revenue bonds
152 issued under this article prior to the twentieth day of July, one
153 thousand nine hundred ninety-three, are not invalid. The
154 Legislature further finds and declares that the financial capacity
155 of a county to construct, lease and improve school facilities
156 depends upon the county's bonding capacity (local property
157 wealth), voter willingness to pass bond issues and the county's
158 ability to reallocate other available county funds instead of
159 criteria related to educational needs or upon the ability of the
160 school building authority created in this article to issue bonds
161 that comply with the holding of the West Virginia supreme

162 court of appeals or otherwise assist counties with the financing
163 of facilities construction and improvement. The Legislature
164 further finds and declares that this section, as well as section
165 eighteen, article twenty-two, chapter twenty-nine of this code,
166 have been reenacted during the first extraordinary session of the
167 West Virginia Legislature in the year one thousand nine
168 hundred ninety-four in an attempt to comply with the holding
169 of the supreme court of appeals of West Virginia.

170 The Legislature further finds and declares that it intends,
171 through the reenactment of this section and section eighteen,
172 article twenty-two, chapter twenty-nine of this code, to dedicate
173 a source of state revenues to special revenue funds for the
174 purposes of paying the debt service on bonds and refunding
175 bonds issued subsequent to the first day of January, one
176 thousand nine hundred ninety-four, the proceeds of which will
177 be used for the construction and improvement of school
178 building facilities. The Legislature further finds and declares
179 that it intends, through the reenactment of this section and
180 section thirty, article fifteen, chapter eleven of this code and
181 section eighteen, article twenty-two, chapter twenty-nine of this
182 code, to appropriate revenues to two special revenue funds for
183 the purposes of construction and improvement of school
184 building facilities. Furthermore, the Legislature intends to
185 encourage county boards to maintain existing levels of county
186 funding for construction, improvement and maintenance of
187 school building facilities and to generate additional county
188 funds for those purposes through bonds and special levies
189 whenever possible. The Legislature further encourages the
190 school building authority, the state board and county boards of
191 education to propose uniform project specifications for compa-
192 rable projects whenever possible to meet county needs at the
193 lowest possible cost.

194 The Legislature further finds and declares that it intends,
195 through the reenactment of this section and section eighteen,

196 article twenty-two, chapter twenty-nine of this code, to comply
197 with the provisions of sections four and six, article X of the
198 constitution of West Virginia; and section one, article XII of
199 said constitution.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the school
2 building authority to facilitate and provide state funds and to
3 administer all federal funds provided for the construction and
4 major improvement of school facilities so as to meet the
5 educational needs of the people of this state in an efficient and
6 economical manner. The authority shall make funding determi-
7 nations in accordance with the provisions of this article and
8 shall assess existing school facilities and each facility's school
9 major improvement plan in relation to the needs of the individ-
10 ual student, the general school population, the communities
11 served by the facilities and facility needs statewide.

12 (b) An amount that is no more than three percent of the sum
13 of moneys that are determined by the authority to be available
14 for distribution during the then current fiscal year from: (1)
15 Moneys paid into the school building capital improvements
16 fund pursuant to section ten, article nine-a of this chapter; (2)
17 the issuance of revenue bonds for which moneys in the school
18 building debt service fund are pledged as security; (3) moneys
19 paid into the school construction fund pursuant to section six of
20 this article; and (4) any other moneys received by the authority,
21 except moneys paid into the school major improvement fund
22 pursuant to section six of this article, may be allocated and may
23 be expended by the authority for projects that service the
24 educational community statewide or, upon application by the
25 state board, for educational programs that are under the
26 jurisdiction of the state board. In addition, upon application by
27 the state board or the administrative council of an area voca-
28 tional educational center established pursuant to article two-b

29 of this chapter, the authority may allocate and expend under this
30 subsection moneys for school major improvement projects
31 proposed by the state board or an administrative council for
32 school facilities under the direct supervision of the state board
33 or an administrative council, respectively: *Provided*, That the
34 authority may not expend any moneys for a school major
35 improvement project proposed by the state board or the
36 administrative council of an area vocational educational center
37 unless the state board or an administrative council has submit-
38 ted a ten-year school major improvement plan, to be updated
39 annually, pursuant to section sixteen of this article: *Provided*,
40 *however*, That the authority shall, before allocating any moneys
41 to the state board or the administrative council of an area
42 vocational educational center for a school improvement project,
43 consider all other funding sources available for the project.

44 (c) An amount that is no more than two percent of the
45 moneys that are determined by the authority to be available for
46 distribution during the current fiscal year from: (1) Moneys
47 paid into the school building capital improvements fund
48 pursuant to section ten, article nine-a of this chapter; (2) the
49 issuance of revenue bonds for which moneys in the school
50 building debt service fund are pledged as security; (3) moneys
51 paid into the school construction fund pursuant to section six of
52 this article; and (4) any other moneys received by the authority,
53 except moneys deposited into the school major improvement
54 fund, shall be set aside by the authority as an emergency fund
55 to be distributed in accordance with the guidelines adopted by
56 the authority.

57 (d) An amount that is no more than five percent of the
58 moneys that are determined by the authority to be available for
59 distribution during the current fiscal year from: (1) Moneys
60 paid into the school building capital improvements fund
61 pursuant to section ten, article nine-a of this chapter; (2) the
62 issuance of revenue bonds for which moneys in the school

63 building debt service fund are pledged as security; (3) moneys
64 paid into the school construction fund pursuant to section six of
65 this article; and (4) any other moneys received by the authority,
66 except moneys deposited into the school major improvement
67 fund, may be reserved by the authority for multiuse vocational-
68 technical education facilities that may include post-secondary
69 programs as a first priority use. The authority may allocate and
70 expend under this subsection moneys for any purposes autho-
71 rized in this article on multiuse vocational-technical education
72 facilities and for equipment and equipment updates at the
73 facilities. If the projects approved under this subsection do not
74 require the full amount of moneys reserved, moneys above the
75 amount required may be allocated and expended in accordance
76 with other provisions of this article. A county board, the state
77 board, an administrative council or the joint administrative
78 board of a vocational-technical education facility which
79 includes post-secondary programs may propose projects for
80 facilities or equipment, or both, which are under the direct
81 supervision of the respective body: *Provided*, That the authority
82 shall, before allocating any moneys for a project under this
83 subsection, consider all other funding sources available for the
84 project.

85 (e) The remaining moneys determined by the authority to
86 be available for distribution during the then current fiscal year
87 from: (1) Moneys paid into the school building capital improve-
88 ments fund pursuant to section ten, article nine-a of this
89 chapter; (2) the issuance of revenue bonds for which moneys in
90 the school building debt service fund are pledged as security;
91 (3) moneys paid into the school construction fund pursuant to
92 section six of this article; and (4) any other moneys received by
93 the authority, except moneys deposited into the school major
94 improvement fund, shall be allocated and expended on the basis
95 of need and efficient use of resources, the basis to be deter-
96 mined by the authority in accordance with the provisions of
97 section sixteen of this article.

98 (f) If a county board of education proposes to finance a
99 project that is approved pursuant to section sixteen of this
100 article through a lease with an option to purchase leased
101 premises upon the expiration of the total lease period pursuant
102 to an investment contract, the authority may allocate no moneys
103 to the county board in connection with the project: *Provided,*
104 That the authority may transfer moneys to the state board of
105 education which, with the authority, shall lend the amount
106 transferred to the county board to be used only for a one-time
107 payment due at the beginning of the lease term, made for the
108 purpose of reducing annual lease payments under the invest-
109 ment contract, subject to the following conditions:

110 (1) The loan shall be secured in the manner required by the
111 authority, in consultation with the state board, and shall be
112 repaid in a period and bear interest at a rate as determined by
113 the state board and the authority and shall have such terms and
114 conditions as are required by the authority, all of which shall be
115 set forth in a loan agreement among the authority, the state
116 board and the county board;

117 (2) The loan agreement shall provide for the state board and
118 the authority to defer the payment of principal and interest upon
119 any loan made to the county board during the term of the
120 investment contract, and annual renewals of the investment
121 contract, among the state board, the authority, the county board
122 and a lessor: *Provided,* That in the event a county board which
123 has received a loan from the authority for a one-time payment
124 at the beginning of the lease term does not renew the subject
125 lease annually until performance of the investment contract in
126 its entirety is completed, the county board is in default and the
127 principal of the loan, together with all unpaid interest accrued
128 to the date of the default, shall, at the option of the authority, in
129 consultation with the state board, become due and payable
130 immediately or subject to renegotiation among the state board,
131 the authority and the county board: *Provided, however,* That if

132 a county board renews the lease annually through the perfor-
133 mance of the investment contract in its entirety, the county
134 board shall exercise its option to purchase the leased premises:
135 *Provided further*, That the failure of the county board to make
136 a scheduled payment pursuant to the investment contract
137 constitutes an event of default under the loan agreement: *And*
138 *provided further*, That upon a default by a county board, the
139 principal of the loan, together with all unpaid interest accrued
140 to the date of the default, shall, at the option of the authority, in
141 consultation with the state board, become due and payable
142 immediately or subject to renegotiation among the state board,
143 the authority and the county board: *And provided further*, That
144 if the loan becomes due and payable immediately, the authority,
145 in consultation with the state board, shall use all means avail-
146 able under the loan agreement and law to collect the outstand-
147 ing principal balance of the loan, together with all unpaid
148 interest accrued to the date of payment of the outstanding
149 principal balance; and

150 (3) The loan agreement shall provide for the state board and
151 the authority to forgive all principal and interest of the loan
152 upon the county board purchasing the leased premises pursuant
153 to the investment contract and performance of the investment
154 contract in its entirety.

155 (g) To encourage county boards to proceed promptly with
156 facilities planning and to prepare for the expenditure of any
157 state moneys derived from the sources described in this
158 subsection, any county board failing to expend money within
159 three years of the allocation to the county board shall forfeit the
160 allocation and thereafter is ineligible for further allocations
161 pursuant to this subsection until the county board is ready to
162 expend funds in accordance with an approved facilities plan:
163 *Provided*, That the authority may authorize an extension beyond
164 the three-year forfeiture period not to exceed an additional two
165 years. Any amount forfeited shall be added to the total funds

166 available in the school construction fund of the authority for
167 future allocation and distribution. Funds may not be distributed
168 to any county board that does not have a comprehensive
169 educational facility plan approved by the state board and the
170 school building authority or to any county board that is not
171 prepared to commence expenditure of the funds during the
172 fiscal year in which the moneys are distributed.

173 (h) The remaining moneys that are determined by the
174 authority to be available for distribution during the then current
175 fiscal year from moneys paid into the school major improve-
176 ment fund pursuant to section six of this article shall be
177 allocated and distributed on the basis of need and efficient use
178 of resources, the basis to be determined by the authority in
179 accordance with the provisions of section sixteen of this article:
180 *Provided*, That the moneys may not be distributed to any county
181 board that does not have an approved school major improve-
182 ment plan or to any county board that is not prepared to
183 commence expenditures of the funds during the fiscal year in
184 which the moneys are distributed: *Provided, however*, That any
185 moneys allocated to a county board and not distributed to that
186 county board shall be deposited in an account to the credit of
187 that county board, the principal amount to remain to the credit
188 of and available to the county board for a period of two years.
189 Any moneys which are unexpended after a two-year period
190 shall be redistributed on the basis of need from the school major
191 improvement fund in that fiscal year.

192 (i) No local matching funds may be required under the
193 provisions of this section. However, the responsibilities of the
194 county boards of education to maintain school facilities are not
195 negated by the provisions of this article. To be eligible to
196 receive an allocation of school major improvement funds from
197 the authority, a county board must have expended in the
198 previous fiscal year an amount of county moneys equal to or
199 exceeding the lowest average amount of money included in the

200 county board's maintenance budget over any three of the
201 previous five years and must have budgeted an amount equal to
202 or greater than the average in the current fiscal year: *Provided,*
203 That the state board of education shall promulgate rules relating
204 to county boards' maintenance budgets, including items which
205 shall be included in the budgets.

206 (j) Any county board may use moneys provided by the
207 authority under this article in conjunction with local funds
208 derived from bonding, special levy or other sources. Distribu-
209 tion to a county board, or to the state board or the administra-
210 tive council of an area vocational educational center pursuant
211 to subsection (b) of this section, may be in a lump sum or in
212 accordance with a schedule of payments adopted by the
213 authority pursuant to guidelines adopted by the authority.

214 (k) Funds in the school construction fund shall first be
215 transferred and expended as follows:

216 Any funds deposited in the school construction fund shall
217 be expended first in accordance with an appropriation by the
218 Legislature. To the extent that funds are available in the school
219 construction fund in excess of that amount appropriated in any
220 fiscal year, the excess funds may be expended in accordance
221 with the provisions of this article. Any projects which the
222 authority identified and announced for funding on or before the
223 first day of August, one thousand nine hundred ninety-five, or
224 identified and announced for funding on or before the
225 thirty-first day of December, one thousand nine hundred
226 ninety-five, shall be funded by the authority in an amount
227 which is not less than the amount specified when the project
228 was identified and announced.

229 (l) It is the intent of the Legislature to encourage county
230 boards to explore and consider arrangements with other
231 counties that may facilitate the highest and best use of all

232 available funds, which may result in improved transportation
233 arrangements for students or which otherwise may create
234 efficiencies for county boards and the students. In order to
235 address the intent of the Legislature contained in this subsection,
236 the authority shall grant preference to those projects which
237 involve multicounty arrangements as the authority shall
238 determine reasonable and proper.

239 (m) County boards shall submit all designs for construction
240 of new school buildings to the school building authority for
241 review and approval prior to preparation of final bid documents:
242 *Provided*, That a vendor who has been debarred pursuant to the
243 provisions of sections thirty-three-a through thirty-three-f, inclusive,
244 article three, chapter five-a of this code, may not bid on or be awarded
245 a contract under this section.

246 (n) The authority may elect to disburse funds for approved
247 construction projects over a period of more than one year
248 subject to the following:

249 (1) The authority may not approve the funding of a school
250 construction project for more than three years;

251 (2) The authority may not approve the use of more than
252 fifty percent of the revenue available for distribution in any
253 given fiscal year for projects that are to be funded over more
254 than one year; and

255 (3) In order to encourage local participation in funding
256 school construction projects, the authority may set aside limited
257 funding, not to exceed five hundred thousand dollars, in reserve
258 for one additional year to provide a county the opportunity to
259 complete financial planning for a project prior to the allocation
260 of construction funds. Any such funding shall be on a reserve
261 basis and converted to a part of the construction grant only after
262 all project budget funds have been secured and all county

263 commitments have been fulfilled. Failure of the county to
264 solidify the project budget and meet its obligations to the state
265 within eighteen months of the date the funding is set aside by
266 the authority will result in expiration of the reserve and the
267 funds shall be reallocated by the authority in the succeeding
268 funding cycle.

**§18-9D-16. Facilities and major improvement plans generally;
need-based eligibility.**

1 (a) To facilitate the goals as stated in section fifteen of this
2 article and to assure the prudent and resourceful expenditure of
3 state funds for construction projects as described in subsection
4 (d) of said section, each county board of education shall submit
5 a countywide comprehensive educational facilities plan that
6 addresses the facilities and major improvement needs of the
7 county and includes up-to-date projections of student enroll-
8 ments pursuant to such guidelines as shall be adopted by the
9 authority in accordance with this section and in accordance with
10 each county's facilities plan approved by the state board of
11 education. Any project receiving funding must be in furtherance
12 of the approved countywide facilities plan.

13 (1) To assure efficiency and productivity in the project
14 approval process, the countywide facilities plan may be
15 submitted only after a preliminary plan, a plan outline or a
16 proposal for a plan has been submitted to the authority. Selected
17 members of the authority, which selection shall include citizen
18 members, shall then meet promptly with those persons desig-
19 nated by the county board to attend the facilities plan consulta-
20 tion. The purpose of the consultation is to assure understanding
21 of the general goals of the school building authority and the
22 specific goals encompassed in the following criteria and to
23 discuss ways the plan may be structured to meet those goals.

24 (2) The guidelines for the development of a facilities plan
25 must state the manner, timeline and process for submission of
26 any plan to the authority; project specifications considered
27 appropriate by the authority; and those matters which are
28 considered by the authority to be important reflections of how
29 the project will further the overall goals of the authority.

30 (b) To facilitate the goals as stated in section fifteen of this
31 article and to assure the prudent and resourceful expenditure of
32 state funds derived from the school major improvement fund,
33 each county board of education shall submit to the authority a
34 ten-year countywide school major improvement plan that
35 addresses the major improvement needs of each school within
36 the county. If the state board of education or the administrative
37 council of an area vocational educational center chooses to seek
38 funding for a major improvement project from the authority
39 pursuant to subsection (f) of said section, the state board or the
40 administrative council shall submit a ten-year school major
41 improvement plan that addresses the major improvement needs
42 of the school or area vocational educational center for which
43 funding is sought. Each ten-year school major improvement
44 plan must be prepared pursuant to guidelines adopted by the
45 authority in accordance with this section and must be updated
46 annually to reflect projects completed, current enrollment
47 projections and new or continuing needs. Any school major
48 improvement project funded by the authority must be in
49 furtherance of the approved school major improvement plan.

50 The guidelines for the development and annual updates of
51 a ten-year school major improvement plan must state the
52 manner, timeline and process for submission of any plan,
53 including a repair and replacement schedule for school facili-
54 ties, to the authority; the maintenance specifications considered
55 appropriate by the authority; and those matters which are
56 considered by the authority to be important reflections of how

57 the major improvement project or projects will further the
58 overall goals of the authority.

59 (c) The guidelines regarding submission of the facilities
60 plans and school major improvement plans must include
61 requirements for public hearings, comments or other means of
62 providing broad-based input within a reasonable time period as
63 the authority may consider appropriate. The submission of each
64 plan must be accompanied by a synopsis of all comments
65 received and a formal comment by the county board, the state
66 board or the administrative council of an area vocational
67 educational center submitting the plan.

68 The guidelines regarding project specifications may include
69 such matters as energy efficiency, preferred siting, construction
70 materials, maintenance plan or any other matter related to how
71 the project is to proceed. If a county board of education
72 proposes to finance a construction project through a lease with
73 an option to purchase pursuant to an investment contract as
74 described in subsection (e), section fifteen of this article, the
75 specifications for the project must include the term of the lease,
76 the amount of each lease payment, including the payment due
77 upon exercise of the option to purchase, and the terms and
78 conditions of the proposed investment contract.

79 (d) The guidelines pertaining to quality educational
80 facilities must require that a facilities plan address how the
81 current facilities do not meet and how the proposed plan and
82 any project thereunder does meet the following goals:

83 (1) Student health and safety;

84 (2) Economies of scale, including compatibility with
85 similar schools that have achieved the most economical
86 organization, facility utilization and pupil-teacher ratios;

87 (3) Reasonable travel time and practical means of address-
88 ing other demographic considerations;

89 (4) Multicounty and regional planning to achieve the most
90 effective and efficient instructional delivery system;

91 (5) Curriculum improvement and diversification, including
92 computerization and technology and advanced senior courses
93 in science, mathematics, language arts and social studies;

94 (6) Innovations in education;

95 (7) Adequate space for projected student enrollments; and

96 (8) To the extent constitutionally permissible, each facilities
97 plan must address the history of efforts taken by the county
98 board to propose or adopt local school bond issues or special
99 levies.

100 If the project is to benefit more than one county in the
101 region, the facilities plan must state the manner in which the
102 cost and funding of the project will be apportioned among the
103 counties.

104 (e) The guidelines pertaining to quality educational
105 facilities must require that a school major improvement plan
106 address how the proposed plan and any project thereunder meet
107 the following goals:

108 (1) Student health and safety, including, but not limited to,
109 critical health and safety needs; and

110 (2) Economies of scale, including regularly scheduled
111 preventive maintenance: *Provided*, That each county board's
112 school maintenance plan must address regularly scheduled
113 maintenance for all facilities within the county.

114 (f) Each county board's facilities plan and school major
115 improvement plan must prioritize all the construction projects
116 or major improvement projects, respectively, within the county.
117 A school major improvement plan submitted by the state board
118 or the administrative council of an area vocational educational
119 center must prioritize all the school improvement projects
120 contained in the plan. The priority list is one of the criteria to be
121 considered by the authority in determining how available funds
122 must be expended. In prioritizing the projects, the county board,
123 the state board or the administrative council submitting a plan
124 shall make determinations in accordance with the objective
125 criteria formulated by the school building authority.

126 (g) Each facilities plan and school major improvement plan
127 must include the objective means to be used in evaluating
128 implementation of the overall plan and each project included
129 therein. The evaluation must measure each project's furtherance
130 of each applicable goal stated in this section and any guidelines
131 adopted hereunder, as well as the overall success of any project
132 as it relates to the facilities plan or school major improvement
133 plan and the overall goals of the authority.

134 (h) The state department of education shall conduct on-site
135 inspections, at least annually, of all facilities which have been
136 funded wholly or in part by moneys from the authority or state
137 board to ensure compliance with the county board's facilities
138 plan and school major improvement plan as related to the
139 facilities; to preserve the physical integrity of the facilities to
140 the extent possible; and to otherwise extend the useful life of
141 the facilities: *Provided*, That the state board shall submit reports
142 regarding its on-site inspections of facilities to the authority
143 within thirty days of completion of the on-site inspections:
144 *Provided, however*, That the state board shall promulgate rules
145 regarding the on-site inspections and matters relating thereto,
146 in consultation with the authority, as soon as practical and shall

147 submit proposed rules for legislative review no later than the
148 first day of December, one thousand nine hundred ninety-four.

149 (i) The authority may adopt guidelines for requiring that a
150 county board modify, update, supplement or otherwise submit
151 changes or additions to an approved facilities plan or for
152 requiring that a county board, the state board or the administra-
153 tive council of an area vocational educational center modify,
154 update, supplement or otherwise submit changes or additions to
155 an approved county board facilities plan or school major
156 improvement plan. The authority shall provide reasonable
157 notification and sufficient time for the change or addition as
158 delineated in guidelines developed by the authority.

159 (j) Based on its on-site inspection or notification by the
160 authority to the state board that the changes or additions to a
161 county's board facilities plan or school major improvement
162 plan required by the authority have not been implemented
163 within the time period prescribed by the authority, the state
164 board shall restrict the use of the necessary funds or otherwise
165 allocate funds from moneys appropriated by the Legislature for
166 those purposes set forth in section nine, article nine-a of this
167 chapter.

§18-9D-19. Comprehensive high schools.

1 (a) The Legislature finds the following:

2 (1) The decline in student enrollment over the last twenty
3 years has necessitated consolidation of schools in many
4 counties;

5 (2) It is projected that the decline in student enrollment
6 during the period two thousand two through two thousand
7 twelve may be as great as eighteen percent and will continue
8 the necessity to consolidate schools;

9 (3) The new consolidated school buildings now being built
10 across the state provide an opportunity for communities to have
11 comprehensive high schools that include space for voca-
12 tional-technical courses, community college courses and other
13 workforce-related courses for the students and the public at
14 large;

15 (4) Requiring students to be bused to remote vocational
16 centers has sometimes deterred student participation in voca-
17 tional courses and has sometimes been considered a stigma
18 upon those students attending vocational courses;

19 (5) Offering vocational, community college and workforce
20 programs in close proximity to each other compliment the high
21 school and the programs; and

22 (6) The change in the season for girls' basketball to
23 coincide with boys' basketball has placed significant pressures
24 on the availability of gymnasium space and often has caused
25 practices to be scheduled late in the evenings and on weekends,
26 interfering with time needed for studying and rest.

27 (b) When planning the construction of a high school which
28 has been approved by the authority and which meets the
29 required authority efficiencies, the authority shall provide
30 funding for comprehensive vocational facilities to be located,
31 when feasible, on the same site as the high school and may, in
32 cooperation with the higher education policy commission,
33 established in section one, article one-b, chapter eighteen-b of
34 this code, provide funding for facilities for community and
35 technical college education. When building in conjunction with
36 the higher education policy commission, an educational
37 specification must be developed for the proposed new facility
38 by the appropriate institutional governing board as defined in
39 section two, article one of said chapter. The county board is the
40 fiscal agent for construction. All planning, design, bidding and

41 construction must be completed with authority guidelines and
42 under the supervision of the authority.

43 (c) When planning the construction of a high school which
44 has been approved by the authority and meets the required
45 authority efficiencies, the authority shall provide funding
46 sufficient for the construction of at least one auxiliary gymna-
47 sium. The authority may establish standards for the auxiliary
48 gymnasium.

49 (d) Upon application of a county board to construct
50 comprehensive vocational facilities at an existing high school,
51 the authority will provide technical assistance to the county in
52 developing a plan for construction of the comprehensive
53 vocational facility. The facility may, in cooperation with the
54 higher education policy commission in accordance with the
55 provisions of subsection (b) of this section, include facilities for
56 community and technical college education. Upon development
57 of the plan, the authority shall consider funding based on the
58 following criteria:

59 (1) The distance of any existing vocational facilities from
60 the high schools it serves;

61 (2) The time required to travel to and from the vocational
62 facility to the high schools it serves;

63 (3) The ability of the county board to provide local funds
64 for the construction of new comprehensive vocational facilities;

65 (4) The size of the existing high schools and the demand for
66 vocational technical courses;

67 (5) The age and physical condition of the existing voca-
68 tional facilities; and

69 (6) Such other criteria as the authority shall consider
70 appropriate.

71 (e) When planning the construction of a high school in a
72 county which is served by a multicounty vocational technical
73 facility, the county may not be required to include the construc-
74 tion of a comprehensive vocational facility in the plan. If the
75 county board elects to construct a comprehensive vocational
76 facility pursuant to this section, the board shall include the
77 multicounty center director and board in planning programs to
78 be offered at the vocational facility which complement the
79 programs offered at the multicounty center and may as part of
80 the plan include facilities for community and technical college
81 education at the multicounty center. The programs offered at
82 the vocational facility may not replace the programs offered at
83 the multicounty vocational technical center without the consent
84 of the center board.

85 (f) Notwithstanding any other provisions of this section to
86 the contrary, the county board in which there is an existing
87 comprehensive vocational center may eliminate any vocational
88 offering from a new comprehensive high school if the county
89 board:

90 (1) Completes a comprehensive vocational curriculum
91 study, as required by the authority, including an evaluation of
92 both the programmatic and physical facilities of the existing
93 center and coordinates the county's vocational curriculum; and

94 (2) Submits the plan to the authority for review and obtains
95 the authority's approval.

**ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE IN
VOCATIONAL-TECHNICAL EDUCATION.**

**§18-10H-6. Effective schools program in vocational-technical
education.**

1 The state board of education shall establish and operate an
2 effective schools program for vocational-technical education,
3 including introductory vocational-technical courses in middle
4 school grades as appropriate. The purpose of the program is to
5 provide vocational-technical education personnel with re-
6 sources and staff development for school program improvement
7 based on application of the effective schools research, including
8 components such as instructional leadership, school climate,
9 high student expectations, emphasis on academic and occupa-
10 tional achievement and community and parental involvement.
11 The program shall be coordinated by the bureau of vocational,
12 technical and adult education with the advisement from a
13 committee composed of two vocational administrators, two
14 vocational teachers, one vocational guidance counselor, one
15 educator of vocational teachers, one county school superinten-
16 dent, one comprehensive high school principal, one academic
17 teacher, two business/industry representatives, one labor
18 representative and one vocational education program completer.

CHAPTER 95

**(H. B. 2555 — By Delegates Beane, Kuhn, Ferrell, Yeager,
Iaquinta, Leggett and Azinger)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of West Virginia's membership in the southern regional education compact.

Be it enacted by the Legislature of West Virginia:

That section three, article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§18-10C-3. Membership in compact continued.

1 West Virginia's membership in the southern regional
2 education compact shall continue, pursuant to the provisions of
3 article ten, chapter four of this code, until the first day of July,
4 two thousand nine, unless sooner terminated, continued or
5 reestablished pursuant to the provisions of that article.

CHAPTER 96

(H. B. 2224 — By Delegates Williams, Shaver, Tabb,
Canterbury, Hamilton, Sobonya and Howard)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to repeal section two, article eight, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article five, chapter five of said code; to amend and reenact section two, article one, chapter eighteen-b of said code; to further amend said article by adding thereto two new sections, designated sections eight and ten; to amend and reenact section three, article one-a of said chapter; to amend and reenact section six, article one-b of said chapter; to further amend said article by adding thereto a new section, designated section ten; to amend and reenact sections

three, four and eight, article three-c of said chapter; to amend and reenact sections three, four, five, six and seven, article five of said chapter; to further amend said article by adding thereto a new section, designated section nine; to amend article six of said chapter by adding thereto a new section, designated section four-b; to amend and reenact sections four and six, article seven of said chapter; to amend and reenact section three, article eight of said chapter; to amend and reenact sections five and ten, article nine of said chapter; to amend and reenact sections one and fourteen, article ten of said chapter; and to amend article fourteen of said chapter by adding thereto a new section, designated section eleven, all relating to higher education; higher education policy commission; governing, advisory and visitor boards; administrative heads; faculty; staff; students; administrative and programmatic efficiencies; definitions; clarifying certain student rights; providing for Potomac state college to become a fully-integrated division of West Virginia university; limiting certain operational costs; incorporation of certain auxiliary enterprises; auxiliary service and product rates; establishing areas of academic emphasis at the Potomac campus; institutional missions; program and service contracts and collaboration; reports to the policy commission, legislative oversight commission on education accountability and Legislature; draft legislation submission requirements; peers; peer approval; appointment and evaluation of administrative heads; directing Concord college and Bluefield state college to make a joint study on progress toward meeting goals; altering sponsoring institutions for certain community and technical college components; implementation of certain institutional changes; monitoring institutional progress toward meeting goals; clarifying reporting relationships of certain provosts; establishing and redesignating certain community and technical college responsibility districts; transfer of certain property, obligations and staff; deleting references to Bluefield community and technical college and the center for higher education and work force development at Beckley; creating New River community

and technical college of Bluefield state college from existing components and entities; transfer and retention of certain academic programs; findings and intent; governance and program offerings; expenditures; contractual arrangements; responsibilities and duties of certain executive agencies and officials; expanding certain purchasing authority; eliminating bid preference for institutional print shops; modifying attorney general lease purchase agreement and contract approval; authorizing certain leasing authority for the policy commission and the governing boards; requiring prior review of lease agreements; lease cancellation and renewal; authorized signatures on approved leases; requirements and authorizations for promulgating policies, rules and emergency rules; adjusting purchasing threshold for requiring vendor registration; vendor eligibility; clarifying provisions relating to purchasing; disposal of obsolete or unusable equipment, surplus supplies; application of proceeds; ensuring the fiscal integrity of certain institutional procedures; providing for expanded electronic transfers; expanding purchasing authority on purchase cards; authorizing certain emergency expenditures; consolidating certain financial and administrative operations; authorizing fee charges for services provided; limiting certain fee charges; authorizing certain services to be provided by higher education institutions; reduction of low-enrollment sections of certain courses; directing utilization of certain natural resources and alternative fuel resources; retention of cost savings; establishing staff councils; election of members and chair; meetings; notice to probationary faculty of retention status; consideration of need for flexibility at community and technical colleges when reviewing institutional policies; deleting obsolete language referencing faculty salary schedule; modifying certain salary provisions; competitive faculty salary schedule requirement; removing obsolete references to annual experience increment; providing means for funding certain salary increases; participation in catastrophic leave banks; authorizing certain mandatory auxiliary fee increases; limiting certain tuition and fee increases;

increase approval; use of fees; reduction of certain state subsidies; return of funds to general revenue; certification of fee revenues; expanding use of bookstore revenues; and public employees insurance agency benefit option expansion study.

Be it enacted by the Legislature of West Virginia:

That section two, article eight, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article five, chapter five of said code be amended and reenacted; that section two, article one, chapter eighteen-b of said code be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections eight and ten; that section three, article one-a of said chapter be amended and reenacted; that section six, article one-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten; that sections three, four and eight, article three-c of said chapter be amended and reenacted; that sections three, four, five, six and seven, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nine; that article six of said chapter be amended by adding thereto a new section, designated section four-b; that sections four and six, article seven of said chapter be amended and reenacted; that section three, article eight of said chapter be amended and reenacted; that sections five and ten, article nine of said chapter be amended and reenacted; that sections one and fourteen, article ten of said chapter be amended and reenacted; and that article fourteen of said chapter be amended by adding thereto a new section, designated section eleven, 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.

18B. Higher Education.

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND ATTOR-
NEY GENERAL; BOARD OF PUBLIC WORKS; MISCEL-
LANEOUS AGENCIES, COMMISSIONS, OFFICES, PRO-
GRAMS, ETC.**

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.

1 For the purposes of this article:

2 (a) "Eligible employee" means either of the following:

3 (1) Any regular full-time employee of the state or any
4 spending unit of the state who is eligible for membership in any
5 state retirement system of the state of West Virginia or other
6 retirement plan authorized by the state: *Provided*, That the
7 mandatory salary increase required by this article shall not
8 apply to any faculty employee at state institutions of higher
9 education, or any employee of the state whose compensation is
10 fixed by statute or by statutory schedule other than employees
11 described in this section. Clerks, deputy clerks and magistrate
12 assistants of magistrate courts are eligible for the incremental
13 salary increases provided in this article with the increases to be
14 allowable in addition to the maximum salaries and compensa-
15 tion for the employee offices under the magistrate court system
16 statutes of article one, chapter fifty of the code. This article may
17 not be construed to mandate an increase in the salary of any
18 elected or appointed officer of the state; or

19 (2) Any classified employee as defined in section two,
20 article nine, chapter eighteen-b of this code who is an employee
21 of a state institution of higher education or of the higher
22 education policy commission;

23 (b) "Years of service" means full years of totaled service as
24 an employee of the state of West Virginia; and

25 (c) "Spending unit" means any state office, department,
26 agency, board, commission, institution, bureau or other
27 designated body authorized to hire employees.

CHAPTER 18B. HIGHER EDUCATION.

Article

1. Governance.

1A. Compact with Higher Education for the Future of West Virginia.

1B. Higher Education Policy Commission.

3C. Community and Technical College System.

5. Higher Education Budgets and Expenditures.

6. Advisory Councils.

7. Personnel Generally.

8. Higher Education Full-Time Faculty Salaries.

9. Classified Employee Salary Schedule and Classification System.

**10. Fees and Other Money Collected at State Institutions of Higher
Education.**

14. Miscellaneous.

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

§18B-1-8. Student rights when institutions merge or become administratively
linked.

§18B-1-10. Potomac branch of West Virginia university.

§18B-1-2. Definitions.

1 The following words when used in this chapter and chapter
2 eighteen-c of this code have the meaning hereinafter ascribed
3 to them unless the context clearly indicates a different meaning:

4 (a) Effective the first day of July, two thousand five,
5 "regional campus" means West Virginia university at
6 Parkersburg, and West Virginia university institute of technol-
7 ogy.

8 (b) "Governing boards" or "boards" means the institutional
9 boards of governors created pursuant to subsection (b), section
10 one, article two-a of this chapter;

11 (c) "Freestanding community and technical colleges"
12 means southern West Virginia community and technical
13 college, West Virginia northern community and technical
14 college, eastern West Virginia community and technical
15 college, which shall not be operated as branches or off-campus
16 locations of any other state institution of higher education;

17 (d) "Community college" or "community colleges" means
18 community and technical college or colleges as those terms are
19 defined in this section;

20 (e) "Community and technical college", in the singular or
21 plural, means the freestanding community and technical
22 colleges and other state institutions of higher education which
23 have defined community and technical college responsibility
24 districts and programs in accordance with the provisions of
25 sections four and six, article three-c of this chapter;

26 (f) "Community and technical college education" means the
27 programs, faculty, administration and funding associated with
28 the mission of community and technical colleges as provided in
29 article three-c of this chapter;

30 (g) "Essential conditions" means those conditions which
31 shall be met by community and technical colleges as provided
32 in section three, article three-c of this chapter;

33 (h) "Higher education institution" means any institution as
34 defined by Sections 401(f), (g) and (h) of the federal Higher
35 Education Facilities Act of 1963, as amended;

36 (i) "Higher education policy commission", "policy com-
37 mission" or "commission" means the commission created
38 pursuant to section one, article one-b of this chapter;

39 (j) "Chancellor" means the chief executive officer of the
40 higher education policy commission employed pursuant to
41 section five, article one-b of this chapter;

42 (k) "Institutional operating budget" or "operating budget"
43 for any fiscal year means an institution's total unrestricted
44 education and general funding from all sources in a prior fiscal
45 year, including, but not limited to, tuition and fees and legisla-
46 tive appropriation, and any adjustments to that funding as
47 approved by the commission based on comparisons with peer
48 institutions or to reflect consistent components of peer operat-
49 ing budgets;

50 (l) "Post-secondary vocational education programs" means
51 any college-level course or program beyond the high school
52 level provided through an institution of higher education under
53 the jurisdiction of a governing board which results in or may
54 result in the awarding of a two-year associate degree;

55 (m) "Rule" or "rules" means a regulation, standard, policy
56 or interpretation of general application and future effect;

57 (n) For the purposes of this chapter and chapter eighteen-c
58 of this code, "senior administrator" means the vice chancellor
59 for administration employed by the chancellor in accordance
60 with section two, article four of this chapter. The vice chancel-
61 lor for administration shall assume all the powers and duties
62 that are assigned by law to the senior administrator;

63 (o) "State college" means Bluefield state college, Concord
64 college, Fairmont state college, Glenville state college, Shep-
65 herd college, West Liberty state college or West Virginia state
66 college;

67 (p) “State institution of higher education” means any
68 university, college or community and technical college under
69 the direct or indirect jurisdiction of a governing board as that
70 term is defined in this section;

71 (q) “Regional campus” means West Virginia university at
72 Parkersburg, Potomac state college of West Virginia university,
73 and West Virginia university institute of technology;

74 (r) The advisory board previously appointed for the West
75 Virginia graduate college shall be known as the “board of
76 visitors” and shall provide guidance to the Marshall university
77 graduate college;

78 (s) “Institutional compact” means a compact between a
79 state institution of higher education and the commission, as
80 described in section two, article one-a of this chapter;

81 (t) “Peer institutions”, “peer group” or “peers” means
82 public institutions of higher education used for comparison
83 purposes and selected by the commission pursuant to section
84 three, article one-a of this chapter;

85 (u) “Administratively linked community and technical
86 college” means a community and technical college created
87 pursuant to section eight, article three-c of this chapter;

88 (v) “Sponsoring institution” means the state institution of
89 higher education that maintains an administrative link to a
90 community and technical college pursuant to section eight,
91 article three-c of this chapter;

92 (w) “Collaboration” means entering into an agreement with
93 one or more providers of education services in order to enhance
94 the scope, quality, or efficiency of education services;

95 (x) "Broker" or the act of "brokering" means serving as an
96 agent on behalf of students, employers, communities or
97 responsibility areas to obtain education services not offered by
98 a sponsoring institution. These services include courses, degree
99 programs or other services contracted through an agreement
100 with a provider of education services either in-state or out-of-
101 state; and

102 (y) "Joint commission for vocational-technical-occupa-
103 tional education" or "joint commission" means the commission
104 established pursuant to article three-a of this chapter.

**§18B-1-8. Student rights when institutions merge or become
administratively linked.**

1 (a) Commencing with the effective date of this section,
2 when a conflict exists between academic program requirements
3 at an institution to be consolidated, merged or administratively
4 linked to another state institution of higher education, the
5 requirements of the institution at which the student initially
6 enrolled prevail. A student may not be required to earn addi-
7 tional credits toward the degree pursued, or to take additional
8 courses, that were not included in the program of study at the
9 time the student declared that major at the enrolling institution.

10 (b) A student enrolled in an institution to be consolidated,
11 merged or administratively linked to another state institution of
12 higher education shall continue to receive any state-funded
13 student financial aid for which he or she would otherwise be
14 eligible.

§18B-1-10. Potomac branch of West Virginia university.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, by the first day of July, two thousand five, Potomac
3 state college shall merge and consolidate with West Virginia
4 university, and become a fully integrated division of the

5 university. All administrative and academic units shall be
6 consolidated with primary responsibility for direction and
7 support assigned to West Virginia university. The advisory
8 board previously appointed for Potomac state college shall be
9 known as the board of visitors and shall provide guidance to the
10 division in carrying out its mission.

11 (b) Operational costs for the Potomac campus may not
12 exceed by more than ten percent the average cost per full-time
13 equivalent student for freestanding community and technical
14 colleges or the southern regional education board average
15 expenditures for two-year institutions. West Virginia university
16 shall reduce these costs to the mandated level within four years.

17 (c) Auxiliary enterprises shall be incorporated into the West
18 Virginia university auxiliary enterprise system. The West
19 Virginia university board of governors shall determine if
20 operations at the Potomac campus can be operated on a self-
21 sufficient basis when establishing rates for auxiliary services
22 and products.

23 (d) Potomac state college has a strong reputation in
24 agriculture and forestry instruction, pre-professional programs
25 in business, computer science and education, and basic liberal
26 arts instruction. These programs shall be further cultivated and
27 emphasized as the sustaining mission of the Potomac campus
28 over the next decade, except that the higher education policy
29 commission may change the mission of the Potomac campus at
30 any time the commission determines appropriate. In order to
31 focus its resources on these programs, the campus shall contract
32 through eastern West Virginia community and technical college
33 to provide work force development training, literacy education
34 and technical education programs which are most efficiently
35 offered within a flexible community and technical college
36 curriculum. This collaborative relationship shall serve to
37 strengthen both institutions and generate a model relationship

38 between traditional and community and technical college
39 education for institutions throughout the state.

40 (e) Beginning the first day of November, two thousand
41 three, and annually thereafter, Potomac state college and eastern
42 West Virginia community and technical college shall report to
43 the higher education policy commission on plans, accomplish-
44 ments and recommendations in implementing the cooperative
45 relationship authorized in subsection (d) of this section. The
46 commission shall report to the legislative oversight commission
47 on education accountability on the cooperative activities, results
48 and recommendations for changes by the fifteenth day of
49 December, two thousand three, and annually thereafter.

**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FU-
TURE OF WEST VIRGINIA.**

§18B-1A-3. Peer institutions.

1 (a) The commission shall select not fewer than ten peer
2 institutions for each state institution of higher education in West
3 Virginia, including, but not limited to, independently accredited
4 community and technical colleges.

5 (b) The peer institutions shall be selected from among
6 institutions throughout the United States and not solely from the
7 states that are members of the southern regional education
8 board.

9 (c) The peer institutions, as selected by the commission,
10 shall be used as benchmarks for comparison purposes only and
11 are not intended to reflect funding goals for West Virginia
12 institutions of higher education. Such a use is inappropriate
13 since institutions selected as peers for a state institution may be
14 located in an area of high per capita income or have their
15 funding subject to other factors that make its use unrealistic for

16 setting funding goals in West Virginia. The peer institutions
17 shall be used for comparison in the following areas:

18 (1) To determine adjustments to base operating budgets as
19 described in section five of this article;

20 (2) To determine comparable levels of tuition;

21 (3) To determine comparable faculty and staff teaching
22 requirements and other workloads; and

23 (4) For such other purposes as the law may require or the
24 commission may find useful or necessary.

25 (d) The commission shall contract with a national, inde-
26 pendent education consulting firm to assist in the unbiased
27 selection of peer institutions for each West Virginia institution.
28 The commission shall select peer institutions for each institu-
29 tion through an open, deliberative, objective process and in
30 consultation with the institutional boards of governors, intended
31 to achieve broad understanding of the basis for this selection in
32 the higher education community and the Legislature. Final peer
33 selection is subject to the approval of the legislative oversight
34 commission on education accountability. In selecting peer
35 institutions, the commission shall use criteria such as, but not
36 limited to:

37 (1) Institutional mission;

38 (2) Institutional size related to full-time equivalent students;

39 (3) The proportions of full-time and part-time students;

40 (4) The level of academic programs, including, but not
41 limited to, number of degrees granted at the associate, baccalau-
42 reate, masters, doctoral and first-professional level;

43 (5) The characteristics of academic programs such as health
44 sciences, professional, technical or liberal arts and sciences; and

45 (6) The level of research funding from federal competitive
46 funding sources.

47 (e) Subject to the approval of the legislative oversight
48 commission on education accountability, the commission shall
49 review and make necessary adjustments to peer institutions at
50 least every six years or as necessary based on changes in
51 institutional missions as approved in institutional compacts or
52 in changes at peer institutions.

53 (f) Nothing herein may be construed to prevent the commis-
54 sion from using the same peers or peer groups for more than
55 one institution of higher education.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-6. Appointment of institutional presidents; provosts; evaluation.

§18B-1B-10. Goals of efficiency and effectiveness; findings; reports to commis-
sion and legislative oversight commission on education account-
ability.

§18B-1B-6. Appointment of institutional presidents, provosts; evaluation.

1 (a) *Appointment of institutional presidents.* — Appointment
2 of presidents of the public institutions of higher education shall
3 be made as follows:

4 (1) Subject to the approval of the commission, the appropri-
5 ate governing board of the institution shall appoint a president
6 for Bluefield state college, Concord college, eastern West
7 Virginia community and technical college, Fairmont state
8 college, Glenville state college, Marshall university, Shepherd
9 college, southern West Virginia community and technical
10 college, West Liberty state college, West Virginia northern

11 community and technical college, West Virginia school of
12 osteopathic medicine, West Virginia state college and West
13 Virginia university;

14 (2) Subject to the approval of the appropriate governing
15 board and to the provisions of article three-c of this chapter, the
16 president of the appropriate institution shall appoint the
17 president of the regional campuses of West Virginia university
18 and of the community and technical colleges which remain
19 linked administratively to a sponsoring institution. The presi-
20 dents of such regional campuses and community and technical
21 colleges shall serve at the will and pleasure of the institutional
22 president. The president of the sponsoring institution shall
23 appoint a president for the administratively linked community
24 and technical college at the appropriate time as outlined in the
25 institutional compact and approved by the commission.

26 (3) Subject to the approval of the commission and to the
27 provisions of article three-c of this chapter, the president of the
28 appropriate institution shall appoint the provost in those cases
29 where the community and technical college remains as a
30 component of another institution. The provost shall serve at the
31 will and pleasure of the president of the employing institution.

32 (b) *Other appointments.* — Appointments of administrative
33 heads of state institutions of higher education shall be made in
34 accordance with the provisions of subsection (a) of this section
35 except in the following instances:

36 (1) Effective the first day of July, two thousand three, the
37 institutional president shall appoint a provost to be the adminis-
38 trative head of New River community and technical college;
39 and

40 (2) Effective the first day of July, two thousand five, the
41 institutional president shall appoint a provost to be the adminis-

42 trative head of the Potomac campus of West Virginia univer-
43 sity.

44 (c) *Evaluation of administrative heads.* — The governing
45 boards shall conduct written performance evaluations of each
46 institution's president except the presidents of regional cam-
47 puses shall be evaluated by the president of West Virginia
48 university. The provosts of administratively linked community
49 and technical colleges and other consolidated, merged or
50 administratively linked units shall be evaluated by the president
51 of the employing institution. Evaluations shall be done in every
52 fourth year of employment as administrative head, recognizing
53 unique characteristics of the institution and utilizing institu-
54 tional personnel, institutional boards of advisors as appropriate,
55 staff of the appropriate governing board and persons knowl-
56 edgeable in higher education matters who are not otherwise
57 employed by a governing board. A part of the evaluation shall
58 be a determination of the success of the institution in meeting
59 the requirements of its institutional compact.

**§18B-1B-10. Goals of efficiency and effectiveness; findings;
reports to commission and legislative oversight
commission on education accountability.**

1 (a) The Legislature finds that it is in the best interests of the
2 citizens of West Virginia for state institutions of higher
3 education to work diligently toward achieving the goals and
4 objectives set forth in section one-a, article one of this chapter
5 and in the institutional compacts. One way these goals may be
6 achieved is through collaborative agreements between or
7 among two or more institutions to enhance the scope, quality,
8 or efficiency of education services.

9 (b) To further these goals of cooperation and coordination,
10 to avoid unnecessary duplication of program development and
11 delivery, and to ensure that programs and services address the

12 public policy agenda established by the Legislature and the
13 commission, compact elements and goals for post-secondary
14 education, by the first day of September, two thousand three,
15 Concord college and Bluefield state college jointly shall
16 complete a comprehensive study of the degree to which these
17 institutions are making progress toward meeting the goals for
18 post-secondary education, their institutional compacts and the
19 public policy agenda and shall report their finding to the
20 commission. The report shall address specific examples of
21 collaboration, cooperation or brokering in academic programs,
22 administrative services or any joint efforts which aim to avoid
23 unnecessary duplication and to ensure delivery of high quality
24 education services.

25 (c) The commission shall analyze the report prepared by
26 Concord college and Bluefield state college, together with any
27 other relevant data, and report to the legislative oversight
28 commission on education accountability by the first day of
29 November, two thousand three. The report shall contain
30 findings and recommendations to address at least the following
31 areas relevant to the two institutions:

32 (1) The fiscal status;

33 (2) The progress in meeting the goals for post-secondary
34 education, the institutional compact, and the public policy
35 agenda;

36 (3) Possible academic and fiscal advantages that might be
37 derived from an administrative link between the two institu-
38 tions; and

39 (4) Any changes to the programs or services of either
40 institution required by the commission based on their findings
41 or those of the institutions.

42 (d) If the commission determines that either institution has
43 made insufficient progress toward the goals established in this
44 chapter, in the institutional compacts, in the public policy
45 agenda established by the commission, or has not complied
46 with the changes required by the commission pursuant to
47 subsection (c) of this section, the commission immediately shall
48 take any action necessary to further the goals and requirements
49 of this section.

50 (e) The commission shall continue to monitor and review
51 each institution's compliance with this section.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-3. Essential conditions for community and technical college programs and services.

§18B-3C-4. Responsibility districts.

§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

§18B-3C-3. Essential conditions for community and technical college programs and services.

1 The Legislature hereby establishes the following essential
2 conditions for community and technical college programs and
3 services:

4 (a) Independent accreditation by the commission on
5 institutions of higher education of the north central association
6 of colleges and schools (NCA) reflecting external validation
7 that academic programs, services, faculty, governance, financ-
8 ing and other policies are aligned with the community and
9 technical college mission of the institution;

10 (b) A full range of community and technical college
11 services offered as specified in section six of this article;

12 (c) Programmatic approval consistent with the provisions
13 of section nine of this article;

14 (d) A fee structure competitive with its peer institutions;

15 (e) Basic services, some of which may be obtained under
16 contract with existing institutions in the region. These basic
17 services shall include, but are not limited to, the following:

18 (1) Student services, including, but not limited to, advising,
19 academic counseling, financial aid and provision of the first
20 line of academic mentoring and mediation;

21 (2) Instructional support services;

22 (3) Access to information and library services;

23 (4) Physical space in which courses can be offered;

24 (5) Access to necessary technology for students, faculty and
25 mentors;

26 (6) Monitoring and assessment; and

27 (7) Administrative services, including, but not limited to,
28 registration, fee collection and bookstore and other services for
29 the distribution of learning materials;

30 (f) A provost who is the chief academic and administrative
31 officer of the community and technical college appointed and
32 serving pursuant to the terms of section six, article one-b of this
33 chapter. The provost shall report directly to the president of the
34 institution and shall have appropriate direct contact with the
35 institutional board of governors. It is the responsibility of the
36 board of governors to provide sufficient time on its agenda for
37 each provost of a component community and technical college
38 to discuss issues relevant to the mission of the component;

39 (g) An institutional board of governors or an institutional
40 board of advisors appointed and serving as required by law;

41 (h) A full-time core faculty, complemented by persons
42 engaged through contract or other arrangements, including
43 college and university faculty, to teach community college
44 courses and qualified business, industry and labor persons
45 engaged as adjunct faculty in technical areas;

46 (i) A faculty personnel policy, formally established to be
47 separate and distinct from that of other institutions, which
48 includes, but is not limited to, appointment, promotion, work-
49 load and, if appropriate, tenure pursuant to section nine of this
50 article. These policies shall be appropriate for the community
51 and technical college mission and may not be linked to the
52 policies of any other institution;

53 (j) Community and technical colleges designed and
54 operating as open-provider centers with the authority and
55 flexibility to draw on the resources of the best and most
56 appropriate provider to ensure that community and technical
57 college services are available and delivered in the region in a
58 highly responsive manner. A community and technical college
59 may contract with other institutions and providers as necessary
60 to obtain the academic programs and resources to complement
61 those available through a sponsoring college, where applicable,
62 in order to meet the region's needs;

63 (k) Separately identified state funding allocations for each
64 of the community and technical colleges. The provost of the
65 community and technical college has full budgetary authority
66 for the entity, subject to accountability to its governing board,
67 including authority to retain all tuition and fees generated by
68 the community and technical college for use to carry out its
69 mission.

§18B-3C-4. Responsibility districts.

1 (a) Each community and technical college is hereby
2 assigned a responsibility district within which it is responsible
3 for providing the full array of community and technical college
4 programs and services as defined in section six of this article.
5 The programs and services shall address the public policy
6 agenda, compact elements and goals for post-secondary
7 education established in section one-a, article one of this
8 chapter as they relate to community and technical colleges, and
9 other goals which may be established by the commission. The
10 responsibility districts shall be comprised of contiguous areas
11 of the state which have similar economic, industrial, educa-
12 tional, community and employment characteristics to facilitate
13 specialization in mission and programming. For the purposes of
14 initial implementation and organization, the districts shall be
15 comprised as follows and assigned to the designated community
16 and technical colleges:

17 (1) West Virginia northern community and technical
18 college - Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel
19 counties;

20 (2) West Virginia university at Parkersburg - Wood,
21 Jackson, Pleasants, Ritchie, Roane, Tyler and Wirt counties;

22 (3) Southern West Virginia community and technical
23 college - Logan, Boone, Lincoln, McDowell, Mingo, Raleigh
24 and Wyoming counties;

25 (4) Bluefield state community and technical college -
26 Mercer, Greenbrier, McDowell, Monroe, Pocahontas, Raleigh
27 and Summers counties;

28 (5) Glenville state community and technical college -
29 Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis, Nicholas,
30 Roane, Upshur and Webster counties;

31 (6) Fairmont state community and technical college -
32 Marion, Doddridge, Harrison, Monongalia, Preston, Randolph,
33 Taylor and Barbour counties;

34 (7) Shepherd community and technical college - Jefferson,
35 Berkeley and Morgan counties;

36 (8) Eastern West Virginia community and technical college
37 - Mineral, Grant, Hampshire, Hardy, Tucker and Pendleton
38 counties;

39 (9) West Virginia state community and technical college -
40 Kanawha, Putnam and Clay counties;

41 (10) West Virginia university institute of technology
42 community and technical college - Fayette, Clay, Kanawha,
43 Raleigh and Nicholas counties;

44 (11) Marshall university community and technical college -
45 Cabell, Kanawha, Mason, Putnam and Wayne counties; and

46 (12) Effective the first day of July, two thousand three, the
47 following changes are made to the responsibility districts:

48 (A) The responsibility districts of the components known as
49 Glenville state community and technical college and Bluefield
50 state community and technical college are abolished and the
51 counties formerly within those responsibility districts are
52 reassigned as provided in this subsection.

53 (B) New River community and technical college of
54 Bluefield state college - Clay, Fayette, Greenbrier, Mercer,
55 McDowell, Monroe, Nicholas, Pocahontas, Raleigh, Summers
56 and Webster counties; and

57 (C) Fairmont state community and technical college -
58 Barbour, Braxton, Calhoun, Doddridge, Gilmer, Harrison,

59 Lewis, Marion, Monongalia, Preston, Randolph, Taylor and
60 Upshur counties.

61 (b) It is the intent of the Legislature that, where counties are
62 listed in more than one district, the county shall be the joint
63 responsibility of each community and technical college
64 assigned that county or shall be divided as determined by the
65 commission. The boundaries of the districts may be modified
66 from time to time by the commission to serve better the needs
67 within the districts. Such modifications are not required to
68 follow county boundaries.

69 (c) Prior to the first day of July, two thousand three,
70 Glenville state college, Fairmont state college and Bluefield
71 state college shall agree as to the transfer of ownership of or
72 title to any property, materials, equipment or supplies of the
73 former Glenville state community and technical college; the
74 transfer of any valid agreement, obligation or claim entered into
75 or incurred by the Glenville state community and technical
76 college; and the transfer, if any, of faculty and staff employed
77 by Glenville state college for the benefit of its community and
78 technical college. Any disagreement regarding these transfers
79 shall be submitted to the higher education policy commission
80 for resolution.

**§18B-3C-8. Process for achieving independently-accredited
community and technical colleges.**

1 (a) Over a six-year period beginning the first day of July,
2 two thousand one, West Virginia shall move from having
3 “component” community and technical colleges to having a
4 statewide network of independently-accredited community and
5 technical colleges serving every region of the state. This section
6 does not apply to the freestanding community and technical
7 colleges, West Virginia university at Parkersburg and Potomac
8 state college of West Virginia university.

9 (b) To be eligible for funds appropriated to develop
10 independently accredited community and technical colleges, a
11 state institution of higher education shall demonstrate the
12 following:

13 (1) That it has as a part of its institutional compact ap-
14 proved by the council and the commission a step-by-step plan
15 with measurable benchmarks for developing an independently
16 accredited community and technical college that meets the
17 essential conditions set forth in section three of this article;

18 (2) That it is able to offer evidence annually to the satisfac-
19 tion of the council and the commission that it is making
20 progress toward accomplishing the benchmarks established in
21 its institutional compact for developing an independently
22 accredited community and technical college; and

23 (3) That it has submitted an expenditure schedule approved
24 by the council and the commission which sets forth a proposed
25 plan of expenditures for funds allocated to it from the fund.

26 (c) The following are recommended strategies for moving
27 from the current arrangement of "component" community and
28 technical colleges to the legislatively mandated statewide
29 network of independently accredited community and technical
30 colleges serving every region of the state. The Legislature
31 recognizes that there may be other means to achieve this
32 ultimate objective; however, it is the intent of the Legislature
33 that the move from the current arrangement of "component"
34 community and technical colleges to the legislatively-mandated
35 statewide network of independently-accredited community and
36 technical colleges serving every region of the state shall be
37 accomplished. The following recommendations are designed to
38 reflect significant variations among regions and the potential
39 impacts on the sponsoring institutions.

40 (1) *New River community and technical college of Bluefield*
41 *state college.* —

42 (A) Bluefield state shall retain its existing mission but place
43 greater emphasis and priority on its community and technical
44 college role and serving the citizens of its expanded service
45 district. Subject to the provisions of section twelve of this
46 article, the community and technical college will remain
47 administratively linked to Bluefield state college. Nothing
48 herein may be construed to require Bluefield state college to
49 discontinue any associate degree program in areas of particular
50 institutional strength which are closely articulated to their
51 baccalaureate programs and missions or which are of a high-
52 cost nature and can best be provided in direct coordination with
53 a baccalaureate institution.

54 (B) Effective the first day of July, two thousand three, the
55 component formerly known as Bluefield state community and
56 technical college shall become a multi-campus entity known as
57 New River community and technical college, administratively
58 linked to Bluefield state college. The multi-campus community
59 and technical college shall serve Raleigh, Summers, Fayette,
60 Greenbrier, Clay, Mercer, McDowell, Monroe, Nicholas,
61 Pocahontas, and Webster counties and be headquartered in
62 Beckley. The West Virginia council for community and
63 technical college education shall appoint an institutional board
64 of advisors, pursuant to section one, article six of this chapter,
65 for New River community and technical college which is
66 separate from the institutional board of governors of Bluefield
67 state college.

68 (C) Bluefield state college shall take immediate steps to
69 seek independent accreditation of New River community and
70 technical college including all sites within its revised service
71 district. The president and the board of governors are responsi-
72 ble for obtaining independent accreditation of the community

73 and technical college by the thirty-first day of December, two
74 thousand four. If the multi-campus entity known as New River
75 community and technical college has not obtained independent
76 accreditation by this date, the commission shall choose one of
77 the following options:

78 (i) Create New River as a freestanding community and
79 technical college; or

80 (ii) Assign the responsibility for obtaining independent
81 accreditation to another state institution of higher education.

82 (D) The president and the board of governors of Bluefield
83 state college also are accountable to the commission for
84 ensuring that the full range of community and technical college
85 services is available throughout the region and that New River
86 community and technical college adheres to the essential
87 conditions pursuant to section three of this article.

88 (E) As an independently accredited community and
89 technical college, New River also shall serve as a higher
90 education center for its region by brokering with other colleges,
91 universities and other providers, in-state and out-of-state, both
92 public and private, to ensure the coordinated access of students,
93 employers, and other clients to needed programs and services.

94 (F) New River community and technical college shall
95 facilitate the planning and development of a unified effort
96 involving multiple providers and facilities, including, but not
97 limited to, Concord college, the college of West Virginia,
98 Marshall university, West Virginia university, West Virginia
99 university institute of technology and other entities to meet the
100 documented work force development needs in the region.
101 Nothing in this subdivision prohibits or limits any existing, or
102 the continuation of any existing, affiliation between the college
103 of West Virginia, West Virginia university institute of technol-

104 ogy and West Virginia university. New River community and
105 technical college also shall provide the facilities and support
106 services for other public and private institutions delivering
107 courses, programs and services in Beckley. The objective is to
108 assure students and employers in the area that there is coordina-
109 tion and efficient use of resources among the separate programs
110 and facilities, existing and planned, in the Beckley area.

111 (2) *Fairmont state community and technical college.* —
112 Fairmont state community and technical college shall be an
113 independently accredited community and technical college
114 serving Marion, Doddridge, Barbour, Harrison, Monongalia,
115 Preston, Randolph Taylor, Braxton, Calhoun, Gilmer, Lewis,
116 and Upshur counties. The community and technical college is
117 developed on the base of the existing component community
118 and technical college of Fairmont state college. Subject to the
119 provisions of this section, the president and the governing board
120 of Fairmont state college are responsible, according to a plan
121 approved by the commission, for step-by-step implementation
122 of the independently accredited community and technical
123 college which adheres to the essential conditions pursuant to
124 section three of this article. Subject to the provisions of section
125 twelve of this article, the community and technical college will
126 remain administratively linked to Fairmont state college.
127 Nothing herein may be construed to require Fairmont state
128 college to discontinue any associate degree program in areas of
129 particular institutional strength which are closely articulated to
130 their baccalaureate programs and missions or which are of a
131 high-cost nature and can best be provided in direct coordination
132 with a baccalaureate institution.

133 (3) *Marshall university community and technical college.*
134 — Senate Bill 653 created an implementation board charged
135 with the responsibility to develop a plan, to be recommended to
136 the commission, for the most effective and efficient method to
137 deliver comprehensive community and technical college

138 education to the citizens and employers of the responsibility
139 areas of Marshall university, West Virginia state college and
140 West Virginia university institute of technology. Pursuant to the
141 recommendation of the implementation board and of the
142 commission, Marshall university community and technical
143 college shall become an independently accredited community
144 and technical college. It shall serve Cabell, Kanawha, Mason,
145 Putnam and Wayne counties. The new community and technical
146 college is developed on the base of the existing component
147 community and technical college of Marshall university.
148 Subject to the provisions of this section, the president and the
149 governing board of Marshall university are responsible,
150 according to a plan approved by the commission, for
151 step-by-step implementation of the new independently accred-
152 ited community and technical college which adheres to the
153 essential conditions pursuant to section three of this article.
154 Subject to the provisions of section twelve of this article, the
155 community and technical college will remain administratively
156 linked to Marshall university. Nothing herein may be construed
157 to require Marshall university to discontinue any associate
158 degree program in areas of particular institutional strength
159 which are closely articulated to their baccalaureate programs
160 and missions or which are of a high-cost nature and can best be
161 provided in direct coordination with a baccalaureate institution.

162 (4) *Shepherd community and technical college.* — Shep-
163 herd community and technical college shall become an inde-
164 pendently accredited community and technical college. It shall
165 serve Jefferson, Berkeley and Morgan counties. The new
166 community and technical college is developed on the base of
167 the existing component community and technical college of
168 Shepherd college. Subject to the provisions of this section, the
169 president and the governing board of Shepherd college are
170 responsible, according to a plan approved by the commission,
171 for step-by-step implementation of the new independently
172 accredited community and technical college which adheres to

173 the essential conditions pursuant to section three of this article.
174 Subject to the provisions of section twelve of this article, the
175 community and technical college will remain administratively
176 linked to Shepherd college. Nothing herein may be construed to
177 require Shepherd college to discontinue any associate degree
178 program in areas of particular institutional strength which are
179 closely articulated to their baccalaureate programs and missions
180 or which are of a high-cost nature and can best be provided in
181 direct coordination with a baccalaureate institution.

182 (5) *West Virginia state community and technical college.* —
183 Senate Bill 653 created an implementation board charged with
184 the responsibility to develop a plan, to be recommended to the
185 commission, for the most effective and efficient method to
186 deliver comprehensive community and technical college
187 education to the citizens and employers of the responsibility
188 areas of Marshall university, West Virginia state college and
189 West Virginia university institute of technology. Pursuant to the
190 recommendation of the implementation board and of the
191 commission, West Virginia state community and technical
192 college shall become an independently accredited community
193 and technical college. It shall serve Kanawha, Putnam and Clay
194 counties. The new community and technical college is devel-
195 oped on the base of the existing component community and
196 technical college of West Virginia state college. Subject to the
197 provisions of this section, the president and the governing board
198 of West Virginia state college are responsible, according to a
199 plan approved by the commission, for step-by-step implementa-
200 tion of the new independently accredited community and
201 technical college which adheres to the essential conditions
202 pursuant to section three of this article. Subject to the provi-
203 sions of section twelve of this article, the community and
204 technical college will remain administratively linked to West
205 Virginia state college. Nothing herein may be construed to
206 require West Virginia state college to discontinue any associate
207 degree program in areas of particular institutional strength

208 which are closely articulated to their baccalaureate programs
209 and missions or which are of a high-cost nature and can best be
210 provided in direct coordination with a baccalaureate institution.

211 (6) *West Virginia university institute of technology.* —
212 Senate Bill 653 created an implementation board charged with
213 the responsibility to develop a plan, to be recommended to the
214 commission, for the most effective and efficient method to
215 deliver comprehensive community and technical college
216 education to the citizens and employers of the responsibility
217 areas of Marshall university, West Virginia state college and
218 West Virginia university institute of technology. Pursuant to the
219 recommendation of the implementation board and of the
220 commission, West Virginia university institute of technology
221 community and technical college shall become an independ-
222 ently accredited community and technical college. It shall serve
223 Fayette, Clay, Kanawha, Raleigh and Nicholas counties. The
224 new community and technical college is developed on the base
225 of the existing component community and technical college of
226 West Virginia university institute of technology. Subject to the
227 provisions of this section, the president and the governing board
228 of West Virginia university institute of technology are responsi-
229 ble, according to a plan approved by the commission, for
230 step-by-step implementation of the new independently accred-
231 ited community and technical college which adheres to the
232 essential conditions pursuant to section three of this article.
233 Subject to the provisions of section twelve of this article, the
234 community and technical college will remain administratively
235 linked to West Virginia university institute of technology.
236 Nothing herein may be construed to require West Virginia
237 university institute of technology to discontinue any associate
238 degree program in areas of particular institutional strength
239 which are closely articulated to their baccalaureate programs
240 and missions or which are of a high-cost nature and can best be
241 provided in direct coordination with a baccalaureate institution.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-3. Authority to contract for programs, services and facilities.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

§18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.

§18B-5-9. Higher education fiscal responsibility.

§18B-5-3. Authority to contract for programs, services and facilities.

1 The governing boards and the commission are authorized
2 and empowered to enter into contracts and expend funds for
3 programs, services and facilities provided by public and private
4 education institutions, associations, boards, agencies, consortia,
5 corporations, partnerships, individuals and local, state and
6 federal governmental bodies within and outside of West
7 Virginia in order that maximum higher education opportunities
8 of high quality may be provided to the citizens of the state in
9 the most economical manner. In no event may a contract for
10 such services and facilities be entered into unless the commis-
11 sion or the governing boards have determined that such services
12 and facilities are necessary and would be at a savings to the
13 state.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

1 (a) The commission and each governing board, through the
2 vice chancellor for administration, shall purchase or acquire all
3 materials, supplies, equipment, services and printing required
4 for that governing board or the commission, as appropriate, and
5 the state institutions of higher education under their jurisdiction.

6 The commission shall adopt rules governing and controlling
7 acquisitions and purchases in accordance with the provisions of
8 this section. The rules shall assure that the commission and the
9 governing boards:

10 (1) Do not preclude any person from participating and
11 making sales thereof to the governing board or to the commis-
12 sion except as otherwise provided in section five of this article.
13 Provision of consultant services such as strategic planning
14 services will not preclude or inhibit the governing boards or the
15 commission from considering any qualified bid or response for
16 delivery of a product or a commodity because of the rendering
17 of those consultant services;

18 (2) Establish and prescribe specifications, in all proper
19 cases, for materials, supplies, equipment, services and printing
20 to be purchased; and

21 (3) Adopt and prescribe such purchase order, requisition or
22 other forms as may be required;

23 (4) Negotiate for and make purchases and acquisitions in
24 such quantities, at such times and under contract, in the open
25 market or through other accepted methods of governmental
26 purchasing as may be practicable in accordance with general
27 law;

28 (5) Advertise for bids on all purchases exceeding twenty-
29 five thousand dollars, to purchase by means of sealed bids and
30 competitive bidding or to effect advantageous purchases
31 through other accepted governmental methods and practices;

32 (6) Post notices of all acquisitions and purchases for which
33 competitive bids are being solicited in the purchasing office of
34 the specified institution involved in the purchase, at least two
35 weeks prior to making such purchases and ensure that the notice
36 is available to the public during business hours;

37 (7) Provide for purchasing in the open market;

38 (8) Make provision for vendor notification of bid solicita-
39 tion and emergency purchasing; and

40 (9) Provide that competitive bids are not required for
41 purchases of five thousand dollars or less.

42 (b) The commission or each governing board, through the
43 vice chancellor for administration, may issue a check in
44 advance to a company supplying postage meters for postage
45 used by that board, the commission and by the state institutions
46 of higher education under their jurisdiction.

47 (c) When a purchase is to be made by bid, any or all bids
48 may be rejected. However, all purchases based on advertised
49 bid requests shall be awarded to the lowest responsible bidder
50 taking into consideration the qualities of the articles to be
51 supplied, their conformity with specifications, their suitability
52 to the requirements of the governing boards, the commission
53 and delivery terms. The preference for resident vendors as
54 provided in section thirty-seven, article three, chapter five-a of
55 this code apply to the competitive bids made pursuant to this
56 section.

57 (d) The governing boards and the commission shall
58 maintain a purchase file, which shall be a public record and
59 open for public inspection. After the award of the order or
60 contract, the governing boards and the commission shall
61 indicate upon the successful bid that it was the successful bid
62 and shall further indicate why bids are rejected and, if the
63 mathematical low vendor is not awarded the order or contract,
64 the reason therefor. No records in the purchase file may be
65 destroyed without the written consent of the legislative auditor.
66 Those files in which the original documentation has been held
67 for at least one year and in which the original documents have

68 been reproduced and archived on microfilm or other equivalent
69 method of duplication may be destroyed without the written
70 consent of the legislative auditor. All files, no matter the
71 storage method, shall be open for inspection by the legislative
72 auditor upon request.

73 (e) The commission also shall adopt rules to prescribe
74 qualifications to be met by any person who is to be employed
75 as a buyer pursuant to this section. These rules shall require that
76 no person may be employed as a buyer unless that person, at the
77 time of employment, either is:

78 (1) A graduate of an accredited college or university; or

79 (2) Has at least four years' experience in purchasing for any
80 unit of government or for any business, commercial or indus-
81 trial enterprise.

82 (f) Any person making purchases and acquisitions pursuant
83 to this section shall execute a bond in the penalty of fifty
84 thousand dollars, payable to the state of West Virginia, with a
85 corporate bonding or surety company authorized to do business
86 in this state as surety thereon, in form prescribed by the
87 attorney general and conditioned upon the faithful performance
88 of all duties in accordance with sections four through eight of
89 this article and the rules of the interim governing board and the
90 commission. In lieu of separate bonds for such buyers, a blanket
91 surety bond may be obtained. Any such bond shall be filed with
92 the secretary of state. The cost of any such bond shall be paid
93 from funds appropriated to the applicable governing board or
94 commission.

95 (g) All purchases and acquisitions shall be made in consid-
96 eration and within limits of available appropriations and funds
97 and in accordance with applicable provisions of article two,

98 chapter five-a of this code, relating to expenditure schedules
99 and quarterly allotments of funds.

100 (h) The governing boards and the commission may make
101 requisitions upon the auditor for a sum to be known as an
102 advance allowance account, in no case to exceed five percent of
103 the total of the appropriations for the governing board or the
104 commission, and the auditor shall draw a warrant upon the
105 treasurer for such accounts. All advance allowance accounts
106 shall be accounted for by the applicable governing board or
107 commission once every thirty days or more often if required by
108 the state auditor.

109 (i) Contracts entered into pursuant to this section shall be
110 signed by the applicable governing board or the commission in
111 the name of the state and shall be approved as to form by the
112 attorney general. A contract which requires approval as to form
113 by the attorney general and for which the attorney general has
114 not responded within fifteen days of presentation of the
115 contract, the contract shall be considered approved. A contract
116 or a change order for that contract and notwithstanding any
117 other provision of this code to the contrary, associated docu-
118 ments such as performance and labor/material payments, bonds
119 and certificates of insurance which use terms and conditions or
120 standardized forms previously approved by the attorney general
121 and do not make substantive changes in the terms and condi-
122 tions of the contract do not require approval by the attorney
123 general. The attorney general shall make a list of those changes
124 which he or she deems to be substantive and the list, and any
125 changes thereto, shall be published in the state register. A
126 contract that exceeds fifteen thousand dollars shall be filed with
127 the state auditor. If requested to do so, the governing boards or
128 the commission shall make all contracts available for inspection
129 by the state auditor. The governing board or the commission, as
130 appropriate, shall prescribe the amount of deposit or bond to be
131 submitted with a bid or contract, if any, and the amount of

132 deposit or bond to be given for the faithful performance of a
133 contract.

134 (j) If the governing board or the commission purchases or
135 contracts for materials, supplies, equipment, services and
136 printing contrary to the provisions of sections four through
137 seven of this article or the rules pursuant thereto, such purchase
138 or contract shall be void and of no effect.

139 (k) Any governing board or the commission, as appropriate,
140 may request the director of purchases to make available, from
141 time to time, the facilities and services of that department to the
142 governing boards or the commission in the purchase and
143 acquisition of materials, supplies, equipment, services and
144 printing and the director of purchases shall cooperate with that
145 governing board or the commission, as appropriate, in all such
146 purchases and acquisitions upon such request.

147 (l) Each governing board or the commission, as appropriate,
148 shall permit private institutions of higher education to join as
149 purchasers on purchase contracts for materials, supplies,
150 services and equipment entered into by that governing board or
151 the commission. Any private school desiring to join as purchas-
152 ers on such purchase contracts shall file with that governing
153 board or the commission an affidavit signed by the president of
154 the institution of higher education or a designee requesting that
155 it be authorized to join as purchaser on purchase contracts of
156 that governing board or the commission, as appropriate. The
157 private school shall agree that it is bound by such terms and
158 conditions as that governing board or the commission may
159 prescribe and that it will be responsible for payment directly to
160 the vendor under each purchase contract.

161 (m) Notwithstanding any other provision of this code to the
162 contrary, the governing boards and the commission, as appro-
163 priate, may make purchases from cooperative buying groups,

164 consortia, the federal government or from federal government
165 contracts if the materials, supplies, services, equipment or
166 printing to be purchased is available from cooperative buying
167 groups, consortia, the federal government or from a federal
168 contract and purchasing from the cooperative buying groups,
169 consortia, federal government or from a federal government
170 contract would be the most financially advantageous manner of
171 making the purchase.

172 (n) An independent performance audit of all purchasing
173 functions and duties which are performed at any institution of
174 higher education shall be performed each fiscal year. The joint
175 committee on government and finance shall conduct the
176 performance audit and the governing boards and the commis-
177 sion, as appropriate, shall be responsible for paying the cost of
178 the audit from funds appropriated to the governing boards or the
179 commission.

180 (o) The governing boards shall require each institution
181 under their respective jurisdictions to notify and inform every
182 vendor doing business with that institution of the provisions of
183 section fifty-four, article three, chapter five-a of this code, also
184 known as the "prompt pay act of 1990".

185 (p) Consultant services, such as strategic planning services,
186 may not preclude or inhibit the governing boards or the
187 commission from considering any qualified bid or response for
188 delivery of a product or a commodity because of the rendering
189 of those consultant services.

190 (q) After the commission has granted approval for
191 lease-purchase arrangements by the governing boards, a
192 governing board may enter into lease-purchase arrangements
193 for capital improvements, including equipment. Any lease-
194 purchase arrangement so entered shall constitute a special
195 obligation of the state of West Virginia. The obligation under

196 a lease-purchase arrangement so entered may be from any funds
197 legally available to the institution and must be cancelable at the
198 option of the governing board or institution at the end of any
199 fiscal year. The obligation, any assignment or securitization
200 thereof, shall never constitute an indebtedness of the state of
201 West Virginia or any department, agency or political subdivi-
202 sion thereof, within the meaning of any constitutional provision
203 or statutory limitation, and may not be a charge against the
204 general credit or taxing powers of the state or any political
205 subdivision thereof; and such facts shall be plainly stated in any
206 lease-purchase agreement. Further, the lease-purchase agree-
207 ment shall prohibit assignment or securitization without consent
208 of the lessee and the approval of the attorney general of West
209 Virginia. Proposals for any arrangement must be requested in
210 accordance with the requirements of this section and any rules
211 or guidelines of the commission. In addition, any lease-pur-
212 chase agreement which exceeds one hundred thousand dollars
213 total shall be approved by the attorney general of West Vir-
214 ginia. The interest component of any lease-purchase obligation
215 shall be exempt from all taxation of the state of West Virginia,
216 except inheritance, estate and transfer taxes. It is the intent of
217 the Legislature that if the requirements set forth in the internal
218 revenue code of one thousand nine hundred eighty-six, as
219 amended, and any regulations promulgated pursuant thereto are
220 met, the interest component of any lease-purchase obligation
221 also shall be exempt from the gross income of the recipient for
222 purposes of federal income taxation and may be designated by
223 the governing board or the president of the institution as a bank-
224 qualified obligation.

225 (r) Notwithstanding any other provision of this code to the
226 contrary, the commission and the governing boards have the
227 authority, in the name of the state, to lease, or offer to lease, as
228 lessee, any grounds, buildings, office or other space in accor-
229 dance with this paragraph and as provided below:

230 (1) The commission and the governing boards have sole
231 authority to select and to acquire by contract or lease all
232 grounds, buildings, office space or other space, the rental of
233 which is necessarily required by the commission or governing
234 boards for the institutions under their jurisdiction. The chief
235 executive officer of the commission or an institution shall
236 certify the following:

237 (A) That the grounds, buildings, office space or other space
238 requested is necessarily required for the proper function of the
239 commission or institution;

240 (B) That the commission or institution will be responsible
241 for all rent and other necessary payments in connection with the
242 contract or lease; and

243 (C) That satisfactory grounds, buildings, office space or
244 other space is not available on grounds and in buildings now
245 owned or leased by the commission or the institution.

246 Before executing any rental contract or lease, the commis-
247 sion or a governing board shall determine the fair rental value
248 for the rental of the requested grounds, buildings, office space
249 or other space, in the condition in which they exist, and shall
250 contract for or lease the premises at a price not to exceed the
251 fair rental value.

252 (2) The commission and the governing boards are autho-
253 rized to enter into long-term agreements for buildings, land and
254 space for periods longer than one fiscal year, but not to exceed
255 forty years. Any purchases of real estate, any lease-purchase
256 agreement and any construction of new buildings or other
257 acquisition of buildings, office space or grounds resulting
258 therefrom, pursuant to the provisions of this subsection shall be
259 presented by the policy commission to the joint committee on

260 government and finance for prior review. Any such lease shall
261 contain, in substance, all the following provisions:

262 (A) That the commission or the governing board, as lessee,
263 have the right to cancel the lease without further obligation on
264 the part of the lessee upon giving thirty days' written notice to
265 the lessor at least thirty days prior to the last day of the succeed-
266 ing month;

267 (B) That the lease shall be considered canceled without
268 further obligation on the part of the lessee if the Legislature or
269 the federal government fails to appropriate sufficient funds
270 therefor or otherwise acts to impair the lease or cause it to be
271 canceled; and

272 (C) That the lease shall be considered renewed for each
273 ensuing fiscal year during the term of the lease unless it is
274 canceled by the commission or the governing board before the
275 end of the then-current fiscal year.

276 (3) The commission or an institution which is granted any
277 grounds, buildings, office space or other space leased in
278 accordance with this section may not order or make permanent
279 changes of any type thereto, unless the commission or the
280 governing board, as appropriate, has first determined that the
281 change is necessary for the proper, efficient and economically
282 sound operation of the institution. For purposes of this section,
283 a "permanent change" means any addition, alteration, improve-
284 ment, remodeling, repair or other change involving the expendi-
285 ture of state funds for the installation of any tangible thing
286 which cannot be economically removed from the grounds,
287 buildings, office space or other space when vacated by the
288 institution.

289 (4) Leases and other instruments for grounds, buildings,
290 office or other space, once approved by the commission or

291 governing board, may be signed by the chief executive officer
292 of the commission or the institution. Any lease or instrument
293 exceeding one hundred thousand dollars annually shall be
294 approved as to form by the attorney general. A lease or other
295 instrument for grounds, buildings, office or other space that
296 contains a term, including any options, of more than six months
297 for its fulfillment shall be filed with the state auditor.

298 (5) The commission may promulgate rules it considers
299 necessary to carry out the provisions of this section.

**§18B-5-5. Prequalification disclosure by vendors; register of
vendors; exceptions; suspension of vendors.**

1 (a) Every person, firm or corporation selling or offering to
2 sell to the commission or the governing boards, upon competi-
3 tive bids or otherwise, any materials, equipment, services or
4 supplies in excess of twenty-five thousand dollars:

5 (1) Shall comply with the provisions of section twelve,
6 article three, chapter five-a of this code;

7 (2) Shall file with the director of the purchasing division of
8 the state of West Virginia the affidavit required herein; and

9 (3) If presently in compliance with said section may not be
10 required to requalify thereunder to be able to transact business
11 with the commission or the governing boards.

12 (b) Any person, firm or corporation failing or refusing to
13 comply with said statute as herein required shall be ineligible
14 to sell or offer to sell materials, supplies, equipment, services
15 or printing to the commission or the governing boards as
16 hereinafter set forth. Any person suspended under the provi-
17 sions of section thirty-two, article three, chapter five-a of this
18 code is not eligible to sell or offer to sell materials, supplies,
19 equipment, services or printing to the commission or the
20 governing boards. The commission or the governing boards

21 may suspend, for a period not to exceed one year, the right and
22 privilege of a person to bid on purchases of the commission or
23 the governing boards when there is reason to believe that such
24 person has violated any of the provisions in sections four
25 through seven of this article or the rules of the governing boards
26 pursuant thereto. Any person whose right to bid has been so
27 suspended shall be notified thereof by a letter posted by
28 registered mail containing the reason for the suspension and has
29 the right to have the action of the commission or the governing
30 board, as applicable, reviewed in accordance with section
31 thirty-three, article three, chapter five-a of this code. A vendor
32 who has been debarred pursuant to the provisions of sections
33 thirty-three-a through thirty-three-f, article three, chapter five-a
34 of this code, may not bid on or be awarded a contract under this
35 section.

**§18B-5-6. Other code provisions relating to purchasing not
controlling; exceptions; criminal provisions and
penalties; financial interest of governing boards,
etc.; receiving anything of value from interested
party and penalties therefor; application of brib-
ery statute.**

1 The provisions of article three, chapter five-a of this code
2 do not control or govern the purchase, acquisition or other
3 disposition of any equipment, materials, supplies, services or
4 printing by the commission or the governing boards, except as
5 provided in sections four through seven of this article. Sections
6 twenty-nine, thirty and thirty-one, article three, chapter five-a
7 of this code apply to all purchasing activities of the commission
8 and the governing boards.

9 Neither the commission, the governing boards, nor any
10 employee of the commission or governing boards, may be
11 financially interested, or have any beneficial personal interest,
12 directly or indirectly, in the purchase of any equipment,
13 materials, supplies, services or printing, nor in any firm,

14 partnership, corporation or association furnishing them, except
15 as may be authorized by the provisions of chapter six-b of this
16 code. Neither the commission, the governing boards nor any
17 employee of the commission or governing boards may accept
18 or receive directly or indirectly from any person, firm or
19 corporation, known by the commission, governing boards or
20 such employee to be interested in any bid, contract or purchase,
21 by rebate, gift or otherwise, any money or other thing of value
22 whatsoever or any promise, obligation or contract for future
23 reward or compensation, except as may be authorized by the
24 provisions of chapter six-b of this code.

25 A person who violates any of the provisions of this section
26 is guilty of a misdemeanor, and, upon conviction thereof, shall
27 be imprisoned in jail not less than three months nor more than
28 one year, or fined not less than fifty nor more than one thousand
29 dollars, or both imprisoned and fined, in the discretion of the
30 court. Any person who violates any provisions of this section by
31 receiving money or other thing of value under circumstances
32 constituting the crime of bribery under the provisions of section
33 three, article five-a, chapter sixty-one of this code, shall, upon
34 conviction of bribery, be punished as provided in section nine
35 of said article.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.

1 (a) The commission and the governing boards shall dispose
2 of obsolete and unusable equipment, surplus supplies and other
3 unneeded materials, either by transfer to other governmental
4 agencies or institutions, by exchange or trade, or by sale as junk
5 or otherwise. The commission and each governing board shall
6 adopt rules governing and controlling the disposition of all such
7 equipment, supplies and materials. At least ten days prior to the
8 disposition, the commission or the governing boards, as
9 applicable, shall advertise, by newspaper publication as a Class

10 II legal advertisement in compliance with the provisions of
11 article three, chapter fifty-nine of this code, in the county in
12 which the equipment, supplies and materials are located the
13 availability or sales of such disposable equipment, supplies and
14 materials. The commission or governing boards, as applicable,
15 may sell the disposable equipment, supplies and materials, in
16 whole or in part, at public auction or by sealed bid, or may
17 transfer, exchange or trade the same to other governmental
18 agencies or institutions (if by transfer, exchange or trade, then
19 without advertising), in whole or in part, as sound business
20 practices may warrant under existing circumstances and
21 conditions.

22 (b) The commission or governing board, as appropriate,
23 shall report semiannually to the legislative auditor, all sales of
24 commodities made during the preceding six months. The report
25 shall include a description of the commodities sold, the name of
26 the buyer to whom each commodity was sold, and the price
27 paid by the buyer.

28 (c) The proceeds of sales or transfers shall be deposited in
29 the state treasury to the credit on a pro rata basis of the fund or
30 funds from which the purchase of the particular commodities or
31 expendable commodities was made. The commission or
32 governing board, as appropriate, may charge and assess fees
33 reasonably related to the costs of care and handling with respect
34 to the transfer, warehousing, sale and distribution of state
35 property that is disposed of or sold pursuant to the provisions of
36 this section.

§18B-5-9. Higher education fiscal responsibility.

1 (a) The commission shall ensure the fiscal integrity of any
2 electronic process conducted at its offices or at any institution
3 using best business and management practices.

4 (b) The commission shall implement a process whereby, to
5 the maximum extent practicable, employees of the commission
6 and any state institution of higher education receive their wages
7 via electronic transfer or direct deposit.

8 (c) Notwithstanding the provisions of section ten-a, article
9 three, chapter twelve of this code, the amount of any purchase
10 made with a purchasing card used by the commission or an
11 institution may not exceed five thousand dollars. Subject to
12 approval of the purchasing division of the department of
13 administration, any routine, regularly-scheduled payment,
14 including, but not limited to, utility payments and real property
15 rental fees may exceed this amount limit. The commission or an
16 institution may use a purchasing card for travel expenses
17 directly related to the job duties of the traveling employee.
18 Traveling expenses may include registration fees and airline
19 and other transportation reservations, if approved by the
20 administrative head of the institution. Traveling expenses may
21 not include fuel or food purchases. The commission and each
22 institution shall maintain one purchase card for use only in and
23 for situations declared an emergency by the president of the
24 institution and approved by the chancellor. Such emergencies
25 may include, but are not limited to, partial or total destruction
26 of a campus facility; loss of a critical component of utility
27 infrastructure; heating, ventilation, or air conditioning failure in
28 an essential academic building; loss of campus road, parking lot
29 or campus entrance; or a local, regional, or national emergency
30 situation that has a direct impact on the campus.

31 (d) Notwithstanding the provisions of section ten-f, article
32 three, chapter twelve of this code, or any other provision of this
33 code or law to the contrary, by the thirtieth day of June, two
34 thousand four, the auditor shall accept any receiving report
35 submitted in a format utilizing electronic media and from the
36 effective date of this section shall conduct any audit or investi-

37 gation of the commission or any institution at its own expense
38 and at no cost to the commission or institution.

39 (e) The Legislature finds that an emergency exists, and,
40 therefore, by the first day of July, two thousand three, the
41 commission shall file an emergency legislative rule in accor-
42 dance with the provisions of article three-a, chapter twenty-
43 nine-a of this code. The rule shall provide for institutions
44 individually or cooperatively to maximize their use of any of
45 the following purchasing practices that are determined to
46 provide a financial advantage:

47 (1) Bulk purchasing;

48 (2) Reverse bidding;

49 (3) Electronic marketplaces; and

50 (4) Electronic remitting.

51 (f) Each institution shall establish a consortium with at least
52 one other institution in the most cost-efficient manner feasible,
53 to consolidate the following operations and student services:

54 (1) Payroll operations;

55 (2) Human resources operations;

56 (3) Warehousing operations;

57 (4) Financial transactions;

58 (5) Student financial aid application, processing and
59 disbursement;

60 (6) Standard and bulk purchasing; and

61 (7) Any other operation or service appropriate for consoli-
62 dation as determined by the commission.

63 (g) An institution may charge a fee to each institution for
64 which it provides a service or performs an operation. The fee
65 rate shall be in the best interest of both the institution being
66 served and the providing institution, as approved by the
67 commission.

68 (h) Any community and technical college, college and
69 university may provide the services authorized by this section
70 for the benefit of any governmental body or public or private
71 institution.

72 (i) Commencing with the two thousand four fall academic
73 term, each institution shall reduce its number of low-enrollment
74 sections of introductory courses. To the maximum extent
75 practicable, institutions shall use distance learning to consoli-
76 date the course sections. The commission shall report the
77 progress of the reduction to the legislative oversight commis-
78 sion on education accountability by the first day of December,
79 two thousand four.

80 (j) An institution shall use its natural resources and alterna-
81 tive fuel resources to the maximum extent feasible. The
82 institution may supply the resources for its own use and for use
83 by any other institution. The institution may supply the re-
84 sources to the general public at fair market value. An institution
85 shall maximize all federal or grant funds available for research
86 regarding alternative energy sources, and may develop research
87 parks to further the purpose of this section and to expand the
88 economic development opportunities in the state.

89 (k) Any cost-savings realized or fee procured or retained by
90 an institution pursuant to implementation of the provisions of
91 this section shall be retained by the institution.

92 (l) In assuring the fiscal integrity of processes implemented
93 under this section, at a minimum, the commission has the
94 following responsibilities:

95 (1) To conduct a performance audit of the policies, proce-
96 dures and results of the procurement of goods and services by
97 the state institutions of higher education;

98 (2) To make progress reports on the implementation of this
99 section to the legislative oversight commission on education
100 accountability throughout the two thousand three interim
101 meetings period;

102 (3) To make a comprehensive report to the legislative
103 oversight commission on education accountability by the first
104 day of December, two thousand three, on the results of the
105 performance audit, together with any recommendations for
106 additional actions that might be taken to improve the efficiency,
107 effectiveness and economy of the administrative operations of
108 the state institutions of higher education and the commission.

109 (m) The commission shall report annually to the legislative
110 oversight commission on education accountability regarding
111 any savings achieved by implementing the provisions of this
112 section.

ARTICLE 6. ADVISORY COUNCILS.

§18B-6-4b. Institutional classified employee council.

1 (a) For the purposes of this section the following words
2 have the specified meanings unless the context clearly indicates
3 a different meaning:

4 (1) "Council" or "staff council" means the advisory group
5 of classified employees formed on each campus of state
6 institutions of higher education pursuant to subsections (b) and
7 (c) of this section; and

8 (2) "State institutions of higher education" means all
9 institutions as defined in section two, article one of this chapter
10 and, additionally, Potomac state college of West Virginia
11 university, West Virginia university at Parkersburg, West
12 Virginia university institute of technology, Robert C. Byrd

13 health sciences Charleston division of West Virginia university,
14 the Marshall university graduate college, New River commu-
15 nity and technical college, the higher education policy commis-
16 sion and the West Virginia network for educational
17 telecomputing.

18 (b) Effective the first day of April, two thousand three,
19 there is established at each state institution of higher education
20 an institutional classified employees advisory council to be
21 known as the staff council. Current members of staff councils
22 and their officers who have been duly elected shall continue to
23 serve with all the rights, privileges and responsibilities pre-
24 scribed by this section until the time that members elected as set
25 forth in subsection (c) of this section assume office.

26 (1) During the month of April of each odd-numbered year,
27 beginning in the year two thousand three, each president or
28 other administrative head of a state institution of higher
29 education, at the direction of the council, and in accordance
30 with procedures established by the council, shall convene a
31 meeting or otherwise institute a balloting process to elect
32 members of the staff council as follows:

33 (A) Two classified employees from the administra-
34 tive/managerial sector;

35 (B) Two classified employees from the professional/non-
36 teaching sector;

37 (C) Two classified employees from the paraprofessional
38 sector;

39 (D) Two classified employees from the secretarial/clerical
40 sector;

41 (E) Two classified employees from the physical
42 plant/maintenance sector; and

43 (F) The member who is elected to serve on the advisory
44 council of classified employees pursuant to section four-a of

45 this article. This person shall serve as an ex officio, voting
46 member of the staff council and shall report to the council on
47 meetings of the advisory council and the board of governors.

48 (2) Classified employees at Marshall university and West
49 Virginia university may elect five classified employees from
50 each of the five sectors to serve on the staff council.

51 (3) Members shall serve a term of two years which term
52 shall begin on the first day of July of each odd-numbered year.
53 Members of the council are eligible to succeed themselves.

54 (4) Classified employees shall select one of their members
55 to serve as chair. All classified employees at the institution are
56 eligible to vote for the chair by any method approved by a
57 majority of their members. The chair is eligible to succeed
58 himself or herself.

59 (5) The staff council shall meet at least monthly or at the
60 call of the chair. With appropriate notification to the institu-
61 tional president, the chair may convene staff council meetings
62 for the purpose of sharing information and discussing issues
63 affecting the classified employees or the efficient and effective
64 operations of the institution.

65 (6) The president of the institution shall meet at least
66 quarterly with the staff council to discuss matters affecting
67 classified employees.

68 (7) The governing board shall meet at least annually with
69 the staff council to discuss matters affecting classified employ-
70 ees and the effective and efficient management of the institu-
71 tion.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention;
hearing.

§18B-7-6. Adjunct faculty; part-time and temporary classified employees.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

1 (a) The president or other administrative head of each state
2 institution of higher education shall give written notice to
3 probationary faculty members concerning their retention or
4 nonretention for the ensuing academic year: (1) Not later than
5 the first day of March for those probationary faculty members
6 who are in their first academic year of service; (2) not later than
7 the fifteenth day of December for those probationary faculty
8 members who are in their second academic year of service; and
9 (3) at least one year before the expiration of an appointment for
10 those probationary faculty members who have been employed
11 two or more years with the institution. Such notice to those
12 probationary faculty members not being retained shall be by
13 certified mail, return receipt requested.

14 (b) For any probationary faculty member employed after
15 the effective date of this section, the president or other adminis-
16 trative head of each institution shall give written notice con-
17 cerning retention or nonretention for the ensuing academic year
18 not later than the first day of March.

19 (c) If a request is made by the probationary faculty member
20 not retained, the president or other administrative head of the
21 institution shall inform the probationary faculty member by
22 certified mail within ten days of the reasons for nonretention.
23 Any probationary faculty member who desires to appeal the
24 decision shall use the grievance procedure established in article
25 six-a, chapter twenty-nine of this code. If it is concluded that
26 the reasons for nonretention are arbitrary or capricious or
27 without a factual basis, the faculty member shall be retained for
28 the ensuing academic year.

29 (d) The term “probationary faculty member” shall be
30 defined according to rules promulgated by the governing
31 boards. The rights provided to probationary faculty members by
32 this section are in addition to, and not in lieu of, other rights
33 afforded them by other rules and other provisions of law.

§18B-7-6. Adjunct faculty; part-time and temporary classified employees.

1 (a) Each governing board, with the advice and assistance of
2 the faculty senate, shall establish a policy regarding the role of
3 adjunct faculty at state institutions of higher education and
4 define an appropriate balance between full-time and adjunct
5 faculty members.

6 (b) Each governing board, with the advice and assistance of
7 the staff council shall establish a policy regarding the role of
8 part-time classified employees. Such policy shall discourage the
9 hiring of part-time employees solely to avoid the payment of
10 benefits or in lieu of full-time employees and shall provide all
11 qualified classified employees with nine-month or ten-month
12 contracts with the opportunity to accept part-time or full-time
13 summer employment before new persons are hired for the part-
14 time or full-time employment.

15 (c) Each governing board shall establish the policies
16 required by this section by the first day of July, two thousand
17 three. The commission shall report to the legislative oversight
18 commission on education accountability by the first day of
19 December, two thousand three, regarding the development and
20 implementation of these policies, including the number of
21 adjunct faculty and part-time employees at each institution and
22 the level of compliance with the policies. In making determina-
23 tions regarding the development, implementation and compli-
24 ance with the policies required by this section, the commission
25 shall take into account the special flexibility needs of commu-
26 nity and technical colleges and shall allow greater discretion for
27 these institutions to make decisions regarding employing
28 adjunct faculty.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

**§18B-8-3. Faculty salary policies; reductions in salary prohibited;
salary increase upon promotion in rank.**

1 (a) Each governing board shall establish and maintain a
 2 faculty salary policy that is competitive and which furthers the
 3 goals of attracting, retaining and rewarding high quality faculty.

4 (b) The salary of any full-time faculty member may not be
 5 reduced by the provisions of this article.

6 (c) Upon promotion in rank, each faculty member shall
 7 receive a salary increase of up to ten percent, as determined by
 8 the salary policy adopted by the governing board.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-5. Classified employee salary.

§18B-9-10. Higher education employees' catastrophic leave bank and leave transfer.

§18B-9-5. Classified employee salary.

1 (a) Any classified employee may receive merit increases
 2 and salary adjustments in accordance with policies established
 3 by the board of governors: *Provided*, That merit raises may be
 4 granted only pursuant to a rule adopted by the board of gover-
 5 nors, and approved by the chancellor, which provides a fair and
 6 equitable basis for granting merit raises pursuant to regular
 7 evaluations based upon reasonable performance standards.

8 (b) The current annual salary of any classified employee
 9 may not be reduced by the provisions of this article nor by any
 10 other action inconsistent with the provisions of this article, and
 11 nothing in this article may be construed to prohibit promotion
 12 of any classified employee to a job title carrying a higher pay
 13 grade if the promotion is in accordance with the provisions of
 14 this article and the personnel classification system established
 15 by the appropriate governing board.

16 (c) The cost of providing any salary increase pursuant to the
 17 provisions of section two, article five, chapter five of this code,
 18 shall be borne by the commission or institution from its existing

19 budget. The commission or institution may not increase tuition
20 and fee charges, increase auxiliary fee charges, or receive
21 additional general revenue funds to recover the costs of the
22 increase. Notwithstanding any other provision of this code or
23 law to the contrary, if insufficient funding is available to an
24 institution or the commission to implement the provisions of
25 said section two, funding may be derived from reducing
26 employee positions to any level, in the discretion of the
27 institution or commission, that is sufficient to provide adequate
28 funds, and without regard to seniority.

**§18B-9-10. Higher education employees' catastrophic leave bank
and leave transfer.**

1 (a) For the purposes of this section, "employee" means:

2 (1) A classified or nonclassified employee who is employed
3 by a higher education governing board or by the policy com-
4 mission; or

5 (2) A faculty member, as defined in section one, article
6 eight of this chapter, who is eligible to accrue sick leave.

7 (b) An employee may donate sick and annual leave to a
8 leave bank established and operated in accordance with the
9 provisions of subsection (d) of this section or directly to another
10 employee in accordance with the provisions of subsection (e) of
11 this section. No employee may be compelled to donate sick or
12 annual leave. Any leave donated by an employee pursuant to
13 this section shall be used only for the purpose of catastrophic
14 illness or injury as defined in subsection (c) of this section and
15 shall reduce, to the extent of such donation, the number of days
16 of annual or sick leave to which the employee is entitled.

17 (c) For the purpose of this section, a catastrophic illness or
18 injury is one that is expected to incapacitate the employee and
19 create a financial hardship because the employee has exhausted
20 all sick and annual leave and other paid time off. Catastrophic
21 illness or injury also includes an incapacitated immediate
22 family member as defined by a governing board or the policy

23 commission, as appropriate, if this results in the employee
24 being required to take time off from work for an extended
25 period of time to care for the family member and if the em-
26 ployee has exhausted all sick and annual leave and other paid
27 time off.

28 (d) A leave bank or banks may be established at each state
29 institution of higher education and the policy commission to
30 which employees may donate either sick or annual leave. The
31 bank or banks may be established jointly by the policy commis-
32 sion and the governing boards or may be established for the
33 policy commission and each of the governing boards. Sick or
34 annual leave may be deposited in the leave bank, and such
35 deposit shall be reflected as a day-for-day deduction from the
36 sick or annual leave balance of the depositing employee.

37 Donated leave may be withdrawn by any employee
38 experiencing a catastrophic illness or injury when the following
39 conditions are met:

40 (1) The president of the institution or the chancellor of the
41 policy commission, as appropriate, verifies that the employee
42 is unable to work due to the catastrophic illness or injury; and

43 (2) The president of the institution or the chancellor, as
44 appropriate, approves the withdrawal and provides written
45 notice to the personnel office.

46 The withdrawal shall be reflected as a day-for-day addition
47 to the leave balance of the withdrawing employee.

48 (e) Sick or annual leave may be donated to any employee
49 experiencing a catastrophic illness or injury. Such leave shall be
50 donated at the request of the employee after appropriate
51 verification that the employee is unable to work due to the
52 catastrophic illness or injury as determined by the president of
53 the institution or the chancellor. When transfer of sick or annual
54 leave is approved by the president of the institution or the
55 chancellor, any employee may donate sick or annual leave in
56 one-day increments by providing written notice to the personnel

57 office. Donations shall be reflected as a day-for-day deduction
58 from the sick or annual leave balance of the donating employee.
59 An employee receiving the donated sick or annual leave shall
60 have any time which is donated credited to his or her account in
61 one-day increments and reflected as a day-for-day addition to
62 the leave balance of the receiving employee.

63 (f) Use of donated credits may not exceed a maximum of
64 twelve continuous calendar months for any one catastrophic
65 illness or injury. The total amount of sick or annual leave
66 withdrawn or received may not exceed an amount sufficient to
67 ensure the continuance of regular compensation and may not be
68 used to extend insurance coverage pursuant to section thirteen,
69 article sixteen, chapter five of this code. An employee with-
70 drawing or receiving donations of sick or annual leave pursuant
71 to this section shall use any leave personally accrued on a
72 monthly basis prior to receiving additional donated sick or
73 annual leave.

74 (g) Donated sick or annual leave deposited in an institu-
75 tional leave bank or transferred under subsection (d) of this
76 section may be inter-institutional in accordance with the
77 policies of the appropriate governing board. Each institution
78 and the policy commission is responsible for the administration
79 of the sick or annual leave deposits, withdrawals and transfers
80 of its employees. Rules implementing the provisions of this
81 section may be adopted jointly or separately by the governing
82 boards and the policy commission in accordance with article
83 three-a, chapter twenty-nine-a of this code.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE
INSTITUTIONS OF HIGHER EDUCATION.**

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

§18B-10-14. Bookstores.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

1 (a) Each governing board shall fix tuition and other fees for
2 each school term for the different classes or categories of
3 students enrolling at each state institution of higher education
4 under its jurisdiction and may include among such fees any one
5 or more of the following:

6 (1) Health service fees;

7 (2) Infirmary fees;

8 (3) Student activities, recreational, athletic and extracurric-
9 ular fees, which fees may be used to finance a students'
10 attorney to perform legal services for students in civil matters
11 at such institutions. Such legal services are limited to only those
12 types of cases, programs or services approved by the adminis-
13 trative head of the institution where the legal services are to be
14 performed; and

15 (4) Graduate center fees and branch college fees, or either,
16 if the establishment and operations of graduate centers or
17 branch colleges are otherwise authorized by law.

18 (b) All fees collected at any graduate center or at any
19 branch college shall be paid into special funds and shall be used
20 solely for the maintenance and operation of the graduate center
21 or branch college at which they were collected. The commission
22 shall set tuition and fee goals for residents at each institution
23 after examining tuition and fees at the institutions' peers.
24 Tuition and fees for nonresident, undergraduate students shall,
25 at a minimum, cover actual instructional costs as determined in
26 accordance with commission policy. Students enrolled in
27 undergraduate courses offered at off-campus locations shall pay
28 an off-campus instruction fee and may not be required to pay
29 the athletic fee and the student activity fee.

30 (c) The off-campus instruction fee shall be used solely for
31 the support of off-campus courses offered by the institution.
32 Off-campus locations for each institution shall be defined by
33 the appropriate governing board. The schedule of all fees, and
34 any changes therein, shall be entered in the minutes of the

35 meeting of the appropriate governing board, and the board shall
36 file with the legislative auditor a certified copy of such schedule
37 and changes.

38 (d) In addition to the fees mentioned in the preceding
39 paragraph, each governing board may impose and collect a
40 student union building fee. All such building fees collected at
41 an institution shall be paid into a special student union building
42 fund for such institution, which is hereby created in the state
43 treasury. Pursuant to the provisions of section ten of this article,
44 the fees shall be used only for the following purposes:

45 (1) The construction, operation and maintenance of a
46 student union building or a combination student union and
47 dining hall building;

48 (2) The payment of the principal of and interest on any
49 bond issued to finance part or all of the construction of a
50 student union building or a combination student union and
51 dining hall building; or

52 (3) The renovation of an existing structure for use as a
53 student union building or a combination student union and
54 dining hall building, all as more fully provided in section ten of
55 this article.

56 Any moneys in such funds not needed immediately for such
57 purposes may be invested in any such bonds or other securities
58 as are now or hereafter authorized as proper investments for
59 state funds.

60 (e) The boards shall establish the rates to be charged
61 full-time students enrolled during a regular academic term.

62 (1) For fee purposes, a full-time undergraduate student is
63 one enrolled for twelve or more credit hours in a regular term,
64 and a full-time graduate student is one enrolled for nine or more
65 credit hours in a regular term.

66 (2) Undergraduate students taking fewer than twelve credit
67 hours in a regular term shall have their fees reduced pro rata

68 based upon one twelfth of the full-time rate per credit hour, and
69 graduate students taking fewer than nine credit hours in a
70 regular term shall have their fees reduced pro rata based upon
71 one ninth of the full-time rate per credit hour.

72 (3) Fees for students enrolled in summer terms or other
73 nontraditional time periods shall be prorated based upon the
74 number of credit hours for which the student enrolls in accor-
75 dance with the above provisions.

76 (f) All fees are due and payable by the student upon
77 enrollment and registration for classes except as provided for in
78 this subsection:

79 (1) The governing boards shall permit fee payments to be
80 made in up to three installments over the course of the aca-
81 demic term. All fees shall be paid prior to the awarding of
82 course credit at the end of the academic term.

83 (2) The governing boards also shall authorize the accep-
84 tance of credit cards or other payment methods which may be
85 generally available to students for the payment of fees. The
86 governing boards may charge the students for the reasonable
87 and customary charges incurred in accepting credit cards and
88 other methods of payment.

89 (3) If a governing board determines that a student's
90 finances are affected adversely by a legal work stoppage, it may
91 allow the student an additional six months to pay the fees for
92 any academic term. The governing board shall determine on a
93 case-by-case basis if the finances of a student are affected
94 adversely.

95 (g) The rule related to assessment, payment and refund of
96 fees including refund of fees upon voluntary or involuntary
97 withdrawal from classes, shall comply with all applicable state
98 and federal laws and shall be uniformly applied throughout the
99 system.

100 (h) In addition to the other fees provided in this section,
101 each governing board may impose, collect and distribute a fee
102 to be used to finance a nonprofit, student-controlled public
103 interest research group if the students at the institution demon-
104 strate support for the increased fee in a manner and method
105 established by that institution's elected student government.
106 The fee may not be used to finance litigation against the
107 institution.

108 (i) Institutions shall retain tuition and fee revenues not
109 pledged for bonded indebtedness or other purposes in accor-
110 dance with a revised tuition policy adopted by the respective
111 governing boards and approved by the commission. The revised
112 tuition policy shall:

113 (1) Provide a basis for establishing nonresident tuition and
114 fees;

115 (2) Allow institutions to charge different tuition and fees for
116 different programs;

117 (3) Provide that a board of governors may propose to the
118 commission a mandatory auxiliary fee under the following
119 conditions:

120 (A) The fee shall be approved by the commission and either
121 the students at the institution or the Legislature before becom-
122 ing effective;

123 (B) Increases may not exceed previous state subsidies by
124 more than ten percent;

125 (C) The fee may be used only to replace existing state funds
126 subsidizing auxiliary services such as athletics or bookstores;

127 (D) If the fee is approved, the amount of the state subsidy
128 shall be reduced annually by the amount of money generated
129 for the institution by the fees and that amount shall be returned
130 to general revenue. All state subsidies for the auxiliary services

131 shall cease five years from the date the mandatory auxiliary fee
132 was implemented;

133 (E) The commission shall certify to the Legislature by the
134 first day of October in the fiscal year following implementation
135 of the fee, and annually thereafter, the amount of fees collected
136 for each of the five years.

137 (4) Establish methodology, where applicable, to ensure that,
138 within the appropriate time period under the compact, commu-
139 nity and technical college tuition rates for community and
140 technical college students in all independently accredited
141 community and technical colleges will be commensurate with
142 the tuition and fees charged by their peer institutions.

143 (j) A penalty may not be imposed by the commission upon
144 any institution based upon the number of nonresidents who
145 attend the institution unless the commission determines that
146 admission of nonresidents to any institution or program of study
147 within the institution is impeding unreasonably the ability of the
148 resident students to attend the institution or participate in the
149 programs of the institution. The institutions shall report
150 annually to the commission on the numbers of nonresidents and
151 such other enrollment information as the commission may
152 request.

153 (k) Tuition and fee increases of the governing boards are
154 subject to rules adopted by the commission pursuant to subsec-
155 tion (a), section four, article one-b of this chapter.

156 (1) A governing board may propose tuition and fee in-
157 creases of up to nine and one-half percent for undergraduate
158 resident students for any fiscal year except that proposed tuition
159 and fees increases for community and technical colleges may be
160 up to four and three quarters percent. Any proposed increase
161 shall be approved by the commission. The commission shall
162 examine individually each request from a governing board for
163 an increase. Approval for any increase shall be based on a
164 determination by the commission that the institution has met the
165 following conditions:

166 (A) Has maximized resources available through nonresident
167 tuition and fee charges to the satisfaction of the commission;

168 (B) Is consistently achieving the benchmarks established in
169 the compact of the institution pursuant to the provisions of
170 article one-a of this chapter;

171 (C) Is continuously pursuing the statewide goals for post-
172 secondary education and the statewide compact established in
173 articles one and one-a of this chapter;

174 (D) Is implementing the efficiency measures required by
175 section nine, article five of this chapter;

176 (E) Has demonstrated to the satisfaction of the commission
177 that an increase will be used to maintain high-quality programs
178 at the institution;

179 (F) Has demonstrated to the satisfaction of the commission
180 that the institution is making adequate progress toward achiev-
181 ing the goals for education established by the southern regional
182 education board; and

183 (G) To the extent authorized, will increase by up to five
184 percent the available tuition and fee waivers provided by the
185 institution. The increased waivers may not be used for athletics.

186 (2) In making a determination on tuition and fee proposals,
187 the commission also may take into consideration whether the
188 per capita income in an institution's service region exceeds the
189 state per capita income. For the purposes of this subdivision
190 only:

191 (A) Service region is the county in which the main campus
192 of the institution is located and the contiguous West Virginia
193 counties; and

194 (B) Per capita income for the service region shall be
195 computed using the most current annual, county-level per capita
196 income data published by the United States department of

197 commerce, bureau of economic analysis, weighted by the
198 compatible year population estimates published by the United
199 States census bureau.

200 (3) This section may not be construed to require equal
201 increases among institutions or to require any level of increase
202 at an institution.

203 (4) The commission shall report to the legislative oversight
204 commission on education accountability regarding the basis for
205 each approval or denial as determined using the criteria
206 established in subdivision (1) of this subsection.

§18B-10-14. Bookstores.

1 The appropriate governing board of each state institution of
2 higher education shall have the authority to establish and
3 operate a bookstore at the institution. The bookstore shall be
4 operated for the use of the institution itself, including each of its
5 schools and departments, in making purchases of books,
6 stationery and other school and office supplies generally carried
7 in college stores, and for the benefit of students and faculty
8 members in purchasing such products for their own use, but no
9 sales shall be made to the general public. The prices to be
10 charged the institution, the students and the faculty for such
11 products shall be fixed by the governing board, shall not be less
12 than the prices fixed by any fair trade agreements, and shall in
13 all cases include in addition to the purchase price paid by the
14 bookstore a sufficient handling charge to cover all expenses
15 incurred for personal and other services, supplies and equip-
16 ment, storage, and other operating expenses, to the end that the
17 prices charged shall be commensurate with the total cost to the
18 state of operating the bookstore.

19 Each governing board shall also ensure that bookstores
20 operated at institutions under its jurisdiction meet the additional
21 objective of minimizing the costs to students of purchasing
22 textbooks by adopting policies which may require the repur-
23 chase and resale of textbooks on an institutional or a statewide

24 basis and provide for the use of certain basic textbooks for a
25 reasonable number of years.

26 All moneys derived from the operation of the store shall be
27 paid into a special revenue fund as provided in section two,
28 article two, chapter twelve of this code. Each governing board
29 shall, subject to the approval of the governor, fix, and, from
30 time to time, change the amount of the revolving fund neces-
31 sary for the proper and efficient operation of each bookstore.

32 Moneys derived from the operation of the bookstore shall
33 be used first to replenish the stock of goods and to pay the costs
34 of operating and maintaining the store. From any balance in the
35 Marshall university bookstore fund not needed for operation
36 and maintenance and replenishing the stock of goods, the
37 governing board of that institution shall have authority to
38 expend a sum not to exceed two hundred thousand dollars for
39 the construction of quarters to house the bookstore in the
40 university center at Marshall university. Until such quarters for
41 housing the bookstore are completed, the governing board of
42 Marshall university and the governor shall take this authoriza-
43 tion into account in fixing the amount of the revolving fund for
44 the Marshall university bookstore. Notwithstanding any other
45 provision of this section, any institution that has contracted with
46 a private entity for bookstore operation shall deposit into an
47 appropriate account all revenue generated by the operation and
48 enuring to the benefit of the institution. The institution shall use
49 the funds for nonathletic scholarships.

ARTICLE 14. MISCELLANEOUS.

§18B-14-11. Health insurance coverage option study.

1 (a) Together, the commission and the public employees
2 insurance agency shall submit to the legislative oversight
3 commission on education accountability by the first day of
4 December, two thousand three, draft legislation regarding
5 benefits offered by the agency.

6 (b) The draft legislation shall provide:

7 (1) Incentives for employees insured by the agency to
8 decline benefits from the agency. Incentives may include:

9 (A) Optional purchase of supplemental benefits;

10 (B) Payment of a percentage of the savings realized by the
11 employer due to cancellation of insurance coverage for the
12 employee; and

13 (C) Any other incentive determined appropriate by the
14 agency and commission;

15 (2) A requirement that a public employee may decline
16 benefits from the agency only if that employee verifies that he
17 or she has health insurance coverage by an alternate provider;

18 (3) A procedure for verifying the alternate coverage
19 required by subdivision (2) of this subsection at least annually;
20 and

21 (4) A procedure whereby an employee who has declined
22 coverage pursuant to this section will be reinstated automati-
23 cally in the agency's program immediately following loss of the
24 alternate coverage.

CHAPTER 97

**(S. B. 646 — By Senators Caldwell, Plymale, Edgell, White,
Dempsey, Sprouse, Unger and Oliverio)**

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor;
in Effect from Passage. Approved by the Governor.]

AN ACT to amend chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-a; and to amend and reenact section two, article five, chapter eighteen-c of said

code, all relating to higher education; centers for economic development and technology advancement generally; findings and purpose; definitions; authorizing doctoral institutions to enter into agreements with centers; setting forth requirements for governing bodies; powers and duties of governing bodies; providing for appointment of president; qualifications; powers and duties of president; authorizing agreements; terms and conditions; authorizing audit of center operations; clarifying issues of conflicts of interest; prohibiting waiver of sovereign immunity; clarifying issues of debt obligations of centers; student financial aid; and expanding definition of "eligible institution" for purposes of higher education grant program.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve-a; and that section two, article five, chapter eighteen-c of said code be amended and reenacted, all to read as follows:

Chapter

18B. Higher Education.

18C. Student Loans; Scholarships and State Aid.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 12A. CENTERS FOR ECONOMIC DEVELOPMENT AND TECHNOLOGY ADVANCEMENT.

- §18B-12A-1. Legislative findings and purpose.
- §18B-12A-2. Definitions.
- §18B-12A-3. Establishment of centers for economic development and technology advancement; doctoral institutions authorized to enter into agreements.
- §18B-12A-4. Powers and duties of governing bodies and centers.
- §18B-12A-5. Appointment of president; qualifications.
- §18B-12A-6. Agreements; required provisions.
- §18B-12A-7. Audit.
- §18B-12A-8. Conflicts of interest.
- §18B-12A-9. No waiver of sovereign immunity.
- §18B-12A-10. Not obligation of the state.

§18B-12A-1. Legislative findings and purpose.

1 (a) The Legislature finds that economic development in
2 West Virginia depends in part on the effective and efficient
3 management of research grants and opportunities at doctoral
4 institutions of higher education, on collaborations developed
5 between doctoral institutions and businesses and industry and
6 on the advancement and commercialization of new and evol-
7 ing technologies. It is in the best interests of citizens of the state
8 to develop programs which promote these goals and contribute
9 to the general economic welfare of citizens. In order to enhance
10 the competitive position of doctoral institutions in the current
11 environment for research and economic development, expendi-
12 tures for equipment and material for research projects must be
13 handled efficiently and effectively and the acquisition and use
14 of grant funds should be simplified and expedited through the
15 use of centers for economic development and technology
16 advancement.

17 (b) The purpose of this article is to provide a mechanism for
18 doctoral institutions to enter into agreements with centers for
19 economic development and technology advancement to provide
20 research assistance; to provide maximum flexibility as to the
21 form of organization of centers so as to encourage and facilitate
22 private sector participation in and support of research and
23 economic development grants and opportunities in collabora-
24 tion with doctoral institutions; to expedite the acquisition,
25 administration and management of research and development
26 grants and opportunities; to provide technical assistance in the
27 commercialization of research opportunities; and to authorize
28 doctoral institutions to contract with centers organized for the
29 purpose of providing these services.

§18B-12A-2. Definitions.

1 The following words used in this article have the meaning
2 ascribed to them in this section unless the context clearly
3 indicates a different meaning:

4 (a) "Agreement" means any agreement or contractual
5 relationship being entered into between a doctoral institution
6 and a center pursuant to the provisions of this article.

7 (b) "Center" means a center for economic development and
8 technology advancement created pursuant to section three of
9 this article.

10 (c) "Governing body" means the governing body of a center
11 created pursuant to the provisions of this article.

12 (d) "President" means the chief executive officer of a center
13 employed pursuant to section five of this article.

14 (e) "Doctoral institution" means a state institution of higher
15 education as defined in subsection (d), section one, article eight
16 of this chapter.

**§18B-12A-3. Establishment of centers for economic development
and technology advancement; doctoral institu-
tions authorized to enter into agreements.**

1 There is authorized the establishment of independent
2 entities to be known as centers for economic development and
3 technology advancement. Each center shall be formed with
4 respect to a specific doctoral institution and each center shall
5 meet the following conditions:

6 (1) Representatives from private sector business and
7 industry constitute a majority of the voting members of the
8 governing body of each center;

9 (2) The president of the appropriate doctoral institution or
10 a senior member of the doctoral institution's administrative
11 staff is a member of the appropriate governing body.

12 (3) Each center shall be organized as one of the following:

13 (A) A nonprofit, nonstock corporation under the general
14 corporation laws of the state exclusively for charitable, educa-

15 tional or scientific purposes within the meaning of section
16 501(c) of the Internal Revenue Code of 1986, as amended; or

17 (B) A corporation, partnership, limited partnership, limited
18 liability company or other form of entity authorized to be
19 formed under this code.

§18B-12A-4. Powers and duties of governing bodies and centers.

1 The primary responsibility of each center is to foster and
2 support economic development and the advancement and
3 commercialization of new and emerging technologies through
4 collaboration agreements between business-industry and the
5 respective doctoral institution. To that end, the governing body
6 of each center has the following powers and duties:

7 (a) To adopt and amend, from time to time, a statement of
8 purpose and scope of operations. When the governing body
9 amends the purpose or scope of a center, the governing body
10 shall advise the appropriate doctoral institution of the changes;

11 (b) To employ a president subject to the provisions of
12 section five of this article;

13 (c) To approve employment of other staff recommended by
14 the president as being necessary and appropriate to carry out the
15 purpose and scope of the center;

16 (d) To serve as fiscal agent and provide additional services,
17 including, but not limited to, evaluation of technology, verifica-
18 tion and assessment of market applications, grant administra-
19 tion and human resource management for any entity associated
20 with the doctoral institution if the entity is engaged in business-
21 industry collaborations, technology advancement and commer-
22 cialization activities and research into new areas of economic
23 development;

24 (e) To meet as a governing body: *Provided*, That centers
25 created under this article are exempt from the provisions of

26 section three, article nine-a, chapter six of this code and from
27 the provisions of article one, chapter twenty-nine-b of this code;

28 (f) To receive, purchase, hold, lease, use, sell and dispose
29 of real and personal property of all classes, including all kinds
30 of intellectual property, subject to the provisions of section ten
31 of this article;

32 (g) To receive and accept from any public or private
33 agency, corporation, association, person, partnership, company
34 or any other organization or entity of any nature whatsoever
35 grants to be expended in accomplishing the objectives of this
36 article and to receive and accept from the state, from any
37 municipality, county or other political subdivision of the state
38 and from any other source, aid or contributions of either money,
39 property or other things of value to be held, used and applied
40 only for the purposes for which the grants and contributions
41 may be made;

42 (h) To accept and expend any gift, grant, contribution,
43 bequest, endowment or other money for the purposes of this
44 article and to make a maximum effort to encourage external
45 support for the center's programs. Any transfer of endowment
46 or other assets by the doctoral institution to a center or by the
47 center to the doctoral institution for management or investment
48 shall be formalized in a memorandum of agreement to assure,
49 at a minimum, that any restrictions governing the future
50 disposition of funds are preserved;

51 (i) To make, amend and repeal bylaws and rules consistent
52 with the provisions of this article to carry into effect the
53 purpose and scope of the center and, subject to such directions
54 and limitations as may be contained in its governing documents,
55 to delegate the exercise of any of its powers to the president
56 except for the power to approve budgets; to make, amend or
57 repeal its governing documents; or to alter the purpose or scope
58 of the center;

59 (j) In addition to the powers and duties provided for in this
60 section and any other powers and duties that may be assigned

61 to it by law or agreement, each center has such other powers
62 and duties as may be necessary or expedient to accomplish the
63 objectives of this article or as provided by law.

§18B-12A-5. Appointment of president; qualifications.

1 (a) The governing body of each center shall employ a
2 president who shall be the chief executive officer of the center
3 and who shall serve at the will and pleasure of the governing
4 body;

5 (b) The center shall be under the control and supervision of
6 the president who, with the approval of the governing body,
7 may employ staff as is necessary to carry out the center's
8 purpose and scope;

9 (c) The governing body shall set the qualifications for the
10 position of president and shall conduct a thorough search for
11 qualified candidates. A qualified candidate is one who meets at
12 least the following criteria:

13 (1) Possesses a broad understanding of the relationship
14 between public and private sector research, the advancement
15 and commercialization of new and emerging technologies and
16 economic development and has significant experience and an
17 established professional reputation in these fields;

18 (2) Holds, at a minimum, a bachelor's degree in a field
19 related to the duties and responsibilities of the position of
20 president;

21 (3) Demonstrates specifically that he or she has developed
22 effective and successful grant management skills, as well as
23 skill in fostering collaborations between business-industry and
24 doctoral institutions;

25 (4) Demonstrates strong communication skills and the
26 ability to work with all types of businesses and industry,
27 government agencies and higher education institutions; and

28 (5) Possesses other skills, qualifications or attributes as the
29 governing body may consider appropriate or desirable.

§18B-12A-6. Agreements; required provisions.

1 (a) Notwithstanding section ten, article three, chapter
2 twelve of this code or any other provision of law to the con-
3 trary, each doctoral institution is hereby authorized to enter into
4 agreements with one or more centers: *Provided*, That each
5 center is formed with respect to that specific doctoral institution
6 and meets the conditions set forth either in paragraph (A) or
7 paragraph (B), subdivision (2), section three of this article.

8 (b) Any agreement with a center shall benefit the doctoral
9 institution or one or more of its schools, departments or
10 institutes whose purpose is to further economic development,
11 training, education and technology research and development
12 in its region.

13 (c) On the effective date of the agreement, the center is
14 charged with the responsibility of serving as fiscal agent for
15 specified sponsored projects conducted by the faculty, staff and
16 students of the doctoral institution pursuant to terms of the
17 agreement and grants shall be accepted by the center on behalf
18 of the doctoral institution and assigned to the center for fiscal
19 management.

20 (d) If an agreement is terminated, the funds, contributions
21 or grants paid or held by the center and not encumbered or
22 committed prior to termination shall be distributed as provided
23 for in the agreement.

24 (e) If part of the agreement, a center may utilize both center
25 employees and personnel of the doctoral institution. The center
26 may pay the costs incurred by the doctoral institution, including
27 personnel funded on grants and contracts, fringe benefits of
28 personnel funded on grants and contracts, administrative
29 support costs and other costs which may require reimburse-
30 ment. The center may include as costs any applicable overhead
31 and fringe benefit assessments necessary to recover the costs

32 expended by the doctoral institution, pursuant to the terms of
33 the agreement, and the doctoral institution may be reimbursed
34 for expenses incurred by it pursuant to the agreement.

§18B-12A-7. Audit.

1 The operations of the center are subject to an audit by an
2 independent auditor.

§18B-12A-8. Conflicts of interest.

1 Notwithstanding any other provision of this code to the
2 contrary, officers and employees of a governing board and the
3 affected doctoral institution may hold appointments to offices
4 of the center and be members of its governing body or officers
5 or employees of other entities contracting with either the center
6 or a governing board of a doctoral institution. The governing
7 body shall make an annual report of these appointments to the
8 doctoral institution.

§18B-12A-9. No waiver of sovereign immunity.

1 Nothing contained in this article may be construed to waive
2 or abrogate in any way the sovereign immunity of the state or
3 to deprive the governing board of a doctoral institution, a
4 doctoral institution or any officer or employee of a doctoral
5 institution of sovereign immunity.

§18B-12A-10. Not obligation of the state.

1 Obligations of a governing body or its center do not
2 constitute debts or obligations of a doctoral institution, the
3 governing board of a doctoral institution or the state.

**CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS
AND STATE AID.**

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-2. Definitions.

1 (a) "Approved institution of higher education" means:

2 (1) A state institution of higher education as defined in
3 section two, article one, chapter eighteen-b of this code;
4 Alderson-Broadus college, Appalachian Bible college,
5 Bethany college, Mountain State university, Davis and Elkins
6 college, Ohio Valley college, Salem international university, the
7 university of Charleston, West Virginia Wesleyan college and
8 Wheeling Jesuit college, all in West Virginia; and

9 (2) Any other regionally or nationally accredited institution
10 of higher education in this state, public or private, approved by
11 the vice chancellor for administration if the institution has been
12 licensed for a minimum of fifteen years subject to the provi-
13 sions of section five, article three, chapter eighteen-b of this
14 code and section four, article one-b of said chapter.

15 (b) "Grant" or "grant program" means a grant or the grant
16 program authorized and established by the provisions of this
17 article.

18 (c) "Senior administrator" means the vice chancellor for
19 administration, as provided in section two, article one, chapter
20 eighteen-b of this code.

CHAPTER 98

(Com. Sub. for H. B. 2051 — By Delegates Mezzatesta and Williams)

[Passed March 8, 2003; in effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the semester

or term hours required for eligibility; requiring rule provisions to provide for set aside and distribution of funds for certain noncredit and customized training programs; and requiring rule provisions on grant availability for approved distance education.

Be it enacted by the Legislature of West Virginia:

That section seven, article five, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-7. Higher education adult part-time student grant program.

1 (a) There is established the higher education adult part-time
 2 student grant program, referred to in this section as the HEAPS
 3 grant program. The grant program established and authorized
 4 by this section is administered by the vice chancellor for
 5 administration. Moneys appropriated or otherwise available for
 6 the grant program shall be allocated by line item to an appropri-
 7 ate account. Any moneys remaining in the fund at the close of
 8 a fiscal year shall be carried forward for use in the next fiscal
 9 year.

10 (b) As used in this section, the following terms have the
 11 meanings ascribed to them:

12 (1) "Approved distance education" means a course of study
 13 offered via electronic access that has been approved for
 14 inclusion in the applicant's program of study by the eligible
 15 institution of higher education at which the applicant is enrolled
 16 or has been accepted for enrollment;

17 (2) "Part-time" means enrollment for not less than three nor
 18 more than eleven semester or term hours: *Provided*, That in the
 19 case of enrollment in postsecondary certificate, industry
 20 recognized credential and other skill development programs in
 21 demand occupations in this state, "part-time" means enrollment
 22 on such basis as is established for the program in which
 23 enrolled.

24 (3) "Satisfactory academic progress" means maintaining a
25 cumulative grade point average of at least 2.0 on a 4.0 grading
26 scale with a goal of obtaining a certificate, associate degree or
27 bachelor's degree. In the case of postsecondary certificate,
28 industry recognized credential and other skill development
29 programs, satisfactory academic progress means continuous
30 advancement toward completion of the program on the normal
31 schedule established for the program in which enrolled;

32 (4) "Eligible institution" means:

33 (A) Any community college; community and technical
34 college; adult technical preparatory education program or
35 training;

36 (B) Any state college or university, as those terms are
37 defined in section two, article one, chapter eighteen-b of this
38 code;

39 (C) Any approved institution of higher education as that
40 term is defined in section two of this article; and

41 (D) Any approved distance education, including world wide
42 web based courses;

43 (5) "Eligible program or programs" or "eligible course or
44 courses" means, in addition to programs and courses offered by
45 eligible institutions as defined in subdivision (4) of this
46 subsection:

47 (A) Programs and courses offered by any nationally
48 accredited degree granting institution of higher learning
49 permitted pursuant to section five, article three, chapter
50 eighteen-b of this code and approved by the joint commission
51 for vocational-technical-occupational education; and

52 (B) Any postsecondary certificate, industry recognized
53 credential and other skill development programs of study as
54 defined in this section in a demand occupation in this state;

55 (6) "State resident" means a student who has lived in West
56 Virginia continuously for a minimum of twelve months
57 immediately preceding the date of application for a HEAPS
58 grant or renewal of a grant;

59 (7) "Postsecondary certificate program" means an orga-
60 nized program of study, approved by the joint commission for
61 vocational-technical-occupational education, with defined
62 competencies or skill sets that may be offered for credit or
63 noncredit and which culminates in the awarding of a certificate:
64 *Provided*, That postsecondary certificate programs offered by
65 eligible institutions as defined in subdivision (4) of this
66 subsection do not require the approval of the joint commission
67 for vocational-technical- occupational education;

68 (8) "Demand occupation" means any occupation having
69 documented verification from employers that job opportunities
70 in that occupation are currently available or are projected to be
71 available within a year within the state or regions of the state.
72 The joint commission for vocational-technical-occupational
73 education shall prepare and update annually a list of occupa-
74 tions that they determine meet the requirements of this defini-
75 tion;

76 (9) "Industry recognized credential program" means an
77 organized program that meets nationally recognized standards
78 in a particular industry, is approved by the joint commission for
79 vocational-technical-occupational education and which culmi-
80 nates in the awarding of a certification or other credential
81 commonly recognized in that industry: *Provided*, That industry
82 recognized credential programs offered by eligible institutions
83 as defined in subdivision (4) of this subsection do not require
84 the approval of the joint commission for vocational-technical-
85 occupational education; and

86 (10) "Skill development program" means a structured
87 sequence or set of courses, approved by the joint commission
88 for vocational-technical-occupational education, with defined
89 competencies that are designed to meet the specific skill

90 requirements of an occupation and which culminates in the
91 awarding of a certificate of completion that specifically lists the
92 competencies or skills mastered: *Provided*, That skill develop-
93 ment programs offered by eligible institutions as defined in
94 subdivision (4) of this subsection do not require the approval of
95 the joint commission.

96 (c) A person is eligible for consideration for a HEAPS grant
97 if the person:

98 (1) Demonstrates that he or she has applied for, accepted,
99 or both, other student financial assistance in compliance with
100 federal financial aid rules, including the federal Pell grant;

101 (2) Demonstrates financial need for funds, as defined by
102 legislative rule;

103 (3) Is a state resident and may not be considered a resident
104 of any other state;

105 (4) Is a United States citizen or permanent resident thereof;

106 (5) Is not incarcerated in a correctional facility;

107 (6) Is not in default on a higher education loan; and

108 (7) Is enrolled in a program of study at less than the
109 graduate level on a part-time basis in an eligible institution or
110 program of study and is making satisfactory academic progress
111 at the time of application: *Provided*, That the requirement that
112 the student be making satisfactory academic progress may not
113 preclude a HEAPS grant award to a student who has been
114 accepted for enrollment in an eligible institution or program of
115 study but has not yet been enrolled.

116 (d) Each HEAPS grant award is eligible for renewal until
117 the course of study is completed, but not to exceed an additional
118 nine years beyond the first year of the award.

119 (e) The higher education policy commission shall propose
120 a legislative rule pursuant to article three-a, chapter twenty-

121 nine-a of this code to implement the provisions of this section
122 which shall be filed with the legislative oversight commission
123 on education accountability by the first day of September, two
124 thousand three. The Legislature hereby declares that an
125 emergency situation exists and, therefore, the policy commis-
126 sion may establish, by emergency rule, under the procedures of
127 article three-a, chapter twenty-nine-a of this code, a rule to
128 implement the provisions of this section, after approval by the
129 legislative oversight commission on education accountability.

130 (f) The legislative rule shall provide at least the following:

131 (1) That consideration of financial need, as required by
132 subdivision (3), subsection (c) of this section, include the
133 following factors:

134 (A) Whether the applicant has dependents as defined by
135 federal law;

136 (B) Whether the applicant has any personal hardship as
137 determined at the discretion of the vice chancellor for adminis-
138 tration; and

139 (C) Whether the applicant will receive any other source of
140 student financial aid during the award period.

141 (2) That an appropriate allocation process be provided for
142 distribution of funds directly to the eligible institutions or
143 programs based on the part-time enrollment figures of the prior
144 year;

145 (3) That not less than twenty-five percent of the funds
146 appropriated in any one fiscal year be used to make grants to
147 students enrolled in postsecondary certificate, industry recog-
148 nized credential and other skill development programs of study:
149 *Provided*, That after giving written notice to the legislative
150 oversight commission on education accountability, the vice
151 chancellor for administration may allocate less than twenty-five
152 percent of the funds for such grants;

153 (4) That ten percent of the funds appropriated in any one
154 fiscal year shall be granted to state community and technical
155 colleges by the council for community and technical college
156 education in accordance with a process specified in the rule for
157 noncredit and customized training programs which further the
158 economic development goals of the state, help meet the training
159 and skill upgrade needs of employers in the state, and for which
160 funds are not available from other sources;

161 (5) That any funds not expended by an eligible institution
162 or program at the end of each fiscal year shall be returned to the
163 vice chancellor for administration for distribution under the
164 provisions of this section;

165 (6) That grants under this section shall be available for
166 approved distance education throughout the calendar year,
167 subject only to the availability of funds; and

168 (7) That the amount of each HEAPS grant award be
169 determined using the following guidelines:

170 (A) The amount of any HEAPS grant awarded to a student
171 per semester, term hour or program for those students who are
172 enrolled in eligible institutions or programs operated under the
173 jurisdiction of an agency of the state or a political subdivision
174 thereof shall be based upon the following:

175 (i) Actual cost of tuition and fees;

176 (ii) The portion of the costs determined to be appropriate by
177 the commission; and

178 (iii) In addition to factors (i) and (ii) above, in determining
179 the amount of the award, the vice chancellor may consider the
180 demand for the program pursuant to subdivision (8), subsection
181 (b) of this section; and

182 (B) The amount of any HEAPS grant awarded to a student
183 who is enrolled in any other eligible institution, program or
184 course shall be no greater than the average amount for compara-

185 ble programs or courses as determined pursuant to the provi-
186 sions of paragraph (A) above.

187 (g) The vice chancellor for administration shall report
188 annually, by the first day of December, on the status of the
189 HEAPS grant program to the legislative oversight commission
190 on education accountability.

191 (h) The HEAPS grant program is subject to any provision
192 of this article not inconsistent with the provisions of this
193 section.

CHAPTER 99

(H. B. 3093 — By Mr. Speaker, Mr. Kiss, and Delegates Staton,
Kominar and Trump)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring county commissions to follow geographic physical features recognized by the U.S. Census Bureau when determining precinct boundaries.

Be it enacted by the Legislature of West Virginia:

That section five, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

1 (a) The precinct shall be the basic territorial election unit.
2 The county commission shall divide each magisterial district of
3 the county into election precincts, shall number the precincts,
4 shall determine and establish the boundaries thereof, and shall
5 designate one voting place in each precinct, which place shall
6 be established as nearly as possible at the point most convenient
7 for the voters of the precinct. Each magisterial district shall
8 contain at least one voting precinct and each precinct shall have
9 but one voting place therein.

10 Each precinct within any urban center shall contain not less
11 than three hundred nor more than one thousand five hundred
12 registered voters. Each precinct in a rural or less thickly settled
13 area shall contain not less than two hundred nor more than
14 seven hundred registered voters, unless upon a written finding
15 by the county commission that establishment of or retention of
16 a precinct of less than two hundred voters would prevent undue
17 hardship to the voters, the secretary of state determines that
18 such precinct be exempt from the two hundred voter minimum
19 limit. If, at any time the number of registered voters exceeds the
20 maximum number specified, the county commission shall
21 rearrange the precincts within the political division so that the
22 new precincts each contain a number of registered voters within
23 the designated limits. If a county commission fails to rearrange
24 the precincts as required, any qualified voter of the county may
25 apply for a writ of mandamus to compel the performance of this
26 duty: *Provided*, That when in the discretion of the county
27 commission, there is only one place convenient to vote within
28 the precinct and when there are more than seven hundred
29 registered voters within the existing precinct, the county
30 commission may designate two or more precincts with the same
31 geographic boundaries and which have voting places located
32 within the same building. The county commission shall

33 designate alphabetically the voters who will be eligible to vote
34 in each precinct so created. Each such precinct shall be operated
35 separately and independently with separate voting booths, ballot
36 boxes, election commissioners and clerks, and whenever
37 possible, in separate rooms. No two of such precincts may use
38 the same counting board.

39 (b) In order to facilitate the conduct of local and special
40 elections and the use of election registration records therein,
41 precinct boundaries shall be established to coincide with the
42 boundaries of any municipality of the county and with the
43 wards or other geographical districts of the municipality except
44 in instances where found by the county commission to be
45 wholly impracticable so to do. Governing bodies of all munici-
46 palities shall provide accurate and current maps of their
47 boundaries to the clerk of any county commission of a county
48 in which any portion of the municipality is located.

49 (c) To facilitate the federal and state redistricting process,
50 precinct boundaries must be comprised of intersecting geo-
51 graphic physical features or municipal boundaries recognized
52 by the U.S. Census Bureau. For purposes of this subsection,
53 geographic physical features include streets, roads, streams,
54 creeks, rivers, railroad tracks and mountain ridge lines. The
55 county commission of every county must modify precinct
56 boundaries to follow geographic physical features or municipal
57 boundaries and submit changes to the West Virginia office of
58 legislative services by June 30, 2007 and by the thirtieth day of
59 June, every ten calendar years thereafter. The county commis-
60 sion must also submit precinct boundary details to the U.S.
61 Census Bureau upon request.

62 The West Virginia office of legislative services shall be
63 available for consultation with the county commission regard-
64 ing the precinct modification process: *Provided*, That nothing
65 in this subsection removes or limits the ultimate responsibility

66 of the county commission to modify precinct boundaries to
67 follow geographic physical features.

68 (d) The provisions of this section are subject to the provi-
69 sions of section twenty-eight, article four of this chapter
70 relating to the number of voters in precincts in which voting
71 machines are used.

72 (e) The county commission shall keep available at all times
73 during business hours in the courthouse at a place convenient
74 for public inspection a map or maps of the county and munici-
75 palities with the current boundaries of all precincts.

CHAPTER 100

**(S. B. 648 — By Senators Oliverio, Jenkins, Hunter, White, McKenzie,
Kessler, Caldwell, Fanning, Minard, Rowe and Deem)**

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section forty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section twenty, article two of said chapter; to repeal section twenty-one, article four-a of said chapter; to repeal section twenty-one, article nine of said chapter; to amend and reenact sections seven, nine, twenty, twenty-one, twenty-four, twenty-five, twenty-eight, twenty-nine, thirty, thirty-four, thirty-nine, forty-one, forty-four and forty-five, article one of said chapter; to further amend said article by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty; to amend and reenact sections two, three, five, seven, ten, thirteen, nineteen and thirty, article two of said chapter; to further amend said article by adding thereto a new section, designated section

four-a; to amend and reenact sections one, two, two-a, three, five, five-c, seven, eight, ten and eleven, article three of said chapter; to amend and reenact sections ten and twenty-three, article four of said chapter; to amend and reenact sections nine, nineteen, twenty-two, twenty-four-a and twenty-seven, article four-a of said chapter; to amend and reenact sections ten, thirteen, fifteen and nineteen, article five of said chapter; to amend and reenact sections three, four-a, five, six, seven and nine, article six of said chapter; to amend and reenact sections one and four, article seven of said chapter; to amend and reenact sections two, four, five and twelve, article eight of said chapter; to amend and reenact sections seven and eight, article ten of said chapter; and to amend and reenact section two, article six, chapter eight of said code, all relating to elections generally; requiring written notice to registered voters if precinct is changed; clarifying how members of the state executive committees are elected and providing for additional members; specifying the information to be on the general information cards; providing instruction on casting a provisional ballot; requiring posting of names of official write-in candidates; requiring all information available to voters on election day to be available during the early in-person voting period; requiring the circuit clerk to transfer absentee ballots to the clerk of the county commission where clerk of the county commission is responsible for absentee voting; authorizing poll clerks to pick up election supplies; authorizing reimbursement for county employees who deliver election supplies; prohibiting election officials from also being official write-in candidates; making expanded receiving boards optional; clarifying that alternate election officials be paid for attending training; changing challenged ballot to provisional ballot throughout; clarifying that the clerk of the county commission may use election records and returns to update voter registration records; eliminating the requirement for the immediate arrest of a person accused of voting illegally; establishing procedures for taking and securing affidavits regarding illegal voting; providing for the secured

affidavits to be given to the prosecuting attorney; establishing procedures for challenging ballots and voting a provisional ballot; requiring that the secretary of state establish a system to allow provisional voters to learn whether or not their vote was counted and why; requiring the circuit court to decide proceedings to compel performance of election duties within fifteen days; establishing a state election fund; setting new standards for voting systems; providing for state administrative complaint procedures for election law violations; authorizing the secretary of state to establish and maintain a statewide voter registration list; providing for stricter identification procedures for voter registration; clarifying when seventeen-year-olds may vote in municipal elections; providing that voter registration services will be provided whenever the office of the clerk of the county commission is open for business; clarifying that the secretary of state must periodically review and revise the rule relating to voter registration; clarifying that voter registration lists or data files may not be used or sold for commercial or charitable solicitations or advertising; changing regular absentee voting to early in-person voting; allowing voters who have resided in a nursing home for less than thirty days to vote by an emergency absentee ballot; clarifying that absentee ballots require a mail-in absentee ballot application; authorizing two representatives to assist with absentee voting and establishing qualifications; expanding the early in-person voting period to twenty days; eliminating voting on Monday before a Tuesday election and adding voting on the two Saturdays prior to the election; requiring notice to voters that Monday voting is no longer available; clarifying procedures for, and materials required for, early in-person voting; authorizing representatives to sign the back of mail-in ballots; requiring proper supplies be sent to mail-in absentee voters; establishing measures for securing mail-in absentee ballots; providing that the emergency absentee ballot commissioners must sign an oath; authorizing counties that use paper ballots to begin counting absentee ballots at nine o'clock the morning of election day;

removing certain requirements for challenging absentee ballots; removing language that require ballot commissioner's signatures on absentee ballots; requiring that all electronic voting system materials be retained twenty-two months; providing that a person who assists voters casting their ballots cannot be a candidate on the ballot or an official write-in candidate; removing the requirement that write-in votes be indicated by punching out write-in voting position on a punch card ballot in addition to entering the candidate's name; providing that the publication of sample ballots will be made not more than twenty-six nor less than twenty days prior to the primary and general elections; requiring numbers and perforated stubs on paper ballots; clarifying the requirements for an executive committee to call a meeting to fill vacancies on a ballot; allowing issues of candidate eligibility to be brought before the election commission; requiring the certificate of announcement for a write-in candidate be received by the close of business the eighteenth day prior to the election; requiring contests for state offices, legislative seats and judgeships to be filed within ten days of the certification of the election; removing the requirement that political committees advocating for or against an issue file financial statements; excluding federal political action committees from filing with the state; allowing a change of treasurer of a campaign committee by filing a written statement; requiring that candidates in a primary election file financial statements on the last Saturday in March or within six days thereafter; requiring that candidates in a general election file financial statement on the first Saturday in September or within six days thereafter; eliminating requirement that financial reports be notarized and requiring them to be sworn; allowing corporations to participate in nonpartisan registration and get-out-the-vote campaigns; prohibiting anonymous radio or television advertisements advocating the election or defeat of candidates; clarifying how a vacancy in the office of county commissioner or clerk of the county commission is to be filled; removing requirement to fill certain vacancies by election if the unexpired term is

greater than one year; removing inconsistent time frames for holding annexation election; and clarifying that a majority of votes in the municipality and a majority of votes in the territory to be annexed determine the outcome of annexation elections.

Be it enacted by the Legislature of West Virginia:

That section forty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty, article two of said chapter be repealed; that section twenty-one, article four-a of said chapter be repealed; that section twenty-one, article nine of said chapter be repealed; that sections seven, nine, twenty, twenty-one, twenty-four, twenty-five, twenty-eight, twenty-nine, thirty, thirty-four, thirty-nine, forty-one, forty-four and forty-five, article one of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty; that sections two, three, five, seven, ten, thirteen, nineteen and thirty, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four-a; that sections one, two, two-a, three, five, five-c, seven, eight, ten and eleven, article three of said chapter be amended and reenacted; that sections ten and twenty-three, article four of said chapter be amended and reenacted; that sections nine, nineteen, twenty-two, twenty-four-a and twenty-seven, article four-a of said chapter be amended and reenacted; that sections ten, thirteen, fifteen and nineteen, article five of said chapter be amended and reenacted; that sections three, four-a, five, six, seven and nine, article six of said chapter be amended and reenacted; that sections one and four, article seven of said chapter be amended and reenacted; that sections two, four, five and twelve, article eight of said chapter be amended and reenacted; that sections seven and eight, article ten of said chapter be amended and reenacted; and that section two, article six, chapter eight of said code be amended and reenacted, all to read as follows:

Chapter

- 3. Elections.
- 8. Municipal Corporations.

CHAPTER 3. ELECTIONS.**Article**

- 1. General Provisions and Definitions.
- 2. Registration of Voters.
- 3. Voting by Absentees.
- 4. Voting Machines.
- 4A. Electronic Voting Systems.
- 5. Primary Elections and Nominating Procedures.
- 6. Conduct and Administration of Elections.
- 7. Contested Elections.
- 8. Regulation and Control of Elections.
- 10. Filling Vacancies.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §3-1-7. Precinct changes; procedure; precinct record.
- §3-1-9. Political party committees; how composed; organization.
- §3-1-20. Cards of instructions to voters; sample ballots; posting.
- §3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.
- §3-1-24. Obtaining and delivering election supplies.
- §3-1-25. Supplies by special messenger.
- §3-1-28. Election officials; eligibility, suspension of eligibility.
- §3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.
- §3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.
- §3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.
- §3-1-39. Illegal voting; affidavit; procedure.
- §3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.
- §3-1-44. Compensation of election officials; expenses.
- §3-1-45. Court proceedings to compel performance of duties, etc.
- §3-1-48. State election fund.
- §3-1-49. Voting system standards.
- §3-1-50. Establishment of state-based administrative complaint procedures.

§3-1-7. Precinct changes; procedure; precinct record.

1 (a) Subject to the provisions and limitations of section five
2 of this article, the county commission of any county may
3 change the boundaries of any precinct within the county, or
4 divide any precinct into two or more precincts, or consolidate
5 two or more precincts into one, or change the location of any
6 polling place whenever the public convenience may require it.

7 (b) No order effecting the change, division or consolidation
8 shall be made by the county commission within ninety days
9 prior to an election nor without giving notice at least one month
10 before the change, division or consolidation by publication of
11 the notice as a Class II-0 legal advertisement in compliance
12 with the provisions of article three, chapter fifty-nine of this
13 code. The publication area is the county in which the precinct
14 or precincts are located. The county commission shall also,
15 within fifteen days after the date of the order, publish the order
16 in the manner required for publication of the notice.

17 (c) The county commission shall also, before the next
18 succeeding election, cause the voters in the several precincts
19 affected by the order to be duly registered in the proper precinct
20 or precincts and shall mail written notification to all registered
21 voters affected by the change.

22 (d) The county commission shall keep in a well-bound
23 book, marked "election precinct record", a complete record of
24 all their proceedings hereunder and of every order made
25 creating a precinct or precincts or establishing a place of voting
26 therein. The "election precinct record" shall be kept by the
27 county commission clerk in his or her office and shall, at all
28 reasonable hours, when not actually in use by the county
29 commission, be open to inspection by any citizen of the county.

30 (e) When the county commission establishes a polling place
31 at a location other than the location used for holding the
32 preceding primary, general or special election in that precinct,
33 the commission shall cause a notice to be posted on election
34 day on the door of the previous polling place describing the
35 location of the newly established polling place and shall mail
36 written notification to all registered voters affected by the
37 change.

38 (f) If for any reason the election cannot be held at the
39 designated polling place in a precinct and no provision has been
40 made by the county commission for holding the election at
41 another place, the commissioners of election for that precinct
42 may hold the election at the nearest place which they can secure
43 for the purpose. They shall make known by proclamation to
44 voters present at the time for opening the polls, and by posting
45 a notice at or near the entrance of the first named polling place,
46 the location at which the election will be held. The county
47 commission shall establish another place of voting for that
48 precinct as soon thereafter as practicable.

49 (g) Notwithstanding any provision herein to the contrary, in
50 the case of an emergency, the county commission may make
51 the precinct change no later than sixty days prior to an election
52 in accordance with the requirements herein with the approval of
53 the secretary of state. A change, if made however, shall not
54 cause any voter to be moved to a different district.

§3-1-9. Political party committees; how composed; organization.

1 (a) Every fourth year at the primary election, the voters of
2 each political party in each senatorial district shall elect four
3 members consisting of two male members and two female
4 members of the state executive committee of the party. In
5 senatorial districts containing two or more counties, not more
6 than two elected committee members shall be residents of the

7 same county: *Provided*, That at each election the votes shall be
8 tallied from highest to lowest without regard to gender or
9 county of residence. The two candidates with the highest votes
10 shall be elected first and the other candidates shall be qualified
11 based on vote tallies, gender and county of residence. The
12 committee, when convened and organized as herein provided,
13 shall appoint three additional members of the committee from
14 the state at large which shall constitute the entire voting
15 membership of the state executive committee: *Provided*,
16 *however*, That if it chooses to do so, the committee may by
17 motion or resolution, and in accordance with party rules, may
18 expand the voting membership of the committee. When
19 senatorial districts are realigned following a decennial census,
20 members of the state executive committee previously elected or
21 appointed shall continue in office until the expiration of their
22 terms. Appointments made to fill vacancies on the committee
23 until the next election of executive committee members shall be
24 selected from the previously established districts. At the first
25 election of executive committee members following the
26 realignment of senatorial districts, members shall be elected
27 from the newly established districts.

28 (b) At the primary election, the voters of each political
29 party in each county shall elect one male and one female
30 member of the party's executive committee of the congressio-
31 nal district, of the senatorial district and of the delegate district
32 in which the county is situated, if the county is situated in a
33 multicounty senatorial or delegate district. When districts are
34 realigned following a decennial census, members of an execu-
35 tive committee previously elected in a county to represent that
36 county in a congressional or multicounty senatorial or delegate
37 district executive committee shall continue to represent that
38 county in the appropriate newly constituted multicounty district
39 until the expiration of their terms: *Provided*, That the county
40 executive committee of the political party shall determine
41 which previously elected members will represent the county if

42 the number of multicounty senatorial or delegate districts in the
43 county is decreased; and shall appoint members to complete the
44 remainder of the term if the number of districts is increased.

45 (c) At the same time the voters of the county in each
46 magisterial district or executive committee district, as the case
47 may be, shall elect one male and one female member of the
48 party's county executive committee except that in counties
49 having three executive committee districts, there shall be
50 elected two male and two female members of the party's
51 executive committee from each magisterial or executive
52 committee district.

53 (d) For the purpose of complying with the provisions of this
54 section, the county commission shall create the executive
55 committee districts. The districts shall not be fewer than the
56 number of magisterial districts in the counties, nor shall they
57 exceed in number the following: Forty for counties having a
58 population of one hundred thousand persons or more; thirty for
59 counties having a population of fifty thousand to one hundred
60 thousand; twenty for counties having a population of twenty
61 thousand to fifty thousand; and the districts in counties having
62 a population of less than twenty thousand persons shall be
63 coextensive with the magisterial districts.

64 (e) The executive committee districts shall be as nearly
65 equal in population as practicable and shall each be composed
66 of compact, contiguous territory. The county commissions shall
67 change the territorial boundaries of the districts as required by
68 the increase or decrease in the population of the districts as
69 determined by a decennial census. The changes must be made
70 within two years following the census.

71 (f) All members of executive committees, selected for each
72 political division as herein provided, shall reside within the
73 county or district from which chosen. The term of office of all

74 members of executive committees elected at the primary
75 election in the year one thousand nine hundred ninety-four will
76 begin on the first day of July, following the primary and
77 continue for four years thereafter until their successors are
78 elected and qualified. Vacancies in the state executive commit-
79 tee shall be filled by the members of the committee for the
80 unexpired term. Vacancies in the party's executive committee
81 of a congressional district, senatorial district, delegate district
82 or county shall be filled by the party's executive committee of
83 the county in which the vacancy exists for the unexpired term.

84 (g) As soon as possible after the certification of the election
85 of the new executive committees, as herein provided, they shall
86 convene an organizational meeting within their respective
87 political divisions, on the call of the chairman of corresponding
88 outgoing executive committees or by any member of the new
89 executive committee in the event there is no corresponding
90 outgoing executive committee. During the first meeting the new
91 executive committee must select a chairman, a treasurer and a
92 secretary and other officers as they may desire. Each of the
93 officers shall, for their respective committees, perform the
94 duties that usually appertain to his or her office. The organiza-
95 tional meeting may be conducted prior to the beginning of the
96 term, but no official action other than the election of officers
97 and the appointment to fill vacancies on the committee may be
98 made before the first day of July. A current listing of all
99 executive committees' members shall be filed with the secre-
100 tary of state by the end of July of each year. Vacancies in any
101 executive committee shall be filled no later than four months
102 after the vacancy occurs. The chairman of each executive
103 committee shall submit an updated committee list as changes
104 occur. Executive committee membership lists shall include at
105 least the member's name, full address, employer, telephone
106 number and term information. If a vacancy on an executive
107 committee is not filled within the four-month period prescribed
108 by the provisions of this section, the chair of the executive

109 committee shall name someone to fill the vacancy within ten
110 days of the expiration of the four-month period.

111 (h) Any meeting of any political party executive committee
112 shall be held only after public notice and notice to each member
113 is given according to party rules and shall be open to all
114 members affiliated with the party. Meetings shall be conducted
115 according to party rules, all official actions shall be made by
116 voice vote and minutes shall be maintained and shall be open to
117 inspection by members affiliated with the party.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

1 (a) The board of ballot commissioners of each county shall
2 provide cards of general information which will provide the
3 date of the election and the hours during which polling places
4 will be open, instruction for mail-in registrants and first-time
5 voters and voters' rights and prohibitions against fraud and
6 misrepresentation and cards of instruction for voters in prepar-
7 ing their ballots and casting a provisional ballot as prescribed
8 by the secretary of state. They shall furnish a sufficient number
9 of cards to the commissioners of election at the same time they
10 deliver the ballots for the precinct.

11 (b) The commissioners of election shall post one instruction
12 card in each voting booth giving instructions to the voters on
13 how to prepare the ballots for deposit in the ballot boxes and
14 how to obtain a new ballot in place of one accidentally spoiled.

15 (c) The commissioners of election shall post one or more
16 other cards of general information at places inside and outside
17 of the voting place where voters pass or wait to vote. The
18 commissioners shall also post the official write-in candidates in
19 the same locations inside and outside of the voting place.

20 (d) The ballot commissioners shall have printed, on a
21 different color paper than the official ballot, ten or more copies

22 of sample ballots for each voting place for each election.
23 Sample ballots shall be furnished and posted with the cards of
24 general information at each voting place.

25 (e) During the period of early in-person voting, the official
26 designated to supervise and conduct absentee voting shall post
27 the cards of general information, a list of official write-in
28 candidates and sample ballots within the area where absentee
29 voting is conducted.

§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.

1 (a) The board of ballot commissioners for each county shall
2 provide the ballots and sample ballots necessary for conducting
3 every election for public officers in which the voters of the
4 county participate.

5 (b) The persons required to provide the ballots necessary
6 for conducting all other elections are:

7 (1) The secretary of state, for any statewide special election
8 ordered by the Legislature;

9 (2) The board of ballot commissioners, for any countywide
10 special election ordered by the county commission;

11 (3) The board of education, for any special levy or bond
12 election ordered by the board of education; or

13 (4) The municipal board of ballot commissioners, for any
14 election conducted for or within a municipality except an
15 election in which the matter affecting the municipality is placed
16 on the county ballot at a county election. Ballots other than
17 those printed by the proper authorities as specified in this
18 section shall not be cast, received or counted in any election.

19 (c) When paper ballots are used, the total number of regular
20 official ballots printed shall equal one and one-twentieth times
21 the number of registered voters eligible to vote that ballot. The
22 circuit clerk shall determine the number of absentee official
23 ballots.

24 (d) The number of regular official ballots packaged for each
25 precinct shall equal the number of registered voters of the
26 precinct. The remaining regular official ballots shall be pack-
27 aged and delivered to the circuit clerk who shall retain them
28 unopened until they are required for an emergency. Each
29 package of ballots shall be wrapped and sealed in a manner
30 which will immediately make apparent any attempt to open,
31 alter or tamper with the ballots. Each package of ballots for a
32 precinct shall be clearly labeled in a manner which cannot be
33 altered, with the county name, the precinct number and the
34 number of ballots contained in each package. If the packaging
35 material conceals the face of the ballot, a sample ballot identical
36 to the official ballots contained therein shall be securely
37 attached to the outside of the package or, in the case of ballot
38 cards, the type of ballot shall be included in the label.

39 (e) All absentee ballots necessary for conducting absentee
40 voting in all voting systems shall be delivered to the circuit
41 clerk of the appropriate county not later than the forty-second
42 day before the election. In counties where the clerk of the
43 county commission is responsible for conducting absentee
44 voting, the circuit clerk shall transfer the absentee ballots to the
45 clerk of the county commission prior to the beginning of
46 absentee voting. All official ballots in paper ballot systems shall
47 be delivered to the circuit clerk of the appropriate county not
48 later than twenty-eight days before the election.

49 (f) Upon a finding of the board of ballot commissioners that
50 an official ballot contains an error which, in the opinion of the
51 board, is of sufficient magnitude as to confuse or mislead the

52 voters, the board shall cause the error to be corrected either by
53 the reprinting of the ballots or by the use of stickers printed
54 with the correction and of suitable size to be placed over the
55 error without covering any other portion of the ballot.

§3-1-24. Obtaining and delivering election supplies.

1 (a) It shall be the duty of the clerk of the county commis-
2 sion to appoint one or more of the commissioners of election or
3 poll clerks at each precinct of the county to attend at the offices
4 of the clerks of the circuit court and county commission, as the
5 case may be, at least one day before each election to receive the
6 ballots, ballot boxes, poll books, registration records and forms
7 and all other supplies and materials for conducting the election
8 at the respective precincts. The clerks shall take a receipt for the
9 respective materials delivered to the commissioners of election
10 or poll clerks and shall file the receipt in their respective
11 offices. It shall be the duty of the commissioners or poll clerks
12 to receive the supplies and materials from the respective clerks
13 and to deliver them with the seal of all sealed packages unbro-
14 ken at the election precinct in time to open the election.

15 (b) The commissioners or poll clerks, if they perform the
16 messenger services, shall receive the per diem and mileage rate
17 prescribed by law for this service.

18 (c) Ballots shall be delivered in sealed packages with seals
19 unbroken. For general and special elections the delivered
20 ballots shall not be in excess of one and one-twentieth times the
21 number of registered voters in the precinct. For primary
22 elections the ballots for each party shall be in a separately
23 sealed package containing not more than one and one-twentieth
24 times the number of registered voters of each party in the
25 election precinct.

26 (d) For primary elections one copy of the poll books,
27 including the written or printed forms for oaths of commission-
28 ers of election and poll clerks, shall be supplied at each voting
29 precinct for each political party appearing on the primary ballot.

30 (e) There shall be two ballot boxes for each election
31 precinct for which a receiving and a counting board of election
32 commissioners have been appointed.

§3-1-25. Supplies by special messenger.

1 In case any commissioner of election or poll clerk fails to
2 appear at the offices of the clerks of the county commission and
3 circuit courts by the close of the clerk's office on the day prior
4 to any election, the board of ballot commissioners, the chairman
5 or the circuit clerk shall forthwith dispatch a special messenger
6 to the commissioners of election of each respective precinct
7 with the ballots, registration records, ballot boxes, poll books
8 and other supplies for the precinct. The messenger, if not a
9 county employee, shall be allowed five dollars for this service.
10 The messenger shall also receive mileage up to the rate of
11 reimbursement authorized by the travel management rule of the
12 department of administration for each mile necessarily traveled
13 in the performance of his or her services. The messenger shall
14 promptly report to the clerks of the circuit court and county
15 commission, respectively, and file with the clerks the receipts
16 of the person to whom he or she delivered the ballots and other
17 supplies and his or her affidavit stating when and to whom he
18 or she delivered them.

§3-1-28. Election officials; eligibility, suspension of eligibility.

1 (a) To be eligible to be appointed or serve as an election
2 official in any state, county or municipal election held in West
3 Virginia, a person:

4 (1) Must be a registered voter of the county for elections
5 held throughout the county and a registered voter of the
6 municipality for elections held within the municipality:
7 *Provided*, That if the required number of persons eligible to
8 serve as election officials for a municipal election are not
9 available or are not willing to serve as election officials for a
10 municipal election, a registered voter of the county in which the
11 municipality is located may serve as an election official for
12 elections held within the municipality;

13 (2) Must be able to read and write the English language;

14 (3) May not be a candidate on the ballot or an official write-
15 in candidate in the election;

16 (4) May not be the parent, child, sibling or spouse of a
17 candidate on the ballot or an official write-in candidate in the
18 precinct where the official serves;

19 (5) May not be a person prohibited from serving as an
20 election official pursuant to any other federal or state statute;
21 and

22 (6) May not have been previously convicted of a violation
23 of any election law.

24 (b) The county commission may, upon majority vote,
25 suspend the eligibility to serve as an election official in any
26 election for four years for the following reasons:

27 (1) Failure to appear at the polling place at the designated
28 time without proper notice and just cause;

29 (2) Failure to perform the duties of an election official as
30 required by law;

31 (3) Improper interference with a voter casting a ballot or
32 violating the secrecy of the voter's ballot;

33 (4) Being under the influence of alcohol or drugs while
34 serving as an election official; or

35 (5) Having anything wagered or bet on an election.

36 (c) The county commission may, upon majority vote,
37 suspend the eligibility to serve as an election official in any
38 election for two years upon petition of twenty-five registered
39 voters of the precinct where the official last served and upon
40 presentation of evidence of any of the grounds set forth in
41 subsection (b) of this section: *Provided*, That the petition
42 requesting the suspension of the election official is filed with
43 the county commission at least ninety days prior to an election
44 date. The names of those persons signing the petition must be
45 kept confidential.

**§3-1-29. Boards of election officials; definitions, composition of
boards, determination of number and type.**

1 (a) For the purpose of this article:

2 (1) The term "standard receiving board" means those
3 election officials charged with conducting the process of voting
4 within a precinct and consists of five persons, including one
5 team of poll clerks, one team of election commissioners for the
6 ballot box and one additional election commissioner: *Provided*,
7 That if a municipal election is held at a time when there is no
8 county or state election, the standard receiving board is to
9 consist of four persons, including one team of poll clerks and
10 one team of election commissioners for the ballot box;

11 (2) The term "expanded receiving board" means a standard
12 receiving board as defined in subdivision (1) of this subsection
13 and one additional team of poll clerks;

14 (3) The term “counting board” means those election
15 officials charged with counting the ballots at the precinct in
16 counties using paper ballots and includes one team of poll
17 clerks, one team of election commissioners and one additional
18 commissioner;

19 (4) The term “team of poll clerks” or “team of election
20 commissioners” means two persons appointed by opposite
21 political parties to perform the specific functions of the office:
22 *Provided*, That no team of poll clerks or team of election
23 commissioners may consist of two persons with the same
24 registered political party affiliation or two persons registered
25 with no political party affiliation; and

26 (5) The term “election official trainee” means an individual
27 who is sixteen or seventeen years of age who meets the require-
28 ments of subdivisions (2), (3), (4), (5) and (6), subsection (a),
29 section twenty-eight of this article who serves as a trainee to the
30 standard receiving board on a volunteer basis by assisting the
31 standard receiving board in performing its official duties and
32 who receives credits for an official community service program
33 as may be required to obtain a high school diploma.

34 (b) The composition of boards of election officials shall be
35 as follows:

36 (1) In any primary, general or special election other than a
37 presidential primary or presidential general election, each
38 election precinct is to have one standard receiving board;

39 (2) In presidential primary and presidential general elec-
40 tions, each election precinct is to have one receiving board as
41 follows:

42 (A) For precincts of less than five hundred registered
43 voters, one standard receiving board; and

44 (B) For precincts of more than five hundred registered
45 voters, one standard receiving board or, at the discretion of the
46 county commission, one expanded receiving board.

47 (3) In any election conducted using paper ballots, counting
48 boards may be allowed, disallowed or required as follows:

49 (A) For any state, county or municipal special election, no
50 counting board may be allowed;

51 (B) In a statewide primary or general election, one counting
52 board is required for any precinct of more than four hundred
53 registered voters and one counting board may be allowed, at the
54 discretion of the county commission, for any precinct of at least
55 two hundred but no more than four hundred registered voters;
56 and

57 (C) In a municipal primary or general election, one count-
58 ing board may be allowed, at the discretion of the municipal
59 governing body, for any precinct of more than two hundred
60 registered voters.

61 (c) For each primary and general election in the county, the
62 county commission shall designate the number and type of
63 election boards for the various precincts according to the
64 provisions of this section. At least eighty-four days before each
65 primary and general election the county commission shall
66 notify the county executive committees of the two major
67 political parties in writing of the number of nominations which
68 may be made for poll clerks and election commissioners.

69 (d) For each municipal election, the governing body of the
70 municipality shall perform the duties of the county commission
71 as provided in this section.

72 (e) For each primary, general or special election in the
73 county, the county commission, and for each municipal

74 election, the governing body of the municipality, may appoint
75 one or two election official trainees for each precinct.

**§3-1-30. Nomination and appointment of election officials and
alternates; notice of appointment; appointment to
fill vacancies in election boards.**

1 (a) For any primary, general or special election held
2 throughout a county, poll clerks and election commissioners
3 may be nominated as follows:

4 (1) The county executive committee for each of the two
5 major political parties may, by a majority vote of the committee
6 at a duly called meeting, nominate one qualified person for each
7 team of poll clerks and one qualified person for each team of
8 election commissioners to be appointed for the election;

9 (2) The appointing body shall select one qualified person as
10 the additional election commissioner for each board of election
11 officials;

12 (3) Each county executive committee shall also nominate
13 qualified persons as alternates for at least ten percent of the poll
14 clerks and election commissioners to be appointed in the county
15 and is authorized to nominate as many qualified persons as
16 alternates as there are precincts in the county to be called upon
17 to serve in the event any of the persons originally appointed fail
18 to accept appointment or fail to appear for the required training
19 or for the preparation or execution of their duties;

20 (4) When an executive committee nominates qualified
21 persons as poll clerks, election commissioners or alternates, the
22 committee, or its chairman or secretary on its behalf, shall file
23 in writing with the appointing body, no later than the fifty-sixth
24 day before the election, a list of those persons nominated and
25 the positions for which they are designated.

26 (b) For any municipal primary, general or special election,
27 the poll clerks and election commissioners may be nominated
28 as follows:

29 (1) In municipalities which have municipal executive
30 committees for the two major political parties in the municipal-
31 ity, each committee may nominate election officials in the
32 manner provided for the nomination of election officials by
33 county executive committees in subsection (a) of this section;

34 (2) In municipalities which do not have executive commit-
35 tees, the governing body shall provide by ordinance for a
36 method of nominating election officials or shall nominate as
37 many eligible persons as are required, giving due consideration
38 to any recommendations made by voters of the municipality or
39 by candidates on the ballot.

40 (c) The governing body responsible for appointing election
41 officials is:

42 (1) The county commission for any primary, general or
43 special election ordered by the county commission and any
44 joint county and municipal election;

45 (2) The board of education for any special election ordered
46 by the board of education conducted apart from any other
47 election;

48 (3) The municipal governing body for any primary, general
49 or special municipal election ordered by the governing body.

50 (d) The qualifications for persons nominated to serve as
51 election officials may be confirmed prior to appointment by the
52 clerk of the county commission for any election ordered by the
53 county commission or for any joint county and municipal
54 election and by the official recorder of the municipality for a
55 municipal election.

56 (e) The appropriate governing body shall appoint the
57 election officials for each designated election board no later
58 than the forty-ninth day before the election as follows:

59 (1) Those eligible persons whose nominations for poll clerk
60 and election commissioner were timely filed by the executive
61 committees and those additional persons selected to serve as an
62 election commissioner are to be appointed;

63 (2) The governing body shall fill any positions for which no
64 nominations were filed.

65 (f) At the same time as the appointment of election officials
66 or at a subsequent meeting the governing body shall appoint
67 persons as alternates: *Provided*, That no alternate may be
68 eligible for compensation for election training unless the
69 alternate is subsequently appointed as an election official or is
70 instructed to attend and actually attends training as an alternate
71 and is available to serve on election day. Alternates shall be
72 appointed and serve as follows:

73 (1) Those alternates nominated by the executive committees
74 shall be appointed;

75 (2) The governing body may appoint additional alternates
76 who may be called upon to fill vacancies after all alternates
77 designated by the executive committees have been assigned,
78 have declined to serve or have failed to attend training; and

79 (3) The governing body may determine the number of
80 persons who may be instructed to attend training as alternates.

81 (g) The clerk of the county commission shall appoint
82 qualified persons to fill all vacancies existing after all previ-
83 ously appointed alternates have been assigned, have declined to
84 serve or have failed to attend training.

85 (h) Within seven days following appointment, the clerk of
86 the county commission shall notify, by first-class mail, all
87 election commissioners, poll clerks and alternates of the fact of
88 their appointment and include with the notice a response notice
89 form for the appointed person to return indicating whether or
90 not he or she agrees to serve in the specified capacity in the
91 election.

92 (i) The position of any person notified of appointment who
93 fails to return the response notice or otherwise confirm to the
94 clerk of the county commission his or her agreement to serve
95 within fourteen days following the date of appointment is
96 considered vacant and the clerk shall proceed to fill the vacan-
97 cies according to the provisions of this section.

98 (j) If an appointed election official fails to appear at the
99 polling place by forty-five minutes past five o'clock a.m. on
100 election day, the election officials present shall contact the
101 office of the clerk of the county commission for assistance in
102 filling the vacancy. The clerk shall proceed as follows:

103 (1) The clerk may attempt to contact the person originally
104 appointed, may assign an alternate nominated by the same
105 political party as the person absent if one is available or, if no
106 alternate is available, may appoint another eligible person;

107 (2) If the election officials present are unable to contact the
108 clerk within a reasonable time, they shall diligently attempt to
109 fill the position with an eligible person of the same political
110 party as the party that nominated the person absent until a
111 qualified person has agreed to serve;

112 (3) If two teams of election officials, as defined in section
113 twenty-nine of this article, are present at the polling place, the
114 person appointed to fill a vacancy in the position of the addi-
115 tional commissioner may be of either political party.

116 (k) In a municipal election, the recorder or other official
117 designated by charter or ordinance to perform election responsi-
118 bilities shall perform the duties of the clerk of the county
119 commission as provided in this section.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

1 (a) Any person desiring to vote in an election shall, upon
2 entering the election room, clearly state his or her name and
3 residence to one of the poll clerks who shall thereupon an-
4 nounce the same in a clear and distinct tone of voice. If that
5 person is found to be duly registered as a voter at that precinct,
6 he or she shall be required to sign his or her name in the space
7 marked "signature of voter" on the pollbook prescribed and
8 provided for the precinct. If that person is physically or
9 otherwise unable to sign his or her name, his or her mark shall
10 be affixed by one of the poll clerks in the presence of the other
11 and the name of the poll clerk affixing the voter's mark shall be
12 indicated immediately under the affixation. No ballot may be
13 given to the person until he or she so signs his or her name on
14 the pollbook or his or her signature is so affixed thereon.

15 (b) The clerk of the county commission is authorized, upon
16 verification that the precinct at which a handicapped person is
17 registered to vote is not handicap accessible, to transfer that
18 person's registration to the nearest polling place in the county
19 which is handicap accessible. A request by a handicapped
20 person for a transfer of registration must be received by the
21 county clerk no later than thirty days prior to the date of the
22 election. Any handicapped person who has not made a request
23 for a transfer of registration at least thirty days prior to the date
24 of the election may vote a provisional ballot at a handicap
25 accessible polling place in the county of his or her registration.
26 If during the canvass the county commission determines that
27 the person had been registered in a precinct that is not handicap

28 accessible, the voted ballot, if otherwise valid, shall be counted.
29 The handicapped person may vote in the precinct to which the
30 registration was transferred only as long as the disability exists
31 or the precinct from which the handicapped person was
32 transferred remains inaccessible to the handicapped. To ensure
33 confidentiality of the transferred ballot, the county clerk
34 processing the ballot shall provide the voter with an unmarked
35 envelope and an outer envelope designated "provisional
36 ballot/handicapped voter". After validation of the ballot at the
37 canvass, the outer envelope shall be destroyed and the handi-
38 capped voter's ballot shall be placed with other approved
39 provisional ballots prior to removal of the ballot from the
40 unmarked envelope.

41 (c) When the voter's signature is properly on the pollbook,
42 the two poll clerks shall sign their names in the places indicated
43 on the back of the official ballot and deliver the ballot to the
44 voter to be voted by him or her without leaving the election
45 room. If he or she returns the ballot spoiled to the clerks, they
46 shall immediately mark the ballot "spoiled" and it shall be
47 preserved and placed in a spoiled ballot envelope together with
48 other spoiled ballots to be delivered to the board of canvassers
49 and deliver to the voter another official ballot, signed by the
50 clerks on the reverse side required by this subsection. The voter
51 shall thereupon retire alone to the booth or compartment
52 prepared within the election room for voting purposes and there
53 prepare his or her ballot using a ballpoint pen of not less than
54 five inches in length or other indelible marking device of not
55 less than five inches in length. In voting for candidates in
56 general and special elections, the voter shall comply with the
57 rules and procedures prescribed in section five, article six of
58 this chapter.

59 (d) It is the duty of a poll clerk, in the presence of the other
60 poll clerk, to indicate by a check mark inserted in the appropri-
61 ate place on the registration record of each voter the fact that

62 the voter voted in the election. In primary elections the clerk
63 shall also insert thereon a distinguishing initial or initials of the
64 political party for whose candidates the voter voted. If a person
65 is challenged at the polls, the challenge shall be indicated by the
66 poll clerks on the registration record, together with the name of
67 the challenger. The subsequent removal of the challenge shall
68 be recorded on the registration record by the clerk of the county
69 commission.

70 (e)(1) No voter may receive any assistance in voting unless,
71 by reason of blindness, disability, advanced age or inability to
72 read and write, that voter is unable to vote without assistance.
73 Any voter qualified to receive assistance in voting under the
74 provisions of this section may:

75 (A) Declare his or her choice of candidates to an election
76 commissioner of each political party who, in the presence of the
77 voter and in the presence of each other, shall prepare the ballot
78 for voting in the manner hereinbefore provided and, on request,
79 shall read to the voter the names of the candidates selected on
80 the ballot;

81 (B) Require the election commissioners to indicate to him
82 or her the relative position of the names of the candidates on the
83 ballot, whereupon the voter shall retire to one of the booths or
84 compartments to prepare his or her ballot in the manner
85 hereinbefore provided;

86 (C) Be assisted by any person of the voter's choice, other
87 than the voter's present or former employer or agent of that
88 employer, the officer or agent of a labor union of which the
89 voter is a past or present member or a candidate on the ballot or
90 an official write-in candidate; or

91 (D) If he or she is handicapped, vote from an automobile
92 outside the polling place or precinct in the presence of an

93 election commissioner of each political party if all of the
94 following conditions are met:

95 (i) The polling place is not handicap accessible; and

96 (ii) No voters are voting or waiting to vote inside the
97 polling place.

98 (2) Any voter who requests assistance in voting but who is
99 believed not to be qualified for assistance under the provisions
100 of this section shall nevertheless be permitted to vote a provi-
101 sional ballot with the assistance of any person herein authorized
102 to render assistance.

103 (3) Any one or more of the election commissioners or poll
104 clerks in the precinct may challenge the ballot on the ground
105 that the voter thereof received assistance in voting it when in
106 his, her or their opinion the person who received assistance in
107 voting is not so illiterate, blind, disabled or of such advanced
108 age as to have been unable to vote without assistance. The
109 election commissioner or poll clerk or commissioners or poll
110 clerks making the challenge shall enter the challenge and reason
111 therefor on the form and in the manner prescribed or authorized
112 by article three of this chapter.

113 (4) An election commissioner or other person who assists
114 a voter in voting:

115 (A) May not in any manner request or seek to persuade or
116 induce the voter to vote any particular ticket or for any particu-
117 lar candidate or for or against any public question and must not
118 keep or make any memorandum or entry of anything occurring
119 within the voting booth or compartment and must not, directly
120 or indirectly, reveal to any person the name of any candidate
121 voted for by the voter or which ticket he or she had voted or
122 how he or she had voted on any public question or anything
123 occurring within the voting booth or compartment or voting

124 machine booth except when required pursuant to law to give
125 testimony as to the matter in a judicial proceeding; and

126 (B) Shall sign a written oath or affirmation before assisting
127 the voter on a form prescribed by the secretary of state stating
128 that he or she will not override the actual preference of the voter
129 being assisted, attempt to influence the voter's choice or
130 mislead the voter into voting for someone other than the
131 candidate of voter's choice. The person assisting the voter shall
132 also swear or affirm that he or she believes that the voter is
133 voting free of intimidation or manipulation: *Provided*, That no
134 person providing assistance to a voter is required to sign an oath
135 or affirmation where the reason for requesting assistance is the
136 voter's inability to vote without assistance because of blindness
137 as defined in section three, article fifteen, chapter five of this
138 code and the inability to vote without assistance because of
139 blindness is certified in writing by a physician of the voter's
140 choice and is on file in the office of the clerk of the county
141 commission.

142 (5) In accordance with instructions issued by the secretary
143 of state, the clerk of the county commission shall provide a
144 form entitled "list of assisted voters", the form of which list
145 shall likewise be prescribed by the secretary of state. The
146 commissioners shall enter the name of each voter receiving
147 assistance in voting the ballot, together with the poll slip
148 number of that voter and the signature of the person or the
149 commissioner from each party who assisted the voter. If no
150 voter has been assisted in voting, the commissioners shall
151 likewise make and subscribe to an oath of that fact on the list.

152 (f) After preparing the ballot the voter shall fold the ballot
153 so that the face is not exposed and so that the names of the poll
154 clerks thereon are seen. The voter shall announce his or her
155 name and present his or her ballot to one of the commissioners
156 who shall hand the same to another commissioner, of a different

157 political party, who shall deposit it in the ballot box if the ballot
158 is the official one and properly signed. The commissioner of
159 election may inspect every ballot before it is deposited in the
160 ballot box to ascertain whether it is single, but without unfold-
161 ing or unrolling it so as to disclose its content. When the voter
162 has voted, he or she shall retire immediately from the election
163 room and beyond the sixty-foot limit thereof and may not return
164 except by permission of the commissioners.

165 (g) Following the election, the oaths or affirmations
166 required by this section from those assisting voters, together
167 with the "list of assisted voters", shall be returned by the
168 election commissioners to the clerk of the county commission
169 along with the election supplies, records and returns. The clerk
170 of the county commission shall make the oaths, affirmations
171 and list available for public inspection and shall preserve them
172 for a period of twenty-two months or until disposition is
173 authorized or directed by the secretary of state, or court of
174 record: *Provided*, That the clerk may use these records to
175 update the voter registration records in accordance with
176 subsection (d), section eighteen, article two of this chapter.

177 (h) Any person making an oath or affirmation required
178 under the provisions of this section who knowingly swears
179 falsely or any person who counsels, advises, aids or abets
180 another in the commission of false swearing under this section
181 is guilty of a misdemeanor and, upon conviction thereof, shall
182 be fined not more than one thousand dollars or confined in the
183 county or regional jail for a period of not more than one year,
184 or both fined and confined.

185 (i) Any election commissioner or poll clerk who authorizes
186 or provides unchallenged assistance to a voter when the voter
187 is known to the election commissioner or poll clerk not to
188 require assistance in voting is guilty of a felony and, upon
189 conviction thereof, shall be fined not more than five thousand

190 dollars or imprisoned in a state correctional facility for a period
191 of not less than one year nor more than five years, or both fined
192 and imprisoned.

§3-1-39. Illegal voting; affidavit; procedure.

1 (a) If at any time during the election any qualified voter
2 shall appear at the polls for the purpose of stating that any
3 person who has voted is an illegal voter in the precinct, that
4 person shall be admitted to the election room and shall appear
5 before a commissioner of election to make an affidavit explain-
6 ing why he or she believes the accused to be an illegal voter.

7 (b) All affidavits alleging illegal voting shall be placed in
8 a strong and durable envelope by the commissioners of election.
9 The envelope shall be securely sealed and each of the commis-
10 sioners shall endorse his or her name on the back of the
11 envelope. At the close of the count the envelope shall be
12 delivered to the clerk of the circuit court in accordance with
13 section sixteen, article five of this chapter and section eight,
14 article six of this chapter. The clerk of the circuit court shall
15 carefully preserve the envelope containing the affidavits and
16 deliver it, with the seal unbroken, to the prosecuting attorney in
17 the county. The prosecuting attorney shall proceed as if it had
18 been made before him or her.

**§3-1-41. Challenged and provisional voter procedures; counting
of provisional voters' ballots; ballots of election
officials.**

1 (a) It shall be the duty of the members of the receiving
2 board, jointly or severally, to challenge the right of any person
3 requesting a ballot to vote in any election if the person's
4 registration record is not available at the time of the election or
5 if the signature written by the person in the poll book does not
6 correspond with the signature purported to be his or hers on the

7 registration record, if the registration record of the person
8 indicates any other legal disqualification or if any other valid
9 challenge exists against the voter pursuant to section ten, article
10 three of this chapter.

11 (b) Any person challenged shall nevertheless be permitted
12 to vote in the election. He or she shall be furnished an official
13 ballot not endorsed by the poll clerks. In lieu of the endorse-
14 ments, the poll clerks shall complete and sign an appropriate
15 form indicating the challenge, the reason thereof and the name
16 or names of the challengers. The form shall be securely
17 attached to the voter's ballot and deposited together with the
18 ballot in a separate box or envelope marked "provisional
19 ballots".

20 (c) At the time that an individual casts a provisional ballot,
21 the poll clerk shall give the individual written information
22 stating that an individual who casts a provisional ballot will be
23 able to ascertain under the free access system established in this
24 section whether the vote was counted and, if the vote was not
25 counted, the reason that the vote was not counted.

26 (d) Provisional ballot shall not be counted by the election
27 officials. The county commission shall, on its own motion, at
28 the time of canvassing of the election returns, sit in session to
29 determine the validity of any challenges according to the
30 provisions of this chapter. If the county commission determines
31 that the challenges are unfounded, each provisional ballot of
32 each challenged voter, if otherwise valid, shall be counted and
33 tallied together with the regular ballots cast in the election. The
34 county commission shall disregard technical errors, omissions
35 or oversights if it can reasonably be ascertained that the
36 challenged voter was entitled to vote.

37 (e) Any person duly appointed as an election commissioner
38 or clerk under the provisions of section twenty-eight of this

39 article who serves in that capacity in a precinct other than the
40 precinct in which the person is legally entitled to vote may cast
41 a provisional ballot in the precinct in which the person is
42 serving as a commissioner or clerk. The ballot shall not be
43 invalid for the sole reason of having been cast in a precinct
44 other than the precinct in which the person is legally entitled to
45 vote. The county commission shall record the provisional ballot
46 on the voter's permanent registration record: *Provided*, That the
47 county commission may only count the votes for the offices that
48 the voter was legally authorized to vote for in his or her own
49 precinct.

50 (f) The secretary of state shall establish a free access system
51 such as a toll-free telephone number or an internet website that
52 may be accessed by any individual who casts a provisional
53 ballot to discover whether the vote of that individual was
54 counted and, if not, the reason that the vote was not counted.

§3-1-44. Compensation of election officials; expenses.

1 (a) Each ballot commissioner is to be paid a sum, to be
2 fixed by the county commission, not exceeding one hundred
3 twenty-five dollars for each day he or she serves as ballot
4 commissioner, but in no case may a ballot commissioner
5 receive allowance for more than ten days' services for any one
6 primary, general or special election.

7 (b) Each commissioner of election and poll clerk is to be
8 paid a sum, to be fixed by the county commission, not exceed-
9 ing one hundred twenty-five dollars for one day's services for
10 attending the school of instruction for election officials if the
11 commissioner or poll clerk provides at least one day's service
12 during an election and a sum not exceeding one hundred
13 seventy-five dollars for his or her services at any one election:
14 *Provided*, That each commissioner of election and poll clerk is
15 to be paid a sum not exceeding one hundred seventy-five

16 dollars for his or her services at any of the three special
17 elections described in subsection (f) of this section.

18 (c) Each alternate commissioner of election and poll clerk
19 may be paid a sum, to be fixed by the county commission, not
20 exceeding fifty dollars for one day's services for attending the
21 school of instruction for election officials: *Provided*, That no
22 alternate may be eligible for compensation for election training
23 unless the alternate is subsequently appointed as an election
24 official or is instructed to attend and actually attends training as
25 an alternate and is available to serve on election day.

26 (d) The commissioners of election or poll clerks obtaining
27 and delivering the election supplies, as provided in section
28 twenty-four of this article, and returning them, as provided in
29 articles five and six of this chapter, are to be paid an additional
30 sum, fixed by the county commission, not exceeding one
31 hundred twenty-five dollars for his or her services pursuant to
32 this subsection at any one election. In addition, he or she is to
33 be paid mileage up to the rate of reimbursement authorized by
34 the travel management rule of the department of administration
35 for each mile necessarily traveled in the performance of his or
36 her services.

37 (e) The compensation of election officers, cost of printing
38 ballots and all other expenses incurred in holding and making
39 the return of elections, other than the three special elections
40 described in subsection (f) of this section, are to be audited by
41 the county commission and paid out of the county treasury.

42 (f) The compensation of election officers, cost of printing
43 ballots and all other reasonable and necessary expenses in
44 holding and making the return of a special election for the
45 purpose of taking the sense of the voters on the question of
46 calling a constitutional convention, of a special election to elect
47 members of a constitutional convention and of a special

48 election to ratify or reject the proposals, acts and ordinances of
49 a constitutional convention are obligations of the state incurred
50 by the ballot commissioners, clerks of the circuit courts, clerks
51 of the county commissions and county commissions of the
52 various counties as agents of the state. All expenses of these
53 special elections are to be audited by the secretary of state. The
54 secretary of state shall prepare and transmit to the county
55 commissions forms on which the county commissions shall
56 certify all expenses of these special elections to the secretary of
57 state. If satisfied that the expenses as certified by the county
58 commissions are reasonable and were necessarily incurred, the
59 secretary of state shall requisition the necessary warrants from
60 the auditor of the state to be drawn on the state treasurer and
61 shall mail the warrants directly to the vendors of the special
62 election services, supplies and facilities.

§3-1-45. Court proceedings to compel performance of duties, etc.

1 Any officer or person upon whom any duty is imposed by
2 this chapter may be compelled to perform his or her duty by
3 writ of mandamus. The circuit courts, or the judges thereof in
4 vacation, shall have jurisdiction by writ and shall, upon
5 affidavit filed showing a proper case, issue a writ to be re-
6 turned, heard and determined within fifteen days from the
7 commencement of the proceedings. If a circuit court, or a judge
8 thereof in vacation, shall proceed against any board of canvass-
9 ers by mandamus, or otherwise, to control, in any manner, the
10 action of the board in the performance of its duties, under the
11 provisions of this article, in any case concerning the election of
12 a member of the House of Delegates, or a state senator, and
13 shall fail to enter a final order in the proceedings, settling all
14 questions presented therein within fifteen days from the
15 commencement of the proceedings, unless delayed by proceed-
16 ings in the supreme court of appeals, or a judge thereof in
17 vacation, the writ shall be dismissed. The board shall convene
18 within not less than five days thereafter and proceed forthwith

19 to the performance of its duties under the provisions of this
20 article. A mandamus shall lie from the supreme court of
21 appeals, or any one of the judges thereof in vacation, returnable
22 before court, to compel any officer herein to do and perform
23 legally any duty required of him or her. In an election of a
24 member of the House of Delegates and state senator, a writ of
25 certiorari, mandamus or prohibition shall lie from the supreme
26 court of appeals, or a judge thereof in vacation, returnable
27 before the court, to correct any error of law and review and
28 correct the proceedings of any circuit court, or the judge thereof
29 in vacation, or any board of canvassers. When any rule to show
30 cause why a writ of mandamus, prohibition or certiorari is
31 issued by the court, or a judge thereof in vacation, it shall be the
32 duty of the court to convene in special session at the state
33 capital, not later than ten days from the date of the writ, to hear
34 and determine all matters arising upon the writ. The issues
35 raised in the petition for a writ of mandamus, prohibition or
36 certiorari shall have precedence over all other business pending
37 before the court. The issues before the court shall be determined
38 within five days from the assembling of the court and, in any
39 case, in ample time for the case to be remanded and final action
40 taken by the circuit court and the board of canvassers in order
41 that the board may perform its duty and issue the certificate of
42 election before the second Wednesday in January, then next
43 following. Mandamus and prohibition proceedings under this
44 section may be upon affidavit alone.

§3-1-48. State election fund.

1 There is hereby created in the state treasury a special
2 revenue account to be known as the "State Election Fund"
3 account. Expenditures from the account shall be used by the
4 secretary of state for the administration of this chapter in
5 accordance with the provisions of 42 U. S. C. §1530, *et seq.*, the
6 Help America Vote Act of 2002, Public Law 107-252, in

7 accordance with the provisions of article eleven, chapter four of
8 this code.

§3-1-49. Voting system standards.

1 (a) In accordance with 42 U. S. C. §1530, *et seq.*, the Help
2 America Vote Act of 2002, Public Law 107-252, each voting
3 system used in an election for federal office shall:

4 (1) Permit the voter to verify, in a private and independent
5 manner, the votes selected by the voter on the ballot before the
6 ballot is cast and counted;

7 (2) Provide the voter with the opportunity, in a private and
8 independent manner, to change the ballot or correct any error
9 before the ballot is cast and counted, including the opportunity
10 to correct the error through the issuance of a replacement ballot
11 if the voter was otherwise unable to change the ballot or correct
12 any error; and

13 (3) If the voter selects votes for more than one candidate for
14 a single office: (A) Notify the voter that the voter has selected
15 more than one candidate for a single office on the ballot; (B)
16 notify the voter before the ballot is cast and counted of the
17 effect of casting multiple votes for the office; and (C) provide
18 the voter with the opportunity to correct the ballot before the
19 ballot is cast and counted: *Provided*, That a county that uses a
20 paper ballot voting system, a punch card voting system or an
21 optical scan voting system may meet the requirements of this
22 paragraph by establishing a voter education program specific to
23 that voting system that notifies each voter of the effect of
24 casting multiple votes for an office; and providing the voter
25 with instructions on how to correct the ballot before it is cast
26 and counted, including instructions on how to correct the error
27 through the issuance of a replacement ballot if the voter was
28 otherwise unable to change the ballot or correct any error.

29 (4) Ensure that any notification required under this section
30 preserves the privacy of the voter and the confidentiality of the
31 ballot.

32 (b) Each voting system used in an election for federal office
33 shall produce a record with an audit capacity for the system
34 which shall meet the following requirements:

35 (1) Produce a permanent paper record with a manual audit
36 capacity for the system; and

37 (2) Provide the voter with an opportunity to change the
38 ballot or correct any error before the ballot is cast and counted
39 and before the permanent paper record is produced.

40 (c) Each voting system used in an election for federal office
41 shall be accessible for individuals with disabilities, including
42 nonvisual accessibility for the blind and visually impaired, in a
43 manner that provides the same opportunity for access and
44 participation, including privacy and independence, as for other
45 voters: *Provided*, That the provisions of this subsection may be
46 satisfied through the use of at least one direct recording
47 electronic voting system or other voting system equipped for
48 individuals with disabilities at each polling place.

**§3-1-50. Establishment of state-based administrative complaint
procedures.**

1 The secretary of state shall establish and maintain a state-
2 based administrative complaint procedure for complaints
3 received concerning election violations which shall meet the
4 following requirements:

5 (1) The procedures shall be uniform and nondiscriminatory.

6 (2) Under the procedures, any person who believes that
7 there is a violation of any provision of this chapter, including a

8 violation which has occurred, is occurring or is about to occur,
9 may file a complaint.

10 (3) Any complaint filed under the procedures shall be in
11 writing, notarized and signed and sworn by the person filing the
12 complaint.

13 (4) The secretary of state may consolidate complaints filed
14 under this section.

15 (5) At the request of the complainant, there shall be a
16 hearing on the record.

17 (6) Violations of any provision of this chapter shall be
18 punishable in accordance with the provisions of article nine of
19 this chapter.

20 (7) If, under the procedures, the secretary of state deter-
21 mines that there is no violation, the secretary of state shall
22 dismiss the complaint and publish the results of the procedures.

23 (8) The secretary of state shall make a final determination
24 with respect to a complaint prior to the expiration of the ninety-
25 day period which begins on the date the complaint is filed
26 unless the complainant consents to a longer period for making
27 a determination.

28 (9) If the secretary of state fails to meet the deadline
29 applicable under subdivision (8) of this section, the complaint
30 shall be resolved within sixty days under alternative dispute
31 resolution procedures established for purposes of this section.
32 The record and other materials from any proceedings conducted
33 under the complaint procedures established under this section
34 shall be made available for use under the alternative dispute
35 resolution procedures.

ARTICLE 2. REGISTRATION OF VOTERS.

- §3-2-2. Eligibility to register to vote.
- §3-2-3. State authority relating to voter registration; chief election official.
- §3-2-4a. Statewide voter registration list.
- §3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.
- §3-2-7. Hours and days of registration in the office of the clerk of the county commission; in-person application for voter registration; identification required.
- §3-2-10. Application for registration by mail.
- §3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.
- §3-2-19. Maintenance of active and inactive registration files in precinct record books and county alphabetical registration file.
- §3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

§3-2-2. Eligibility to register to vote.

1 (a) Any person who possesses the constitutional qualifica-
2 tions for voting may register to vote. To be qualified, a person
3 must be a citizen of the United States and a legal resident of
4 West Virginia and of the county where he or she is applying to
5 register, shall be at least eighteen years of age, except that a
6 person who is at least seventeen years of age and who will be
7 eighteen years of age by the time of the next ensuing general
8 election may also be permitted to register, and shall not be
9 otherwise legally disqualified: *Provided*, That a registered voter
10 who has not reached eighteen years of age may vote both
11 partisan and nonpartisan ballots in a state or county primary
12 election, but may only vote in a municipal primary election if
13 he or she will be eighteen years of age by the time of the next
14 municipal general election, but is not eligible to vote in a
15 special election.

16 (b) Any person who has been convicted of a felony, treason
17 or bribery in an election, under either state or federal law, is
18 disqualified and is not eligible to register or to continue to be

19 registered to vote while serving his or her sentence, including
20 any period of incarceration, probation or parole related thereto.
21 Any person who has been determined to be mentally incompe-
22 tent by a court of competent jurisdiction is disqualified and
23 shall not be eligible to register or to continue to be registered to
24 vote for as long as that determination remains in effect.

**§3-2-3. State authority relating to voter registration; chief elec-
tion official.**

1 (a) The secretary of state, as chief election official of the
2 state as provided in section six, article one-a of this chapter,
3 shall have general supervision of the voter registration proce-
4 dures and practices and the maintenance of voter registration
5 records in the state and shall have authority to require reports
6 and investigate violations to ensure the proper conduct of voter
7 registration throughout the state and all of its subdivisions.

8 (b) The secretary of state, as chief election official of the
9 state, is responsible for implementing, in a uniform and
10 nondiscriminatory manner, a single, uniform, official, central-
11 ized, interactive computerized statewide voter registration list
12 defined, maintained and administered at the state level that
13 contains the name and registration information of every legally
14 registered voter in the state and assigns a unique identifier to
15 each legally registered voter in the state.

16 (c) The secretary of state is hereby designated as the chief
17 election official responsible for the coordination of this state's
18 responsibilities under 42 U. S. C. §1973gg, *et seq.*, the "Na-
19 tional Voter Registration Act of 1993". The secretary of state
20 shall have general supervision of voter registration procedures
21 and practices at agencies and locations providing services as
22 required by the provisions of this article and shall have the
23 authority to propose procedural, interpretive and legislative
24 rules for promulgation in accordance with the provisions of
25 article three, chapter twenty-nine-a of this code for application

26 for registration, transmission of applications, reporting and
27 maintenance of records required by the provisions of this article
28 and for the development, implementation and application of
29 other provisions of this article.

§3-2-4a. Statewide voter registration list.

1 (a) The secretary of state shall implement and maintain a
2 single, official, statewide, centralized, interactive computerized
3 voter registration list of every legally registered voter in the
4 state and shall assign a unique voter registration identifier to
5 each legally registered voter in the state, which shall include the
6 following:

7 (1) The computerized list shall serve as the single system
8 for storing and managing the official list of registered voters
9 throughout the state.

10 (2) The computerized list shall contain the name and
11 registration information of every legally registered voter in the
12 state.

13 (3) Under the computerized list, a unique identifier shall be
14 assigned to each legally registered voter in the state.

15 (4) The computerized list shall be coordinated with other
16 agency databases within the state.

17 (5) The secretary of state and any clerk of the county
18 commission may obtain immediate electronic access to the
19 information contained in the computerized list.

20 (6) Voter registration information obtained by every clerk
21 of the county commission in the state shall be electronically
22 entered into the computerized list on an expedited basis at the
23 time the information is provided to the clerk.

24 (7) The secretary of state shall provide necessary support to
25 enable every clerk of the county commission in the state to
26 enter information as described in subdivision (6) of this
27 subsection.

28 (8) The computerized list shall serve as the official voter
29 registration list for conducting all elections in the state.

30 (b) The secretary of state or any clerk of a county commis-
31 sion shall perform list maintenance with respect to the comput-
32 erized list on a regular basis as follows:

33 (1) If an individual is to be removed from the computerized
34 list, he or she shall be removed in accordance with the provi-
35 sions of 42 U. S. C. §1973gg, *et seq.*, the National Voter
36 Registration Act of 1993.

37 (2) The secretary of state shall coordinate the computerized
38 list with state agency records and remove the names of individ-
39 uals who are not qualified to vote because of felony status or
40 death.

41 (c) The list maintenance performed under subsection (b) of
42 this section shall be conducted in a manner that ensures that:

43 (1) The name of each registered voter appears in the
44 computerized list;

45 (2) Only voters who are not registered or who are not
46 eligible to vote are removed from the computerized list; and

47 (3) Duplicate names are eliminated from the computerized
48 list.

49 (d) The secretary of state and the clerks of all county
50 commissions shall provide adequate technological security
51 measures to prevent the unauthorized access to the comput-
52 ized list established under this section.

53 (e) The secretary of state shall ensure that voter registration
54 records in the state are accurate and updated regularly, includ-
55 ing the following:

56 (1) A system of file maintenance that makes a reasonable
57 effort to remove registrants who are ineligible to vote from the
58 official list of eligible voters. Under the system, consistent with
59 42 U. S. C. §1973gg, *et seq.*, registrants who have not re-
60 sponded to a notice sent pursuant to section twenty-four, article
61 three of this chapter and who have not voted in two consecutive
62 general elections for federal office shall be removed from the
63 official list of eligible voters except that no registrant may be
64 removed solely by reason of a failure to vote.

65 (2) Safeguards to ensure that eligible voters are not re-
66 moved in error from the official list of eligible voters.

67 (f) Applications for voter registration may only be accepted
68 when the following information is provided:

69 (1) Except as provided in subdivision (2) of this subsection,
70 notwithstanding any other provision of law to the contrary, an
71 application for voter registration may not be accepted or
72 processed unless the application includes either: (A) In the case
73 of an applicant who has been issued a current and valid driver's
74 license, the applicant's driver's license number; or (B) in the
75 case of any other applicant, the last four digits of the applicant's
76 social security number.

77 (2) If an applicant for voter registration has not been issued
78 a current and valid driver's license or a social security number,
79 the secretary of state shall assign the applicant a number which
80 will serve to identify the applicant for voter registration
81 purposes. To the extent that the state has a computerized list in
82 effect under this section and the list assigns unique identifying
83 numbers to registrants, the number assigned under this section
84 shall be the unique identifying number assigned under the list.

85 (g) The secretary of state and the commissioner of the
86 division of motor vehicles shall enter into an agreement to
87 match information in the database of the statewide voter
88 registration system with information in the database of the
89 division of motor vehicles to the extent required to enable each
90 official to verify the accuracy of the information provided on
91 applications for voter registration.

92 (h) The commissioner of the division of motor vehicles
93 shall enter into an agreement with the commissioner of social
94 security under 42 U. S. C. §301, *et seq.*, the Social Security Act.

**§3-2-5. Forms for application for registration; information
required and requested; types of application forms;
notices.**

1 (a)(1) All state forms for application for voter registration
2 shall be prescribed by the secretary of state and shall conform
3 with the requirements of 42 U. S. C. §1973gg, *et seq.*, the
4 “National Voter Registration Act of 1993” and the requirements
5 of the provisions of this article. Separate application forms may
6 be prescribed for voter registration conducted by the clerk of
7 the county commission, registration by mail, registration in
8 conjunction with an application for motor vehicle driver’s
9 license and registration at designated agencies. These forms
10 may consist of one or more parts, may be combined with other
11 forms for use in registration by designated agencies or in
12 conjunction with driver licensing and may be revised and
13 reissued as required by the secretary of state to provide for the
14 efficient administration of voter registration.

15 (2) Notwithstanding any provisions of subdivision (1) of
16 this subsection to the contrary, the federal postcard application
17 for voter registration issued pursuant to 42 U. S. C. §1973, *et*
18 *seq.*, the “Uniformed and Overseas Citizens Absentee Voting
19 Act of 1986”, and the mail voter registration application form

20 prescribed by the Federal Election Commission pursuant to 42
21 U. S. C. §1973gg, *et seq.*, the “National Voter Registration Act
22 of 1993”, shall be accepted as a valid form of application for
23 registration pursuant to the provisions of this article.

24 (b) Each application form for registration shall include:

25 (1) A statement specifying the eligibility requirements for
26 registration and an attestation that the applicant meets each
27 eligibility requirement;

28 (2) Any specific notice or notices required for a specific
29 type or use of application by 42 U. S. C. §1973gg, *et seq.*, the
30 “National Voter Registration Act of 1993”;

31 (3) A notice that a voter may be permitted to vote the
32 partisan primary election ballot of a political party only if the
33 voter has designated that political party on the application for
34 registration unless the political party has determined otherwise;

35 (4) The last four digits of the applicant’s social security
36 number or the applicant’s driver’s license number; and

37 (5) Any other instructions or information essential to
38 complete the application process.

39 (c) Each application form shall require that the following be
40 provided by the applicant, under oath, and any application
41 which does not contain each of the following shall be consid-
42 ered incomplete:

43 (1) The applicant’s legal name, including the first name,
44 middle or maiden name, if any, and last name;

45 (2) The month, day and year of the applicant’s birth;

46 (3) The applicant's residence address, including the number
47 and street or route and city and county of residence except:

48 (A) In the case of a person eligible to register under the
49 provisions of 42 U. S. C. §1973ff, *et seq.*, the "Uniformed and
50 Overseas Citizens Absentee Voting Act", the address at which
51 he or she last resided before leaving the United States or
52 entering the uniformed services, or if a dependent child of such
53 a person, the address at which his or her parent last resided; and

54 (B) In the case of a homeless person having no fixed
55 residence address who nevertheless resides and remains
56 regularly within the county, the address of a shelter, assistance
57 center or family member with whom he or she has regular
58 contact or other specific location approved by the clerk of the
59 county commission for the purposes of establishing a voting
60 residence; and

61 (4) The applicant's signature, under penalty of perjury, as
62 provided in section thirty-six of this article to the attestation of
63 eligibility to register to vote and to the truth of the information
64 given.

65 (d) The applicant shall be requested to provide the follow-
66 ing information, but no application shall be rejected for lack of
67 this information:

68 (1) An indication whether the application is for a new
69 registration, change of address, change of name or change of
70 party affiliation;

71 (2) The applicant's choice of political party affiliation, if
72 any, or an indication of no affiliation: *Provided*, That any
73 applicant who does not enter any choice of political party
74 affiliation shall be listed as having no party affiliation on the
75 voting record;

76 (3) The applicant's residence mailing address if different
77 than the residence street address;

78 (4) The last four digits of the applicant's social security
79 number;

80 (5) The applicant's telephone number;

81 (6) The address at which the applicant was last registered
82 to vote, if any, for the purpose of canceling or transferring the
83 previous registration; and

84 (7) The applicant's gender.

85 (e) The secretary of state shall prescribe the printing
86 specifications of each type of voter registration application and
87 the voter registration application portion of any form which is
88 part of a combined agency form.

89 (f) Application forms prescribed in this section may refer
90 to various public officials by title or official position, but in no
91 case may the actual name of any officeholder be printed on the
92 voter registration application or on any portion of a combined
93 application form.

94 (g) No later than the first day of July of each odd-numbered
95 year the secretary of state shall submit the specifications of the
96 voter registration application by mail for statewide bidding for
97 a contract period beginning the first day of September of each
98 odd-numbered year and continuing for two calendar years. The
99 successful bidder shall produce and supply the required mail
100 voter registration forms at the contract price to all purchasers of
101 the form for the period of the contract.

**§3-2-7. Hours and days of registration in the office of the clerk of
the county commission; in-person application for
voter registration; identification required.**

1 (a) The clerk of the county commission shall provide voter
2 registration services at all times when the office of the clerk is
3 open for regular business.

4 (b) Any eligible voter who desires to apply for voter
5 registration in person at the office of the clerk of the county
6 commission shall complete a voter registration application on
7 the prescribed form and shall sign the oath required on that
8 application in the presence of the clerk of the county commis-
9 sion or his or her deputy. The applicant shall present valid
10 identification and proof of age, except that the clerk may waive
11 the proof of age requirement if the applicant is clearly over the
12 age of eighteen.

13 (c) The clerk shall attempt to establish whether the resi-
14 dence address given is within the boundaries of an incorporated
15 municipality and, if so, make the proper entry required for
16 municipal residents to be properly identified for municipal
17 voter registration purposes.

18 (d) Upon receipt of the completed registration application,
19 the clerk shall either:

20 (1) Provide a notice of procedure for verification and notice
21 of disposition of the application and immediately begin the
22 verification process prescribed by the provisions of section
23 sixteen of this article; or

24 (2) Upon presentation of a current driver's license or
25 state-issued identification card containing the residence address
26 as it appears on the voter registration application, issue the
27 receipt of registration.

§3-2-10. Application for registration by mail.

1 (a) Any qualified person may apply to register, change,
2 transfer or correct his or her voter registration by mail. Applica-

3 tion shall be made on a prescribed form as provided by section
4 five of this article.

5 (b) To the extent possible, with funds allocated annually for
6 such purpose, the secretary of state shall make state mail
7 registration forms available for distribution through govern-
8 mental and private entities and organized voter registration
9 programs. The secretary of state shall make a record of all
10 requests by entities or organizations for ten or more forms with
11 a description of the dates and locations in which the proposed
12 registration drive is to be conducted. The secretary of state may
13 limit the distribution to a reasonable amount per group.

14 (c) The clerk of the county commission shall provide up to
15 four mail registration forms to any resident of the county upon
16 request. To the extent possible with funds allocated annually for
17 the purpose, the clerk of the county commission shall make
18 state mail registration forms available for distribution through
19 organized voter registration programs within the county. The
20 clerk of the county commission shall make a record of all
21 requests by entities or organizations for ten or more forms with
22 a description of the dates and locations in which the proposed
23 registration drive is to be conducted. The clerk may limit the
24 distribution to a reasonable amount per group.

25 (d) The applicant shall provide all required information and,
26 only after completing the information, sign the prescribed
27 applicant's oath under penalty of perjury as provided in section
28 thirty-six of this article. No person may alter or add any entry
29 or make any mark which would alter any material information
30 on the voter registration application after the applicant has
31 signed the oath: *Provided*, That the clerk of the county commis-
32 sion may correct any entry upon the request of the applicant
33 provided the request is properly documented and the correction
34 is dated and initialed by the clerk.

35 (e) Completed applications shall be mailed or delivered to
36 the clerk of the county commission of the county in which the
37 voter resides. If a clerk receives a completed mail application
38 form from a voter whose residence address is located in another
39 county, the clerk shall forward that application within three
40 days to the clerk of the county commission of the county of the
41 applicant's residence.

42 (f) Upon receipt of the application for registration by the
43 appropriate clerk of the county commission, the clerk shall:

44 (1) Attempt to establish whether the residence address
45 given is within the boundaries of an incorporated municipality
46 and, if so, make the proper entry required for municipal
47 residents to be properly identified for municipal voter registra-
48 tion purposes; and

49 (2) Immediately begin the verification process required by
50 the provisions of section sixteen of this article.

51 (g) Any person who registers by mail pursuant to this
52 section and who has not previously voted in an election in the
53 state or if the statewide voter registration has not yet been
54 implemented, the voter has not previously voted in the county
55 shall be required to present the following forms of identification
56 to the secretary of state or clerk of the county commission:

57 (1) In the case of an individual who votes in person, a
58 current and valid photo identification; or a copy of a current
59 utility bill, bank statement, government check, paycheck or
60 other government document that shows the name and address
61 of the voter;

62 (2) In the case of an individual who votes by mail, submits
63 with the ballot a copy of a current and valid photo identification
64 or a copy of a current utility bill, bank statement, government

65 check, paycheck or other government document that shows the
66 name and address of the voter.

67 (h) An individual who desires to vote in person or by mail,
68 but who does not meet the requirements of subsection (g), may
69 cast a provisional ballot.

70 (i) Subsection (g) shall not apply in the case of a person:

71 (1) Who registers to vote by mail under 42 U. S. C.
72 §1973gg-4, *et seq.*, and submits as part of his or her registration
73 either a copy of a current and valid photo identification or a
74 copy of a current utility bill, bank statement, government check,
75 paycheck or government document that shows the name and
76 address of the voter;

77 (2)(A) Who registers to vote by mail under 42 U. S. C.
78 §1973gg-4, *et seq.*, and submits with his or her registration
79 either a driver's license number or at least the last four digits of
80 the individual's social security number; and (B) with respect to
81 whom the secretary of state or clerk of the county commission
82 matches the information submitted under paragraph (A) with an
83 existing state identification record bearing the same number,
84 name and date of birth as provided in the registration; or

85 (3) Who is: (A) Entitled to vote by absentee ballot under 42
86 U. S. C. §1973ff-1, *et seq.*, the Uniformed and Overseas
87 Citizens Absentee Voting Act; (B) provided the right to vote
88 otherwise than in person under 42 24 U. S. C. §1973ee-1(b) (2)
89 (B) (ii); or 25 (iii), section 3(b)(2)(B)(ii) of the Voting Accessi-
90 bility for the Elderly and Handicapped Act; (C) entitled to vote
91 otherwise than in person under any other federal law: *Provided,*
92 That any person who has applied for an absentee ballot pursuant
93 to the provisions of subdivision (1), subsection (b), section one,
94 article three of this chapter; paragraph (B), subdivision (2) of
95 said subsection; subdivision (3) of said subsection; or subsec-

96 tion (c) of said section shall not have his or her ballot in that
97 election challenged for failure to appear in person or for failure
98 to present identification.

99 (j) Any person who submits a state mail voter registration
100 application to the clerk of the county commission in the county
101 in which he or she is currently registered for the purpose of
102 entering a change of address within the county, making a
103 change of party affiliation or recording a change of legal name
104 shall not be required to make his or her first vote in person or
105 to present identification or proof of age.

**§3-2-13. Agencies to provide voter registration services; designa-
tion of responsible employees; forms; prohibitions;
confidentiality.**

1 (a) For the purposes of this article, “agency” means a
2 department, division or office of state or local government, or
3 a program supported by state funds, which is designated under
4 this section to provide voter registration services, but does not
5 include departments, divisions or offices required by other
6 sections of this article to provide voter registration services.

7 (b) Beginning on the first day of January, one thousand nine
8 hundred ninety-five, the following agencies shall provide voter
9 registration services pursuant to the provisions of this article:

10 (1) Those state agencies which administer or provide
11 services under the food stamp program, the “Aid to Families
12 with Dependent Children” (AFDC) program, the “Women,
13 Infants and Children” (WIC) program and the medicaid
14 program;

15 (2) Those state-funded agencies primarily engaged in
16 providing services to persons with disabilities;

17 (3) County marriage license offices; and

18 (4) Armed services recruitment offices, as required by
19 federal law.

20 (c) No later than the first day of October, one thousand nine
21 hundred ninety-four, the secretary of state shall, in conjunction
22 with a designated representative of each of the appropriate state
23 agencies, review those programs and offices established and
24 operating with state funds which administer or provide public
25 assistance or services to persons with disabilities and shall
26 promulgate an emergency rule pursuant to the provisions of
27 chapter twenty-nine-a of this code designating the specific
28 programs and offices required to provide voter registration
29 services in order to comply with the requirements of this
30 section and the requirements of the "National Voter Registra-
31 tion Act of 1993" (42 U. S. C. §1973gg, *et seq.*). The offices
32 and programs so designated shall begin providing voter
33 registration services on the first day of January, one thousand
34 nine hundred ninety-five.

35 (d) No later than the first day of July, one thousand nine
36 hundred ninety-six, and each even-numbered year thereafter,
37 the secretary of state shall, in conjunction with the designated
38 representatives of the appropriate state agencies, perform the
39 review as required by the provisions of subsection (c) of this
40 section. The secretary of state shall periodically review and
41 revise, if necessary, the legislative rule designating the specific
42 agencies required to provide voter registration services.

43 (e) Each state agency required to provide services pursuant
44 to the provisions of this article shall designate a current
45 employee of that agency to serve as a state supervisor to
46 administer voter registration services required in all programs
47 under the agency's jurisdiction. Each state supervisor shall be
48 responsible for coordination with the secretary of state, overall

49 operation of the program in conjunction with services within
50 the agency, designation and supervision of local coordinators
51 and for the review of any complaints filed against employees
52 relating to voter registration as provided in this chapter.

53 (f) The state supervisor shall designate a current employee
54 as a local coordinator for voter registration services for each
55 office or program delivery center who shall be responsible for
56 the proper conduct of voter registration services, timely return
57 of completed voter registration applications, proper handling of
58 declinations and reporting requirements. Notice of the designa-
59 tion of these persons shall be made upon request of the secre-
60 tary of state and within five days following any change of
61 designation.

62 (g) The registration application forms used for agency
63 registration shall be issued pursuant to the provisions of section
64 five of this article.

65 (h) The secretary of state, in conjunction with those
66 agencies designated to provide voter registration services
67 pursuant to the provisions of this section, shall prescribe the
68 form or portion of the appropriate agency form required by the
69 provisions of 42 U. S. C. §1973gg, *et seq.*, section 7(a)(6)(B) of
70 the “National Voter Registration Act of 1993”, containing the
71 required notices and providing boxes for the applicant to check
72 to indicate whether the applicant would like to register or
73 decline to register to vote. The form or portion of the form is
74 designated the “declination form”.

75 (i) A person who provides voter registration services shall
76 not:

77 (1) Seek to influence an applicant’s political preference or
78 party registration;

79 (2) Display to any applicant any political preference or
80 party allegiance;

81 (3) Make any statement to an applicant or take any action
82 the purpose or effect of which is to discourage the applicant
83 from registering to vote; or

84 (4) Make any statement to an applicant or take any action
85 the purpose or effect of which is to lead the applicant to believe
86 that a decision to register or not to register has any bearing on
87 the availability of services or benefits.

88 (j) No information relating to the identity of a voter
89 registration agency through which any particular voter is
90 registered or to a declination to register to vote in connection
91 with an application made at any designated agency may be used
92 for any purpose other than voter registration.

**§3-2-19. Maintenance of active and inactive registration files in
precinct record books and county alphabetical
registration file.**

1 (a) Each county shall continue to maintain a record of each
2 active and inactive voter registration in precinct registration
3 books until the statewide voter registration system is adopted
4 pursuant to the provisions of section four-a of this article, fully
5 implemented and given final approval by the secretary of state.
6 The precinct registration books shall be maintained as follows:

7 (1) Each active voter registration shall be entered in the
8 precinct book or books for the county precinct in which the
9 voter's residence is located and shall be filed alphabetically by
10 name, alphabetically within categories, or by numerical street
11 address, as determined by the clerk of the county commission
12 for the effective administration of registration and elections. No
13 active voter registration record shall be removed from the

14 precinct registration books unless the registration is lawfully
15 transferred or canceled pursuant to the provisions of this article.

16 (2) Each voter registration which is designated “inactive”
17 pursuant to the procedures prescribed in section twenty-seven
18 of this article shall be retained in the precinct book for the
19 county precinct in which the voter’s last recorded residence
20 address is located until the time period expires for which a
21 record must remain on the inactive files. Every inactive
22 registration shall be clearly identified by a prominent tag or
23 notation or arranged in a separate section in the precinct book
24 clearly denoting the registration status. No inactive voter
25 registration record shall be removed from the precinct registra-
26 tion books unless the registration is lawfully transferred or
27 canceled pursuant to the provisions of this article.

28 (b) For municipal elections, the registration records of
29 active and inactive voters shall be maintained as follows:

30 (1) County precinct books shall be used in municipal
31 elections when the county precinct boundaries and the municip-
32 al precinct boundaries are the same and all registrants of the
33 precinct are entitled to vote in state, county and municipal
34 elections within the precinct or when the registration records of
35 municipal voters within a county precinct are separated and
36 maintained in a separate municipal section or book for that
37 county precinct and can be used either alone or in combination
38 with other precinct books to make up a complete set of registra-
39 tion records for the municipal election precinct.

40 (2) Upon request of the municipality, and if the clerk of the
41 county commission does not object, separate municipal precinct
42 books shall be maintained in cases where municipal or ward
43 boundaries divide county precincts and it is impractical to use
44 county precinct books or separate municipal sections of those
45 precinct books. If the clerk of the county commission objects to

46 the request of a municipality for separate municipal precinct
47 books, the state election commission must determine whether
48 the separate municipal precinct books should be maintained.

49 (3) No registration record may be removed from a municipi-
50 pal registration record unless the registration is lawfully
51 transferred or canceled pursuant to the provisions of this article
52 in both the county and the municipal registration records.

53 (c) Within thirty days following the entry of any annexation
54 order or change in street names or numbers, the governing body
55 of an incorporated municipality shall file with the clerk of the
56 county commission a certified current official municipal
57 boundary map and a list of streets and ranges of street numbers
58 within the municipality to assist the clerk in determining
59 whether a voter's address is within the boundaries of the
60 municipality.

61 (d) Each county, so long as precinct registration books are
62 maintained, shall maintain a duplicate record of every active
63 and inactive voter registration in a county alphabetical file. The
64 alphabetical file may be maintained on individual paper forms
65 or, upon approval of the secretary of state of a qualified data
66 storage program, may be maintained in digitized format. A
67 qualified data storage program shall be required to contain the
68 same information for each voter registration as the precinct
69 books, shall be subject to proper security from unauthorized
70 alteration and shall be regularly duplicated to backup data
71 storage to prevent accidental destruction of the information on
72 file.

**§3-2-30. Public inspection of voter registration records in the
office of the clerk of the county commission; provid-
ing voter lists for noncommercial use; prohibition
against resale of voter lists for commercial use or
profit.**

1 (a) The active, inactive, rejected and canceled voter
2 registration records shall be made available for public inspec-
3 tion during office hours of the clerk of the county commission
4 in accordance with the provisions of chapter twenty-nine-b of
5 this code as follows:

6 (1) When the active and inactive files are maintained on
7 precinct registration books, any person shall be allowed to
8 examine these files under the supervision of the clerk and
9 obtain copies of records except when a precinct book is in
10 temporary use for updating and preparing lists or during the
11 time the books are sealed for use in an election. Other original
12 voter registration records, including canceled voter records,
13 pending applications, rejected applications, records of change
14 requests, reinstatements and other documents, shall be available
15 for inspection upon specific request;

16 (2) When the active, inactive, rejected and canceled voter
17 files are maintained in data format, any person shall be allowed
18 to examine voter record information in printed form or in a
19 read-only data format on a computer terminal set aside for
20 public use, if available. The data files available shall include all
21 registration and voting information maintained in the file,
22 except that the telephone number and social security number of
23 any voter shall not be available for inspection or copying in any
24 format.

25 (b) Printed lists of registered voters may be purchased for
26 noncommercial use from the clerk of the county commission at
27 a cost of one cent per name.

28 (1) In counties maintaining active and inactive files on
29 precinct registration books only, a separate list for each of the
30 two major political parties and for voters registered independent
31 or other affiliation shall be prepared for each precinct. The lists
32 shall be arranged in alphabetical order or street order, as the

33 books are maintained, and shall include the name, residence
34 address and party affiliation of the voter, along with a designa-
35 tion of inactive status where applicable. The lists shall be
36 prepared prior to the primary election and the clerk shall not be
37 required to supplement or revise those lists as registrations are
38 added or canceled.

39 (2) In counties maintaining active and inactive files in
40 digitized data format, the clerk of the county commission shall,
41 upon request, prepare printed copies of the lists of voters for
42 each precinct. No list prepared under this section may include
43 the telephone number or social security number of the regis-
44 trant. The clerk shall establish a written policy, which shall be
45 posted within public view, listing the options which may be
46 requested for selection and sorting criteria and available data
47 elements, which shall include at least the name, residence
48 address, political party affiliation and status and the format of
49 the lists and the times at which lists will be prepared. A copy of
50 the policy shall be filed with the secretary of state no later than
51 the first day of January, one thousand nine hundred ninety-five,
52 and within thirty days after any change in policy.

53 (c) In counties which maintain voter files in a digitized data
54 format, lists of registered voters may be obtained for noncom-
55 mercial purposes in data format on disk provided and prepared
56 by the clerk of the county commission at a cost of one cent per
57 name plus ten dollars for each disk required. No data file
58 prepared under this subsection may include the telephone
59 number or social security number of the registrant.

60 (d) The fees received by the clerk of the county commission
61 shall be kept in a separate fund under the supervision of the
62 clerk for the purpose of defraying the cost of the preparation of
63 the voter lists. Any unexpended balance in the fund shall be
64 transferred to the general fund of the county commission.

65 (e) After the implementation of the state uniform voter data
66 system, the secretary of state may make voter lists available for
67 sale subject to the limitations as provided in this section for
68 counties, except that the cost shall be one and one-half cents per
69 name plus ten dollars for each disk required. One cent per name
70 for each voter from a particular county on each list sold shall be
71 reimbursed to the appropriate county and one-half cent per
72 name shall be deposited to a special account for purpose of
73 defraying the cost of the preparation of the lists.

74 (f) No voter registration lists or data files containing the
75 names, addresses or other information relating to voters derived
76 from voter data files obtained pursuant to the provisions of this
77 article may be used for commercial or charitable solicitations
78 or advertising, sold or reproduced for resale.

ARTICLE 3. VOTING BY ABSENTEES.

- §3-3-1. Persons eligible to vote absentee ballots.
- §3-3-2. Authority to conduct absentee voting; absentee voting application; form.
- §3-3-2a. Voting booths withing public view to be provided; prohibition against display of campaign material.
- §3-3-3. Early voting in person.
- §3-3-5. Voting an absentee ballot by mail; penalties.
- §3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.
- §3-3-7. Delivery of absentee ballots to polling places.
- §3-3-8. Disposition and counting of absent voters' ballots.
- §3-3-10. Challenging of absent voters' ballots.
- §3-3-11. Preparation, number and handling of absent voters' ballots.

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) All registered and other qualified voters of the county
2 may vote an absentee ballot during the period of early voting in
3 person.

4 (b) Registered voters and other qualified voters in the
5 county are authorized to vote an absentee ballot by mail in the
6 following circumstances:

7 (1) Any voter who is confined to a specific location and
8 prevented from voting in person throughout the period of voting
9 in person because of:

10 (A) Illness, injury or other medical reason;

11 (B) Physical disability or immobility due to extreme
12 advanced age; or

13 (C) Incarceration or home detention: *Provided*, That the
14 underlying conviction is not for a crime which is a felony or a
15 violation of section twelve, thirteen or sixteen, article nine of
16 this chapter involving bribery in an election;

17 (2) Any voter who is absent from the county throughout the
18 period and available hours for voting in person because of:

19 (A) Personal or business travel;

20 (B) Attendance at a college, university or other place of
21 education or training; or

22 (C) Employment which because of hours worked and
23 distance from the county seat make voting in person impossi-
24 ble;

25 (3) Any voter absent from the county throughout the period
26 and available hours for voting in person and who is an absent
27 uniformed services voter or overseas voter, as defined by 42 U.
28 S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens
29 Absentee Voting Act of 1986, including members of the
30 uniformed services on active duty, members of the merchant
31 marine, spouses and dependents of those members on active

32 duty and persons who reside outside the United States and are
33 qualified to vote in the last place in which the person was
34 domiciled before leaving the United States;

35 (4) Any voter who is required to dwell temporarily outside
36 the county and is absent from the county throughout the time
37 for voting in person because of:

38 (A) Serving as an elected or appointed federal or state
39 officer; or

40 (B) Serving in any other documented employment assign-
41 ment of specific duration of four years or less; and

42 (5) Any voter for whom the designated area for absentee
43 voting within the county courthouse or annex of the courthouse
44 and the voter's assigned polling place are inaccessible because
45 of his or her physical disability.

46 (c) Registered voters and other qualified voters in the
47 county may, in the following circumstances, vote an emergency
48 absentee ballot, subject to the availability of the services as
49 provided in this article:

50 (1) Any voter who is confined or expects to be confined in
51 a hospital or other duly licensed health care facility within the
52 county of residence or other authorized area, as provided in this
53 article, on the day of the election;

54 (2) Any voter who resides in a nursing home within the
55 county of residence and would be otherwise unable to vote in
56 person, providing the county commission has authorized the
57 services if the voter has resided in the nursing home for a period
58 of less than thirty days; and

59 (3) Any voter who is working as a replacement poll worker
60 and is assigned to a precinct out of his or her voting district, if

61 the assignment was made after the period for voting an absentee
62 ballot in person has expired.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

1 (a) Absentee voting is to be supervised and conducted by
2 the proper official for the political division in which the
3 election is held, in conjunction with the ballot commissioners
4 appointed from each political party, as follows:

5 (1) For any election held throughout the county, within a
6 political subdivision or territory other than a municipality, or
7 within a municipality when the municipal election is conducted
8 in conjunction with a county election, the clerk of the county
9 commission: *Provided*, That if the clerk of the county commis-
10 sion and the clerk of the circuit court jointly petition the county
11 commission setting forth their agreement that the clerk of the
12 circuit court should continue to supervise and conduct the
13 absentee voting, the county commission shall designate the
14 clerk of the circuit court to supervise and conduct the absentee
15 voting; or

16 (2) The municipal recorder or other officer authorized by
17 charter or ordinance provisions to conduct absentee voting, for
18 any election held entirely within the municipality, or in the case
19 of annexation elections, within the area affected. The terms
20 “clerk” or “circuit clerk” or “official designated to supervise
21 and conduct absentee voting” used elsewhere in this article
22 means municipal recorder or other officer in the case of
23 municipal elections.

24 (b) A person authorized and desiring to vote a mail-in
25 absentee ballot in any primary, general or special election is to
26 make application in writing in the proper form to the proper
27 official as follows:

28 (1) The completed application is to be on a form prescribed
29 by the secretary of state and is to contain the name, date of birth
30 and political affiliation of the voter, residence address within
31 the county, the address to which the ballot is to be mailed, the
32 authorized reason, if any, for which the absentee ballot is
33 requested and, if the reason is illness or hospitalization, the
34 name and telephone number of the attending physician, the
35 signature of the voter to a declaration made under the penalties
36 for false swearing as provided in section three, article nine of
37 this chapter that the statements and declarations contained in
38 the application are true, any additional information which the
39 voter is required to supply, any affidavit which may be required
40 and an indication as to whether it is an application for voting in
41 person or by mail; or

42 (2) For any person authorized to vote an absentee ballot
43 under the provisions of 42 U. S. C. §1973, *et seq.*, the Uni-
44 formed and Overseas Citizens Absentee Voting Act of 1986,
45 the completed application may be on the federal postcard
46 application for absentee ballot form issued under authority of
47 that act; or

48 (3) For any person unable to obtain the official form for
49 absentee balloting at a reasonable time before the deadline for
50 an application for an absentee ballot by mail is to be received
51 by the proper official, the completed application may be in a
52 form set out by the voter, provided all information required to
53 meet the provisions of this article is set forth and the application
54 is signed by the voter requesting the ballot.

§3-3-2a. Voting booths within public view to be provided; prohibition against display of campaign material.

1 Throughout the period of early in-person voting, the official
2 designated to supervise and conduct absentee voting shall make
3 the following provisions for voting:

4 (1) The official shall provide a sufficient number of voting
5 booths or devices appropriate to the voting system at which
6 voters may prepare their ballots. The booths or devices are to be
7 in an area separate from but within clear view of the public
8 entrance area of the official's office or other area designated by
9 the county commission for absentee voting and are to be
10 arranged to ensure the voter complete privacy in casting the
11 ballot.

12 (2) The official shall make the voting area secure from
13 interference with the voter and shall ensure that voted and
14 unvoted ballots are at all times secure from tampering. No
15 person, other than a person lawfully assisting the voter accord-
16 ing to the provisions of this chapter, may be permitted to come
17 within five feet of the voting booth while the voter is voting. No
18 person, other than the officials or employees of the official
19 designated to supervise and conduct absentee voting or mem-
20 bers of the board of ballot commissioners assigned to conduct
21 absentee voting, may enter the area or room set aside for voting.

22 (3) The official designated to supervise and conduct
23 absentee voting shall request the county commission designate
24 another area within the county courthouse or any annex of the
25 courthouse as a portion of the official's office for the purpose
26 of absentee voting in the following circumstances:

27 (A) If the voting area is not accessible to voters with
28 physical disabilities;

29 (B) If the voting area is not within clear view of the public
30 entrance of the office of the official designated to supervise and
31 conduct absentee voting; or

32 (C) If there is no suitable area for absentee voting within
33 the office.

34 Any designated area is subject to the same requirements as
35 the regular absentee voting area.

36 (4) The official designated to supervise and conduct
37 absentee voting shall have at least two representatives to assist
38 with absentee voting: *Provided*, That the two representatives
39 shall not be registered with the same political party affiliation
40 or two persons registered with no political party affiliation. The
41 representatives may be full-time employees, temporary employ-
42 ees hired for the period of absentee voting in person or volun-
43 teers.

44 (5) No person may do any electioneering nor may any
45 person display or distribute in any manner, or authorize the
46 display or distribution of, any literature, posters or material of
47 any kind which tends to influence the voting for or against any
48 candidate or any public question on the property of the county
49 courthouse or any annex facilities during the entire period of
50 regular in-person absentee voting. The official designated to
51 supervise and conduct absentee voting is hereby authorized to
52 remove the material and to direct the sheriff of the county to
53 enforce the prohibition.

§3-3-3. Early voting in person.

1 (a) The voting period for early in-person voting is to be
2 conducted during regular business hours beginning on the
3 twentieth day before the election and continuing through the
4 third day before the election. For any election held on a
5 Tuesday, the early voting period for in-person voting is to be
6 available from 9:00 a.m. to 5:00 p.m. on the two Saturdays
7 prior to the election.

8 (b) Any person desiring to vote during the period of early
9 in-person voting shall, upon entering the election room, clearly
10 state his or her name and residence to the official or representa-

11 tive designated to supervise and conduct absentee voting. If that
12 person is found to be duly registered as a voter in the precinct
13 of his or her residence, he or she shall be required to sign his or
14 her name in the space marked "signature of voter" on the
15 pollbook. If the voter is unable to sign his or her name due to
16 illiteracy or physical disability, the person assisting the voter
17 and witnessing the mark of the voter shall sign his or her name
18 in the space provided. No ballot may be given to the person
19 until he or she signs his or her name on the pollbook.

20 (c) When the voter's signature or mark is properly on the
21 pollbook, two qualified representatives of the official desig-
22 nated to supervise and conduct absentee voting shall sign their
23 names in the places indicated on the back of the official ballot.

24 (d) If the official designated to supervise and conduct
25 absentee voting determines that the voter is not properly
26 registered in the precinct where he or she resides, the clerk or
27 his or her representative shall challenge the voter's absentee
28 ballot as provided in this article.

29 (e) The official designated to supervise and conduct
30 absentee voting shall provide each person voting an absentee
31 ballot in person the following items to be printed as prescribed
32 by the secretary of state:

33 (1) In counties using paper ballots, one of each type of
34 official absentee ballot the voter is eligible to vote, prepared
35 according to law;

36 (2) In counties using punch card systems, one of each type
37 of official absentee ballot the voter is eligible to vote, prepared
38 according to law, and a gray secrecy envelope;

39 (3) In counties using optical scan systems, one of each type
40 of official absentee ballot the voter is eligible to vote, prepared
41 according to law, and a secrecy sleeve; or

42 (4) For direct recording election systems, access to the
43 voting equipment in the voting booth.

44 (f) The voter shall enter the voting booth alone and there
45 mark the ballot: *Provided*, That the voter may have assistance
46 in voting according to the provisions of section four of this
47 article. After the voter has voted the ballot or ballots, the
48 absentee voter shall: Place the ballot or ballots in the gray
49 secrecy envelope and return the ballot or ballots to the official
50 designated to supervise and conduct the absentee voting:
51 *Provided, however*, That in direct recording election systems,
52 once the voter has cast his or her ballot, the voter shall exit the
53 polling place.

54 (g) Upon receipt of the voted ballot, representatives of the
55 official designated to supervise and conduct the absentee voting
56 shall:

57 (1) Remove the ballot stub;

58 (2) Place punch card ballots and paper ballots into one
59 envelope which shall not have any marks except the precinct
60 number and seal the envelope;

61 (3) Place ballots for all voting systems into a ballot box that
62 is secured by two locks with a key to one lock kept by the
63 president of the county commission and a key to the other lock
64 kept by the county clerk;

65 (4) Due to the reenactment of this section by the Legislature
66 in the two thousand three regular session removing authoriza-
67 tion for early in-person voting on the Monday prior to a
68 Tuesday election, to assure notice to all persons that voted on
69 the Monday before the Tuesday election day of the two
70 thousand two general election are made aware of this change,
71 the clerk of each county shall, for the primary election of the
72 year two thousand four, include along with the sample ballots

73 published in local newspapers as required by this chapter a
74 notice to voters that Monday in-person voting will no longer be
75 available.

§3-3-5. Voting an absentee ballot by mail; penalties.

1 (a) Upon oral or written request, the official designated to
2 supervise and conduct absentee voting shall provide to any
3 voter of the county, in person, by mail or by facsimile, if the
4 official has access to facsimile equipment, the appropriate
5 application for voting absentee by mail as provided in this
6 article. The voter shall complete and sign the application in his
7 or her own handwriting or, if the voter is unable to complete the
8 application because of illiteracy or physical disability, the
9 person assisting the voter and witnessing the mark of the voter
10 shall sign his or her name in the space provided.

11 (b) Completed applications for voting an absentee ballot by
12 mail is to be accepted when received by the official designated
13 to supervise and conduct absentee voting in person, by mail or
14 by facsimile, if the official has access to facsimile equipment,
15 within the following times:

16 (1) For persons eligible to vote an absentee ballot under the
17 provisions of subdivision (3), subsection (b), section one of this
18 article, relating to absent uniformed services and overseas
19 voters, not earlier than the first day of January of an election
20 year, or eighty-four days preceding the election, whichever is
21 earlier, and not later than the sixth day preceding the election,
22 which application is to, upon the voter's request, be accepted as
23 an application for the ballots for all elections in the calendar
24 year; and

25 (2) For all other persons eligible to vote an absentee ballot
26 by mail, not earlier than eighty-four days preceding the election
27 and not later than the sixth day preceding the election.

28 (c) Upon acceptance of a completed application, the official
29 designated to supervise and conduct absentee voting shall
30 determine whether the following requirements have been met:

31 (1) The application has been completed as required by law;

32 (2) The applicant is duly registered to vote in the precinct
33 of his or her residence and, in a primary election, is qualified to
34 vote the ballot of the political party requested;

35 (3) The applicant is authorized for the reasons given in the
36 application to vote an absentee ballot by mail;

37 (4) The address to which the ballot is to be mailed is an
38 address outside the county if the voter is applying to vote by
39 mail under the provisions of paragraph (A) or (B), subdivision
40 (2), subsection (b), section one of this article; or subdivision (3)
41 or (4) of said subsection;

42 (5) The applicant is not making his or her first vote after
43 having registered by postcard registration or, if the applicant is
44 making his or her first vote after having registered by postcard
45 registration, the applicant is exempt from these requirements;
46 and

47 (6) No regular and repeated pattern of applications for an
48 absentee ballot by mail for the reason of being out of the county
49 during the entire period of voting in person exists to suggest
50 that the applicant is no longer a resident of the county.

51 (d) If the official designated to supervise and conduct
52 absentee voting determines that the required conditions have
53 been met, two representatives that are registered to vote with
54 different political party affiliations shall sign their names in the
55 places indicated on the back of the official ballot. If the official
56 designated to supervise and conduct absentee voting determines
57 the required conditions have not been met, or has evidence that

58 any of the information contained in the application is not true,
59 the official shall give notice to the voter that the voter's
60 absentee ballot will be challenged as provided in this article and
61 shall enter that challenge.

62 (e) Within one day after the official designated to supervise
63 and conduct absentee voting has both the completed application
64 and the ballot, the official shall mail to the voter at the address
65 given on the application the following items as prescribed by
66 the secretary of state:

67 (1) One of each type of official absentee ballot the voter is
68 eligible to vote, prepared according to law;

69 (2) One envelope, unsealed, which may have no marks
70 except the designation "Absent Voter's Ballot Envelope No. 1"
71 and printed instructions to the voter;

72 (3) One postage paid envelope, unsealed, designated
73 "Absent Voter's Ballot Envelope No. 2";

74 (4) Instructions for voting absentee by mail;

75 (5) For electronic systems, one punching tool for perforat-
76 ing or a device for marking by electronically sensible pen or
77 ink, as may be appropriate;

78 (6) If a punching tool is to be utilized, one disposable
79 styrofoam block to be placed behind the ballot card for voting
80 purposes and to be discarded after use by the voter; and

81 (7) Any other supplies required for voting in the particular
82 voting system.

83 (f) The voter shall mark the ballot alone: *Provided*, That the
84 voter may have assistance in voting according to the provisions
85 of section six of this article. After the voter has voted the ballot

86 or ballots, the voter shall: (1) Place the ballot or ballots in
87 envelope no. 1 and seal that envelope; (2) place the sealed
88 envelope no. 1 in envelope no. 2 and seal that envelope; (3)
89 complete and sign the forms on envelope no. 2; and (4) return
90 that envelope to the official designated to supervise and conduct
91 absentee voting.

92 (g) Except as provided in subsection (h) of this section,
93 absentee ballots returned by United States mail or other express
94 shipping service are to be accepted if: (1) The ballot is received
95 by the official designated to supervise and conduct absentee
96 voting no later than the day after the election; or (2) the ballot
97 bears a postmark of the United States postal service dated no
98 later than election day and the ballot is received by the official
99 designated to supervise and conduct absentee voting no later
100 than the hour at which the board of canvassers convenes to
101 begin the canvass.

102 (h) Absentee ballots received through the United States
103 mail from persons eligible to vote an absentee ballot under the
104 provisions of subdivision (3), subsection (b), section one of this
105 article, relating to uniform services and overseas voters, are to
106 be accepted if the ballot is received by the official designated to
107 supervise and conduct absentee voting no later than the hour at
108 which the board of canvassers convenes to begin the canvass.

109 (i) Ballots received after the proper time which cannot be
110 accepted are to be placed unopened in an envelope marked for
111 the purpose and kept secure for twenty-two months following
112 the election, after which time they are to be destroyed without
113 being opened.

114 (j) Absentee ballots which are hand delivered are to be
115 accepted if they are received by the official designated to
116 supervise and conduct absentee voting no later than the day
117 preceding the election: *Provided*, That no person may hand

118 deliver more than two absentee ballots in any election, and any
119 person hand delivering an absentee ballot is required to certify
120 that he or she has not examined or altered the ballot. Any
121 person who makes a false certification violates the provisions
122 of article nine of this chapter and is subject to those provisions.

123 (k) Upon receipt of the sealed envelope, the official
124 designated to supervise and conduct absentee voting shall:

125 (1) Enter onto the envelope any other required information;

126 (2) Enter the challenge, if any, to the ballot;

127 (3) Enter the required information into the permanent
128 record of persons applying for and voting an absentee ballot in
129 person; and

130 (4) Place the sealed envelope into a ballot box that is
131 secured by two locks with a key to one lock kept by the
132 president of the county commission and a key to the other lock
133 kept by the county clerk.

**§3-3-5c. Procedures for voting an emergency absentee ballot by
qualified voters.**

1 (a) Notwithstanding any other provision of this chapter, a
2 person qualified to vote an emergency absentee ballot, as
3 provided in subsection (c), section one of this article may vote
4 an emergency absentee ballot under the procedures established
5 in this section. The county commission may adopt a policy
6 extending the emergency absentee voting procedures to: (1)
7 Hospitals or other duly licensed health care facilities within an
8 adjacent county or within thirty-five miles of the county seat;
9 or (2) nursing homes within the county: *Provided*, That the
10 policy is to be adopted by the county commission at least ninety
11 days prior to the election that will be affected and a copy of the
12 policy is to be filed with the secretary of state.

13 (b) On or before the fifty-sixth day preceding the date on
14 which any election is to be held the official designated to
15 supervise and conduct absentee voting shall notify the county
16 commission of the number of sets of emergency absentee ballot
17 commissioners which he or she determines necessary to
18 perform the duties and functions pursuant to this section.

19 (c) A set of emergency absentee ballot commissioners at-
20 large shall consist of two persons with different political party
21 affiliations appointed by the county commission in accordance
22 with the procedure prescribed for the appointment of election
23 commissioners under the provisions of article one of this
24 chapter. Emergency absentee ballot commissioners have the
25 same qualifications and rights and take the same oath required
26 under the provisions of this chapter for commissioners of
27 elections. Emergency absentee ballot commissioners are to be
28 compensated for services and expenses in the same manner as
29 commissioners of election or poll clerks obtaining and deliver-
30 ing election supplies under the provisions of section forty-four,
31 article one of this chapter.

32 (d) Upon request of the voter or a member of the voter's
33 immediate family or, when the county commission has adopted
34 a policy to provide emergency absentee voting services to
35 nursing home residents within the county, upon request of a
36 staff member of the nursing home, the official designated to
37 supervise and conduct absentee voting, upon receiving a proper
38 request for voting an emergency absentee ballot no earlier than
39 the seventh day next preceding the election and no later than
40 noon of election day shall supply to the emergency absentee
41 ballot commissioners the application for voting an emergency
42 absentee ballot and the balloting materials. The emergency
43 absentee ballot application is to be prescribed by the secretary
44 of state and is to include the name, residence address and
45 political party affiliation of the voter, the date, location and

46 reason for confinement in the case of an emergency, and the
47 name of the attending physician.

48 (e) The application for an emergency absentee ballot is to
49 be signed by the person applying. If the person applying for an
50 emergency absentee ballot is unable to sign his or her applica-
51 tion because of illiteracy or physical disability, he or she is to
52 make his or her mark on the signature line provided for an
53 illiterate or disabled applicant, the mark is to be witnessed. The
54 person assisting the voter and witnessing the mark of the voter
55 shall sign his or her name in the space provided.

56 (f) A declaration is to be completed and signed by each of
57 the emergency absentee ballot commissioners, stating their
58 names, the date on which they appeared at the place of confine-
59 ment of the person applying for an emergency absentee ballot
60 and the particulars of the confinement.

61 (g) At least one of the emergency absentee ballot commis-
62 sioners receiving the balloting materials shall sign a receipt
63 which is to be attached to the application form. Each of the
64 emergency absentee ballot commissioners shall deliver the
65 materials to the absent voter, await his or her completion of the
66 application and ballot and return the application and the ballot
67 to the official designated to supervise and conduct absentee
68 voting. Upon delivering the application and the voted ballot to
69 the official, the emergency absentee ballot commissioners shall
70 sign an oath that no person other than the absent voter voted the
71 ballot. The application and the voted ballot are to be returned to
72 the official designated to supervise and conduct absentee voting
73 prior to the close of the polls on election day. Any ballots
74 received by the official after the time that delivery may
75 reasonably be made but before the closing of the polls are to be
76 delivered to the canvassing board along with the absentee
77 ballots challenged in accordance with the provisions of section
78 ten of this article.

79 (h) Upon receiving the application and emergency absentee
80 ballot, the official designated to supervise and conduct absentee
81 voting shall ascertain whether the application is complete,
82 whether the voter appears to be eligible to vote an emergency
83 absentee ballot, and whether the voter is properly registered to
84 vote with the office of the clerk of the county commission. If
85 the voter is found to be properly registered in the precinct
86 shown on the application, the ballot is to be delivered to the
87 precinct election commissioner pursuant to section seven of this
88 article. If the voter is found not to be registered or is otherwise
89 ineligible to vote an emergency ballot, the ballot is to be
90 challenged for the appropriate reason provided for in section ten
91 of this article.

92 (i) If either or both of the emergency absentee ballot
93 commissioners refuse to sign any application for voting an
94 emergency absentee ballot, the voter may vote as an emergency
95 absentee and the ballot will be challenged in accordance with
96 the provisions of section ten of this article, in addition to those
97 absentee ballots subject to challenge as provided in that section.

98 (j) Any voter who receives assistance in voting an emer-
99 gency absentee ballot shall comply with the provisions of
100 section six of this article. Any other provisions of this chapter
101 relating to absentee ballots not altered by the provisions of this
102 section are to govern the treatment of emergency absentee
103 ballots.

§3-3-7. Delivery of absentee ballots to polling places.

1 (a) Except as otherwise provided in this article, in counties
2 using paper ballots systems or voting machines, the absentee
3 ballots of each precinct, together with the applications for the
4 absentee ballots, the affidavits made in connection with
5 assistance in voting and any forms, lists and records as may be
6 designated by the secretary of state, are to be delivered in a

7 sealed carrier envelope to the election commissioner of the
8 precinct at the time he or she picks up the official ballots and
9 other election supplies as provided in section twenty-four,
10 article one of this chapter.

11 (b) Absentee ballots received after the election commis-
12 sioner has picked up the official ballots and other election
13 supplies for the precinct are to be delivered to the election
14 commissioner of the precinct who has been designated pursuant
15 to section twenty-four, article one of this chapter, by the official
16 designated to supervise and conduct absentee voting in person
17 or by messenger before the closing of the polls, provided the
18 ballots are received by the official in time to make the delivery.
19 Any ballots received by the official after the time that delivery
20 may reasonably be made but within the time required as
21 provided in subsection (g), section five of this article are to be
22 delivered to the board of canvassers along with the provisional
23 ballots.

§3-3-8. Disposition and counting of absent voters' ballots.

1 (a) In counties using paper ballots, all absentee ballots shall
2 be processed as follows:

3 (1) The ballot boxes containing the absentee ballots shall be
4 opened in the presence of the clerk of the county commission
5 and two representatives of opposite political parties;

6 (2) The ballots shall be separated by precincts as stated on
7 the sealed envelopes containing the ballots; and

8 (3) Absentee ballots shall be delivered to the polls to be
9 opened and counted in accordance with section thirty-three,
10 article one of this chapter, section fifteen, article five of this
11 chapter; and section six, article six of this chapter. Disclosure
12 of any results before the voting has been closed and the precinct

13 returns posted on the door of the polling place shall be a per se
14 violation of the oath taken by the counting board. In all other
15 counties, counting is to begin immediately after closing of the
16 polls.

17 (b) In the counties using punch card systems, the absentee
18 ballots shall be processed as follows:

19 (1) On election day, the ballot boxes containing the
20 absentee ballots shall be delivered to the central counting center
21 and opened in the presence of the clerk of the county commis-
22 sion and two representatives of opposite political parties;

23 (2) The ballots shall be separated by precincts as stated on
24 the sealed envelopes containing the ballots; and

25 (3) The absentee ballots shall be counted in accordance
26 with section twenty-seven, article four-a of this chapter.

27 (c) In counties using optical scan systems, the absentee
28 ballots shall be processed as follows:

29 (1) On election day, the ballot boxes containing the
30 absentee ballots shall be delivered to the central counting center
31 and opened in the presence of the clerk of the county commis-
32 sion and two representatives of opposite political parties; and

33 (2) The absentee ballots shall be counted in accordance
34 with section twenty-seven, article four-a of this chapter.

35 (d) In counties using direct recording elections systems, the
36 absentee ballots shall be counted in accordance with section
37 twenty-seven, article four-a of this chapter.

38 (e) The provisional ballots shall be deposited in a provi-
39 sional ballot envelope and delivered to the board of canvassers.

40 (f) Any election official who determines a person has voted
41 an absent voter's ballot and has also voted at the polls on
42 election day must report the fact to the prosecuting attorney of
43 the county in which the votes were cast.

§3-3-10. Challenging of absent voters' ballots.

1 (a) The official designated to supervise and conduct
2 absentee voting may challenge an absent voter's ballot on any
3 of the following grounds:

4 (1) That the application for an absent voter's ballot has not
5 been completed as required by law;

6 (2) That any statement or declaration contained in the
7 application for an absent voter's ballot is not true;

8 (3) That the applicant for an absent voter's ballot is not
9 registered to vote in the precinct of his or her residence as
10 provided by law;

11 (4) That the person voting an absent voter's ballot by
12 personal appearance in his or her office had assistance in voting
13 the ballot when the person was not qualified for voting assis-
14 tance because: (A) The affidavit of the person who received
15 assistance does not indicate a legally sufficient reason for
16 assistance; or (B) the person who received assistance did not
17 make an affidavit as required by this article; or (C) the person
18 who received assistance is not so illiterate as to have been
19 unable to read the names on the ballot or that he or she is not so
20 physically disabled as to have been unable to see or mark the
21 absent voter's ballot;

22 (5) That the person who voted an absent voter's ballot by
23 mail and received assistance in voting the ballot was not
24 qualified under the provisions of this article for assistance; and

25 (6) That the person has voted absentee by mail as a result
26 of being out of the county more than four consecutive times:
27 *Provided*, That the determination as to whether the person has
28 voted more than four consecutive times does not apply if the
29 person is a citizen residing out of the United States; or a
30 member, spouse or dependent of a member serving in the
31 uniformed services; or a college student living outside of his or
32 her home county.

33 (b) Any one or more of the election commissioners or poll
34 clerks in a precinct may challenge an absent voter's ballot on
35 any of the following grounds:

36 (1) That the application for an absent voter's ballot was not
37 completed as required by law;

38 (2) That any statement or declaration contained in the
39 application for an absent voter's ballot is not true;

40 (3) That the person voting an absent voter's ballot is not
41 registered to vote in the precinct of his or her residence as
42 provided by law;

43 (4) That the signatures of the person voting an absent
44 voter's ballot as they appear on his or her registration record,
45 his or her application for an absent voter's ballot and the absent
46 voter's ballot envelope are not in the same handwriting;

47 (5) That the person voting an absent voter's ballot by
48 personal appearance had assistance in voting the ballot when
49 the person was not qualified for assistance because: (A) The
50 affidavit of the person who received assistance does not
51 indicate a legally sufficient reason for assistance; or (B) the
52 person who received assistance did not make an affidavit as
53 required by this article; or (C) the person who received assis-
54 tance is not so illiterate as to have been unable to read the
55 names on the ballot or that he or she was not so physically

56 disabled as to have been unable to see or mark the absent
57 voter's ballot;

58 (6) That the person voted an absent voter's ballot by mail
59 and received assistance in voting the ballot when not qualified
60 under the provisions of this article for assistance;

61 (7) That the person who voted the absent voter's ballot
62 voted in person at the polls on election day;

63 (8) That the person voted an absent voter's ballot under
64 authority of subdivision (3), subsection (b), section one of this
65 article and is or was present in the county in which he or she is
66 registered to vote between the opening and closing of the polls
67 on election day; and

68 (9) On any other ground or for any reason on which or for
69 which the ballot of a voter voting in person at the polls on
70 election day may be challenged.

71 No challenge may be made to any absent voter ballot if the
72 voter was registered and qualified to vote pursuant to the
73 provisions of subsection (a), section one of this article.

74 (c) Forms for, and the manner of, challenging an absent
75 voter's ballot under the provisions of this article are to be
76 prescribed by the secretary of state.

77 (d) Absent voters' ballots challenged by the official
78 designated to supervise and conduct absentee voting under the
79 provisions of this article are to be transmitted by the official
80 directly to the county commission sitting as a board of canvass-
81 ers. The absent voters' ballots challenged by the election
82 commissioners and poll clerks under the provisions of this
83 article may not be counted by the election officials but are to be
84 transmitted by them to the county commission sitting as a board
85 of canvassers. Action by the board of canvassers on challenged

86 absent voters' ballots is to be governed by the provisions of
87 section forty-one, article one of this chapter.

§3-3-11. Preparation, number and handling of absent voters' ballots.

1 (a) Absent voters' ballots are to be in all respects like other
2 ballots. Not less than seventy days before the date on which any
3 primary, general or special election is to be held, unless a lesser
4 number of days is provided for in any specific election law in
5 which case the lesser number of days applies, the clerks of the
6 circuit courts of the several counties shall estimate and deter-
7 mine the number of absent voters' ballots of all kinds which
8 will be required in their respective counties for that election.
9 The ballots for the election of all officers, or the ratification,
10 acceptance or rejection of any measure, proposition or other
11 public question to be voted on by the voters, are to be prepared
12 and printed under the direction of the board of ballot commis-
13 sioners constituted as provided in article one of this chapter.
14 The several county boards of ballot commissioners shall
15 prepare and have printed, in the number they may determine,
16 absent voters' ballots that are to be printed under their direc-
17 tions as provided in this chapter and those ballots are to be
18 delivered to the clerk of the circuit court of the county not less
19 than forty-two days before the day of the election at which they
20 are to be used. In counties where the clerk of the county
21 commission is responsible for conducting absentee voting, the
22 circuit clerk shall transfer the absentee ballots to the clerk of the
23 county commission prior to the beginning of absentee voting.

24 (b) The official designated to supervise and conduct
25 absentee voting shall be primarily responsible for the mailing,
26 receiving, delivering and otherwise handling of all absent
27 voters' ballots. He or she shall keep a record, as may be
28 prescribed by the secretary of state, of all ballots so delivered
29 for the purpose of absentee voting, as well as all ballots, if any,

30 marked before him or her and shall deliver to the commissioner
31 of election a certificate stating the number of ballots delivered
32 or mailed to absent voters and those marked before him or her,
33 if any, and the names of the voters to whom those ballots have
34 been delivered or mailed or by whom they have been marked,
35 if marked before him or her.

ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

§3-4-23. Voting by challenged voters.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

1 (a) The ballot commissioners of any county in which voting
2 machines are to be used in any election shall cause to be printed
3 for use in the election the ballot labels for the voting machines
4 and paper ballots for absentee voting, voting by persons unable
5 to use the voting machine and provisional ballots or if an
6 electronic voting system or direct recording election equipment
7 is to be used in an election, the ballot commissioners shall
8 comply with requirements of section eleven, article four-a of
9 this chapter. The labels shall be clearly printed in black ink on
10 clear white material in a size that will fit the ballot frames. The
11 paper ballots shall be printed in compliance with the provisions
12 of this chapter governing paper ballots.

13 (b) The heading, the names and arrangement of offices and
14 the printing and arrangement of names of the candidates for
15 each office indicated must be placed on the ballot for the
16 primary election as nearly as possible according to the provi-
17 sions of sections thirteen and thirteen-a, article five of this
18 chapter and for the general election according to the provisions
19 of section two, article six of this chapter: *Provided*, That the
20 staggering of the names of candidates in multicandidate races

21 and the instructions to straight ticket voters prescribed by
22 section two, article six of this chapter shall appear on paper
23 ballots but shall not appear on ballot labels for voting machines
24 which mechanically control crossover voting.

25 (c) Each question to be voted on must be placed at the end
26 of the ballot and must be printed according to the provisions of
27 the laws and regulations governing the question.

28 (d) The ballot labels printed must total in number one and
29 one-half times the total number of corresponding voting
30 machines to be used in the several precincts of the county in the
31 election. All the labels must be delivered to the clerk of the
32 circuit court at least twenty-eight days prior to the day of the
33 election. The clerk of the circuit court shall determine the
34 number of paper ballots needed for absentee voting and to
35 supply the precincts for provisional ballots and ballots to be
36 cast by persons unable to use the voting machine. All required
37 paper ballots shall be delivered to the clerk of the circuit court
38 at least forty-two days prior to the day of the election.

39 (e) When the ballot labels and absentee ballots are deliv-
40 ered, the clerk of the circuit court shall examine them for
41 accuracy, assure that the appropriate ballots and ballot labels
42 are designated for each voting precinct and deliver the ballot
43 labels to the clerk of the county commission who shall insert
44 one set in each machine prior to the inspection of the machines
45 as prescribed in section twelve of this article. The remainder of
46 the ballot labels for each machine shall be retained by the clerk
47 of the county commission for use in an emergency.

48 (f) In addition to all other equipment and supplies required
49 by the provisions of this article, the ballot commissioners shall
50 cause to be printed a supply of instruction cards, sample ballots
51 and facsimile diagrams of the voting machine ballot adequate
52 for the orderly conduct of the election in each precinct in their

53 county. In addition, they shall provide appropriate facilities for
 54 the reception and safekeeping of the ballots of absent voters and
 55 of challenged voters and of the “independent” voters who shall,
 56 in primary elections, cast their votes on nonpartisan candidates
 57 and public questions submitted to the voters.

§3-4-23. Voting by challenged voters.

1 If the right of any person to vote is challenged in accor-
 2 dance with provisions of article one of this chapter relating to
 3 the challenging of voters, the person shall not be permitted to
 4 cast his or her vote by use of the voting machine but he or she
 5 shall be supplied by the election officer at the polling place with
 6 an official printed ballot of the election. The provisional ballot
 7 shall not be endorsed on the back by the poll clerks but, when
 8 voted by the challenged voter, shall have affixed thereto by the
 9 poll clerks their statement of information as to the challenge on
 10 the form prescribed therefor. The provisional ballots shall be
 11 secured, handled and disposed of as provisional ballots in other
 12 elections, as provided in article one of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

§3-4A-19. Conducting electronic voting system elections generally; duties of
 election officers; penalties.

§3-4A-22. Assistance to illiterate and disabled voters.

§3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems
 are used.

§3-4A-27. Proceedings at the central counting center.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design
 2 may not be approved by the state election commission or be
 3 purchased, leased or used by any county commission unless it
 4 meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the act
6 of voting or, at the voter's election, provides for open voting;

7 (2) It is constructed to ensure that no person, except in
8 instances of open voting as provided for in this section, can see
9 or know for whom any voter has voted or is voting;

10 (3) It permits each voter to vote at any election for all
11 persons and offices for whom and which he or she is lawfully
12 entitled to vote, whether or not the name of any person appears
13 on a ballot or ballot label as a candidate; and it permits each
14 voter to vote for as many persons for an office as he or she is
15 lawfully entitled to vote for; and to vote for or against any
16 question upon which he or she is lawfully entitled to vote. The
17 automatic tabulating equipment used in electronic voting
18 systems is to reject choices recorded on any ballot if the number
19 of choices exceeds the number to which a voter is entitled;

20 (4) It permits each voter to deposit, write in, affix upon a
21 ballot, card, envelope or other medium to be provided for that
22 purpose, ballots containing the names of persons for whom he
23 or she desires to vote whose names do not appear upon the
24 ballots or ballot labels;

25 (5) It permits each voter to change his or her vote for any
26 candidate and upon any question appearing upon the ballots or
27 ballot labels up to the time when his or her ballot is deposited
28 in the ballot box or his or her ballot is cast by electronic means;

29 (6) It contains a program deck consisting of cards that are
30 sequentially numbered or consisting of a computer program
31 disk, diskette, tape or other programming media containing
32 sequentially numbered program instructions and coded or
33 otherwise protected from tampering or substitution of the media
34 or program instructions by unauthorized persons and capable of
35 tabulating all votes cast in each election;

36 (7) It contains two standard validation test decks approved
37 as to form and testing capabilities by the state election commis-
38 sion;

39 (8) It correctly records and counts accurately all votes cast
40 for each candidate and for and against each question appearing
41 upon the ballots or ballot labels;

42 (9) It permits each voter at any election other than primary
43 elections by one mark or punch to vote a straight party ticket,
44 as provided in section five, article six of this chapter;

45 (10) It permits each voter in primary elections to vote only
46 for the candidates of the party for which he or she is legally
47 permitted to vote and precludes him or her from voting for any
48 candidate seeking nomination by any other political party,
49 permits him or her to vote for the candidates, if any, for
50 nonpartisan nomination or election and permits him or her to
51 vote on public questions;

52 (11) It, where applicable, is provided with means for
53 sealing or electronically securing the vote recording device to
54 prevent its use and to prevent tampering with ballot labels, both
55 before the polls are open or before the operation of the vote
56 recording device for an election is begun and immediately after
57 the polls are closed or after the operation of the vote recording
58 device for an election is completed;

59 (12) It has the capacity to contain the names of candidates
60 constituting the tickets of at least nine political parties and
61 accommodates the wording of at least fifteen questions;

62 (13) Where vote recording devices are used, they:

63 (A) Are durably constructed of material of good quality and
64 in a workmanlike manner and in a form which makes it safely
65 transportable;

66 (B) Are so constructed with frames for the placing of ballot
67 labels that the labels upon which are printed the names of
68 candidates and their respective parties, titles of offices and
69 wording of questions are reasonably protected from mutilation,
70 disfigurement or disarrangement or are constructed to ensure
71 that the screens upon which appear the names of the candidates
72 and their respective parties, titles of offices and wording of
73 questions are reasonably protected from any modification;

74 (C) Bear a number that will identify it or distinguish it from
75 any other machine;

76 (D) Are constructed to ensure that a voter may easily learn
77 the method of operating it and may expeditiously cast his or her
78 vote for all candidates of his or her choice and upon any public
79 question;

80 (E) Are accompanied by a mechanically or electronically
81 operated instruction model which shows the arrangement of
82 ballot labels, party columns or rows, and questions;

83 (F) For electronic voting systems that utilize a screen upon
84 which votes may be recorded by means of a stylus or by means
85 of touch, are constructed to provide for the direct electronic
86 recording and tabulating of votes cast in a system specifically
87 designed and engineered for the election application;

88 (G) For electronic voting systems that utilize a screen upon
89 which votes may be recorded by means of a stylus or by means
90 of touch, are constructed to prevent any voter from voting for
91 more than the allowable number of candidates for any office, to
92 include an audible or visual signal, or both, warning any voter
93 who attempts to vote for more than the allowable number of
94 candidates for any office or who attempts to cast his or her
95 ballot prior to its completion and are constructed to include a

96 visual or audible confirmation, or both, to the voter upon
97 completion and casting of the ballot;

98 (H) For electronic voting systems that utilize a screen upon
99 which votes may be recorded by means of a stylus or by means
100 of touch, are constructed to present the entire ballot to the voter,
101 in a series of sequential pages, and to ensure that the voter sees
102 all of the ballot options on all pages before completing his or
103 her vote and to allow the voter to review and change all ballot
104 choices prior to completing and casting his or her ballot;

105 (I) For electronic voting systems that utilize a screen upon
106 which votes may be recorded by means of a stylus or by means
107 of touch, are constructed to allow election commissioners to
108 spoil a ballot where a voter fails to properly cast his or her
109 ballot, has departed the polling place and cannot be recalled by
110 a poll clerk to complete his or her ballot;

111 (J) For electronic voting systems that utilize a screen upon
112 which votes may be recorded by means of a stylus or by means
113 of touch, are constructed to allow election commissioners, poll
114 clerks, or both, to designate, mark or otherwise record provi-
115 sional ballots;

116 (K) For electronic voting systems that utilize a screen upon
117 which votes may be recorded by means of a stylus or by means
118 of touch, consist of devices which are independent,
119 nonnetworked voting systems in which each vote is recorded
120 and retained within each device's internal nonvolatile electronic
121 memory and contain an internal security, the absence of which
122 prevents substitution of any other device;

123 (L) For electronic voting systems that utilize a screen upon
124 which votes may be recorded by means of a stylus or by means
125 of touch, store each vote in no fewer than three separate,
126 independent, nonvolatile electronic memory components and

127 that each device contains comprehensive diagnostics to ensure
128 that failures do not go undetected;

129 (M) For electronic voting systems that utilize a screen upon
130 which votes may be recorded by means of a stylus or by means
131 of touch, contain a unique, embedded internal serial number for
132 auditing purposes for each device used to activate, retain and
133 record votes;

134 (N) For electronic voting systems that utilize a screen upon
135 which votes may be recorded by means of a stylus or by means
136 of touch, are constructed to record all preelection, election and
137 post-election activities, including all ballot images and system
138 anomalies, in each device's internal electronic memory and are
139 to be accessible in electronic or printed form;

140 (O) For electronic voting systems that utilize a screen upon
141 which votes may be recorded by means of a stylus or by means
142 of touch, are constructed with a battery backup system in each
143 device to, at a minimum, prevent the loss of any votes, as well
144 as all preelection, election and post-election activities, including
145 all ballot images and system anomalies, stored in the device's
146 internal electronic memory and to allow voting to continue for
147 two hours of uninterrupted operation in case of an electrical
148 power failure; and

149 (P) For electronic voting systems that utilize a screen upon
150 which votes may be recorded by means of a stylus or by means
151 of touch, are constructed to prevent the loss of any votes, as
152 well as all preelection, election and post-election activities,
153 including all ballot images and system anomalies, stored in
154 each device's internal electronic memory even in case of an
155 electrical and battery power failure.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

1 (a) The election officers shall constantly and diligently
2 maintain a watch in order to see that no person votes more than
3 once and to prevent any voter from occupying the voting booth
4 for more than five minutes.

5 (b) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election commissioner represent-
7 ing the party to which the voter belongs shall direct the voter to
8 the vote recording device or supply the voter with a ballot, as
9 may be appropriate, which will allow the voter to vote only for
10 the candidates who are seeking nomination on the ticket of the
11 party with which the voter is affiliated or for unaffiliated voters
12 in accordance with section thirty-one, article two of this
13 chapter.

14 (c) The poll clerk shall issue to each voter when he or she
15 signs the pollbook a card or ticket numbered to correspond to
16 the number on the pollbook of the voter and in the case of a
17 primary election, indicating the party affiliation of the voter,
18 which numbered card or ticket is to be presented to the election
19 commissioner in charge of the voting booth.

20 (d) One hour before the opening of the polls the precinct
21 election commissioners shall arrive at the polling place and set
22 up the voting booths in clear view of the election commission-
23 ers. Where applicable, they shall open the vote recording
24 devices, place them in the voting booths, examine them to see
25 that they have the correct ballots or ballot labels, where
26 applicable by comparing them with the sample ballots, and
27 determine whether they are in proper working order. They shall
28 open and check the ballots, supplies, records and forms and post
29 the sample ballots or ballot labels and instructions to voters.
30 Upon ascertaining that all ballots, supplies, records and forms
31 arrived intact, the election commissioners shall certify their
32 findings in writing upon forms provided and collected by the
33 clerk of the county commission over their signatures to the

34 clerk of the county commission. Any discrepancies are to be
35 noted and reported immediately to the clerk of the county
36 commission. The election commissioners shall then number in
37 sequential order the ballot stub of each ballot in their possession
38 and report in writing to the clerk of the county commission the
39 number of ballots received. They shall issue the ballots in
40 sequential order to each voter.

41 (e) Where applicable, each voter shall be instructed how to
42 operate the vote recording device before he or she enters the
43 voting booth.

44 (f) Where applicable, any voter who spoils, defaces or
45 mutilates the ballot delivered to him or her, on returning the
46 ballot to the poll clerks, shall receive another in its place. Every
47 person who does not vote any ballot delivered to him or her
48 shall, before leaving the election room, return the ballot to the
49 poll clerks. When a spoiled or defaced ballot is returned, the
50 poll clerks shall make a minute of the fact on the pollbooks, at
51 the time, write the word "spoiled" across the face of the ballot
52 and place it in an envelope for spoiled ballots.

53 Immediately on closing the polls, the election commission-
54 ers shall ascertain the number of spoiled ballots during the
55 election and the number of ballots remaining not voted. The
56 election commissioners shall also ascertain from the pollbooks
57 the number of persons who voted and shall report, in writing
58 signed by them to the clerk of the county commission, any
59 irregularities in the ballot boxes, the number of ballots cast, the
60 number of ballots spoiled during the election and the number of
61 ballots unused. All unused ballots are to be returned at the same
62 time to the clerk of the county commission who shall count
63 them and record the number. All unused ballots shall be stored
64 with the other election materials and destroyed at the expiration
65 of twenty-two months.

66 (g) Each commissioner who is a member of an election
67 board which fails to account for every ballot delivered to it is
68 guilty of a misdemeanor and, upon conviction thereof, shall be
69 fined not more than one thousand dollars or confined in the
70 county or regional jail for not more than one year, or both.

71 (h) The board of ballot commissioners of each county, or
72 the chair of the board, shall preserve the ballots that are left
73 over in their hands, after supplying the precincts as provided,
74 until the close of the polls on the day of election and shall
75 deliver them to the clerk of the county commission who shall
76 store them with the other election materials and destroy them at
77 the expiration of twenty-two months.

78 (i) Where ballots are used, the voter, after he or she has
79 marked his or her ballot, shall, before leaving the voting booth,
80 place the ballot inside the envelope provided for this purpose,
81 with the stub extending outside the envelope, and return it to an
82 election commissioner who shall remove the stub and deposit
83 the envelope with the ballot inside in the ballot box. No ballot
84 from which the stub has been detached may be accepted by the
85 officer in charge of the ballot box, but the ballot shall be
86 marked "spoiled" and placed with the spoiled ballots. If an
87 electronic voting system is used that utilizes a screen on which
88 votes may be recorded by means of a stylus or by means of
89 touch and the signal warning that a voter has attempted to cast
90 his or her ballot has failed to do so properly has been activated
91 and the voter has departed the polling place and cannot be
92 recalled by a poll clerk to complete his or her ballot while the
93 voter remains physically present in the polling place, then two
94 election commissioners of different registered party affiliations,
95 two poll clerks of different registered party affiliations or an
96 election commissioner and a poll clerk of different registered
97 party affiliations shall spoil the ballot.

98 (j) The precinct election commissioners shall prepare a
99 report in quadruplicate of the number of voters who have voted

100 and, where electronic voting systems are used that utilize a
101 screen on which votes may be recorded by means of a stylus or
102 by means of touch, the number of ballots that were spoiled, as
103 indicated by the pollbooks, and shall place two copies of this
104 report in the ballot box or where electronic voting systems are
105 used that utilize a screen upon which votes may be recorded by
106 means of a stylus or by means of touch, shall place two copies
107 of this report and the electronic ballot devices in a container
108 provided by the clerk of the county commission, which there-
109 upon is to be sealed with a paper seal signed by the election
110 commissioners to ensure that no additional ballots may be
111 deposited or removed from the ballot box. Two election
112 commissioners of different registered party affiliations shall
113 forthwith deliver the ballot box or container to the clerk of the
114 county commission at the central counting center and receive a
115 signed numbered receipt therefor. The receipt must carefully set
116 forth in detail any and all irregularities pertaining to the ballot
117 boxes or containers and noted by the precinct election officers.

118 The receipt is to be prepared in duplicate, a copy of which
119 remains with the clerk of the county commission who shall
120 have any and all irregularities noted. The time of their departure
121 from the polling place is to be noted on the two remaining
122 copies of the report, which are to be immediately mailed to the
123 clerk of the county commission.

124 (k) The pollbooks, register of voters, unused ballots, spoiled
125 ballots and other records and supplies are to be delivered to the
126 clerk of the county commission, all in conformity with the
127 provisions of this section.

§3-4A-22. Assistance to illiterate and disabled voters.

1 (a) Any duly registered voter who requires assistance to
2 vote by reason of blindness, disability, advanced age or

3 inability to read and write may be given assistance by one of the
4 following means:

5 (1) By a person of the voter's choice: *Provided*, That the
6 assistance may not be given by the voter's present or former
7 employer or agent of that employer or by an officer or agent of
8 a labor union of which the voter is a past or present member or
9 a candidate on the ballot or official write-in candidate; or

10 (2) If no person of the voter's choice be present at the
11 polling place, the voter may request assistance from the poll
12 clerks or ballot commissioners present at the polling place,
13 whereupon assistance may be given by any two of the election
14 officers of opposite political party affiliation to whom the voter
15 shall thereupon declare his or her choice of candidates and his
16 or her position on public questions appearing on the ballot. The
17 election officers, in the presence of the voter and in the pres-
18 ence of each other, shall thereupon cause the voter's declared
19 choices to be recorded on the ballot or a vote recording device,
20 as may be appropriate, as votes.

21 (b) A person other than an election officer who assists a
22 voter in voting under the provisions of this section shall sign a
23 written oath or affirmation before assisting the voter, stating
24 that he or she will not override the actual preference of the voter
25 being assisted or mislead the voter into voting for someone
26 other than the candidate of the voter's choice. The person
27 assisting the voter shall also swear or affirm that he or she
28 believes that the voter is voting free of intimidation or manipu-
29 lation.

**§3-4A-24a. Voting by challenged voter where touch-screen elec-
tronic voting systems are used.**

1 If the right of any person to vote is challenged in accor-
2 dance with the provisions of article one of this chapter, relating

3 to the challenging of voters, and a vote recording device or
4 ballot is used that tabulates the vote as an individual vote, the
5 person is to be permitted to cast his or her vote by use of the
6 vote recording device or ballot, as may be appropriate. An
7 election commissioner shall enter into the voting device a voter-
8 specific electronic code for any person voting a provisional
9 ballot. The devices are to retain provisional ballots in electronic
10 memory and are not to be tabulated in accordance with the
11 provisions of this code, but are to be reviewed in accordance
12 with the provisions of this code.

13 After the county commission, as prescribed in article one of
14 this chapter, has determined that the challenges are unfounded,
15 the commissioners shall ensure that the ballots are included in
16 the tabulation.

§3-4A-27. Proceedings at the central counting center.

1 (a) All proceedings at the central counting center are to be
2 under the supervision of the clerk of the county commission and
3 are to be conducted under circumstances which allow observa-
4 tion from a designated area by all persons entitled to be present.
5 The proceedings shall take place in a room of sufficient size
6 and satisfactory arrangement to permit observation. Those
7 persons entitled to be present include all candidates whose
8 names appear on the ballots being counted or if a candidate is
9 absent, a representative of the candidate who presents a written
10 authorization signed by the candidate for the purpose and two
11 representatives of each political party on the ballot who are
12 chosen by the county executive committee chairperson. A
13 reasonable number of the general public is also freely admitted
14 to the room. In the event all members of the general public
15 desiring admission to the room cannot be admitted at one time,
16 the county commission shall provide for a periodic and conve-
17 nient rotation of admission to the room for observation, to the
18 end that each member of the general public desiring admission,

19 during the proceedings at the central counting center, is to be
20 granted admission for reasonable periods of time for observa-
21 tion: *Provided*, That no person except those authorized for the
22 purpose may touch any ballot or ballot card or other official
23 records and papers utilized in the election during observation.

24 (b) All persons who are engaged in processing and counting
25 the ballots are to work in teams consisting of two persons of
26 opposite political parties, and are to be deputized in writing and
27 take an oath that they will faithfully perform their assigned
28 duties. These deputies are to be issued an official badge or
29 identification card which is assigned an identity control number
30 and the deputies are to prominently wear on his or her outer
31 garments the issued badge or identification card. Upon comple-
32 tion of the deputies' duties, the badges or identification cards
33 are to be returned to the county clerk.

34 (c) Ballots are to be handled and tabulated and the write-in
35 votes tallied according to procedures established by the
36 secretary of state, subject to the following requirements:

37 (1) In systems using punch card ballots, the ballot cards and
38 secrecy envelopes for a precinct are to be removed from the box
39 and examined for write-in votes before being separated and
40 stacked for delivery to the tabulator. Immediately after valid
41 write-in votes are tallied, the ballot cards are to be delivered to
42 the tabulator. No write-in vote may be counted for an office
43 unless the voter has entered the name of that office and the
44 name of an official write-in candidate for that office on the
45 inside of the secrecy envelope, either by writing, affixing a
46 sticker or label or placing an ink-stamped impression thereon;

47 (2) In systems using ballots marked with electronically
48 sensible ink, ballots are to be removed from the boxes and
49 stacked for the tabulator which separates ballots containing
50 marks for a write-in position. Immediately after tabulation, the

51 valid write-in votes are to be tallied. No write-in vote may be
52 counted for an office unless the voter has entered the name of
53 an official write-in candidate for that office on the line pro-
54 vided, either by writing, affixing a sticker or placing an ink-
55 stamped impression thereon;

56 (3) In systems using ballots in which votes are recorded
57 upon screens with a stylus or by means of touch, the personal-
58 ized electronic ballots are to be removed from the containers
59 and stacked for the tabulator. Systems using ballots in which
60 votes are recorded upon screens with a stylus or by means of
61 touch are to tally write-in ballots simultaneously with the other
62 ballots;

63 (4) When more than one person is to be elected to an office
64 and the voter desires to cast write-in votes for more than one
65 official write-in candidate for that office, a single punch or
66 mark, as appropriate for the voting system, in the write-in
67 location for that office is sufficient for all write-in choices.
68 When there are multiple write-in votes for the same office and
69 the combination of choices for candidates on the ballot and
70 write-in choices for the same office exceed the number of
71 candidates to be elected, the ballot is to be duplicated or hand
72 counted, with all votes for that office rejected;

73 (5) Write-in votes for nomination for any office and write-
74 in votes for any person other than an official write-in candidate
75 are to be disregarded;

76 (6) When a voter casts a straight ticket vote and also
77 punches or marks the location for a write-in vote for an office,
78 the straight ticket vote for that office is to be rejected, whether
79 or not a vote can be counted for a write-in candidate; and

80 (7) Official write-in candidates are those who have filed a
81 write-in candidate's certificate of announcement and have been

82 certified according to the provisions of section four-a, article
83 six of this chapter.

84 (d) If any ballot card is damaged or defective so that it
85 cannot properly be counted by the automatic tabulating equip-
86 ment, a true duplicate copy is to be made of the damaged ballot
87 card in the presence of representatives of each political party on
88 the ballot and substituted for the damaged ballot card. All
89 duplicate ballot cards are to be clearly labeled "duplicate" and
90 are to bear a serial number which is recorded on the damaged
91 or defective ballot card and on the replacement ballot card.

92 (e) The returns printed by the automatic tabulating equip-
93 ment at the central counting center, to which have been added
94 write-in and other valid votes, are, when certified by the clerk
95 of the county commission, to constitute the official preliminary
96 returns of each precinct or election district. Further, all the
97 returns are to be printed on a precinct basis. Periodically
98 throughout and upon completion of the count, the returns are to
99 be open to the public by posting the returns as have been
100 tabulated precinct by precinct at the central counting center.
101 Upon completion of the canvass, the returns are to be posted in
102 the same manner.

103 (f) If for any reason it becomes impracticable to count all
104 or a part of the ballots with tabulating equipment, the county
105 commission may direct that they be counted manually, follow-
106 ing as far as practicable the provisions governing the counting
107 of paper ballots.

108 (g) As soon as possible after the completion of the count,
109 the clerk of the county commission shall have the vote record-
110 ing devices properly boxed or securely covered and removed to
111 a proper and secure place of storage.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-10. Publication of sample ballots and lists of candidates.

§3-5-13. Form and contents of ballots and ballot labels.

§3-5-15. Ascertaining and certifying primary election results.

§3-5-19. Vacancies in nominations; how filled; fees.

§3-5-10. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall prepare
2 a sample official primary ballot for each party and, as the case
3 may be, for the nonpartisan candidates to be voted for at the
4 primary election, according to the provisions of this article and
5 articles four and four-a of this chapter, as appropriate to the
6 voting system. If any ballot issue is to be voted on in the
7 primary election, the ballot commissioners shall likewise
8 prepare a sample official ballot for that issue according to the
9 provisions of law authorizing the election.

10 (b) The facsimile sample ballot for each political party and
11 for nonpartisan candidates or ballot issues shall be published as
12 follows:

13 (1) For counties in which two or more qualified newspapers
14 publish a daily newspaper, not more than twenty-six nor less
15 than twenty days preceding the primary election, the ballot
16 commissioners shall publish each sample official primary
17 election ballot as a Class I-0 legal advertisement in the two
18 qualified daily newspapers of different political parties within
19 the county having the largest circulation in compliance with the
20 provisions of article three, chapter fifty-nine of this code;

21 (2) For counties having no more than one daily newspaper,
22 or having only one or more qualified newspapers which publish
23 weekly, not more than twenty-six nor less than twenty days
24 preceding the primary election, the ballot commissioners shall
25 publish the sample official primary election ballot as a Class I
26 legal advertisement in the qualified newspaper within the

27 county having the largest circulation in compliance with the
28 provisions of article three, chapter fifty-nine of this code; and

29 (3) Each facsimile sample ballot shall be a photographic
30 reproduction of the official sample ballot or ballot pages and
31 shall be printed in a size no less than eighty percent of the
32 actual size of the ballot, at the discretion of the ballot commis-
33 sioners: *Provided*, That when the ballots for the precincts within
34 the county contain different senatorial, delegate, magisterial or
35 executive committee districts or when the ballots for precincts
36 within a city contain different municipal wards, the facsimile
37 shall be altered to include each of the various districts in the
38 appropriate order. If, in order to accommodate the size of each
39 ballot, the ballot or ballot pages must be divided onto more than
40 one page, the arrangement and order shall be made to conform
41 as nearly as possible to the arrangement of the ballot. The
42 publisher of the newspaper shall submit a proof of the ballot
43 and the arrangement to the ballot commissioners for approval
44 prior to publication.

45 (c) The ballot commissioners of each county shall prepare,
46 in the form and manner prescribed by the secretary of state, an
47 official list of offices and candidates for each office which will
48 appear on the primary election ballot for each party and, as the
49 case may be, for the nonpartisan candidates to be voted for at
50 the primary election. All information which appears on the
51 ballot, including instructions as to the number of candidates for
52 whom votes may be cast for the office, any additional language
53 which will appear on the ballot below the name of the office,
54 any identifying information relating to the candidates, such as
55 residence, magisterial district or presidential preference, and the
56 ballot numbers of the candidates for punch card systems shall
57 be included in the list in the same order in which it appears on
58 the ballot. Following the names of all candidates, the list shall
59 include the full title, text and voting positions of any issue to
60 appear on the ballot.

61 (d) The official list of candidates and issues as provided in
62 subsection (c) of this section shall be published as follows:

63 (1) For counties in which two or more qualified newspapers
64 publish a daily newspaper, on the last day on which a newspa-
65 per is published immediately preceding the primary election,
66 the ballot commissioners shall publish the official list of
67 candidates and issues as a Class I-0 legal advertisement in the
68 two qualified daily newspapers of different political parties
69 within the county having the largest circulation in compliance
70 with the provisions of article three, chapter fifty-nine of this
71 code;

72 (2) For counties having no more than one daily newspaper,
73 or having only one or more qualified newspapers which publish
74 weekly, on the last day on which a newspaper is published
75 immediately preceding the primary election, the ballot commis-
76 sioners shall publish the sample official list of nominees and
77 issues as a Class I legal advertisement in the qualified newspa-
78 per within the county having the largest circulation in compli-
79 ance with the provisions of article three, chapter fifty-nine of
80 this code;

81 (3) The publication of the official list of candidates for each
82 party and for nonpartisan candidates shall be in single or double
83 columns, as required to accommodate the type size require-
84 ments as follows: (A) The words "official list of candidates",
85 the name of the county, the words "primary election", the date
86 of the election, the name of the political party or the designation
87 of nonpartisan candidates shall be printed in all capital letters
88 and in bold type no smaller than fourteen point. The designation
89 of the national, state, district or other tickets shall be printed in
90 all capital letters in type no smaller than fourteen point; (B) the
91 title of the office shall be printed in bold type no smaller than
92 twelve point and any voting instructions or other language
93 printed below the title shall be printed in bold type no smaller

94 than ten point; and (C) the names of the candidates shall be
95 printed in all capital letters in bold type no smaller than ten
96 point and the residence information shall be printed in type no
97 smaller than ten point; and

98 (4) When any ballot issue is to appear on the ballot, the title
99 of that ballot shall be printed in all capital letters in bold type no
100 smaller than fourteen point. The text of the ballot issue shall
101 appear in no smaller than ten point type. The ballot commis-
102 sioners may require the publication of the ballot issue under this
103 subsection in the facsimile sample ballot format in lieu of the
104 alternate format.

105 (e) Notwithstanding the provisions of subsections (c) and
106 (d) of this section, beginning with the primary election to be
107 held in the year two thousand, the ballot commissioners of any
108 county may choose to publish a facsimile sample ballot for each
109 political party and for nonpartisan candidates or ballot issues
110 instead of the official list of offices and candidates for each
111 office for purposes of the last publication required before any
112 primary election.

§3-5-13. Form and contents of ballots and ballot labels.

1 The face of every primary election ballot shall conform as
2 nearly as practicable to that used at the general election.

3 (a) The heading of every ballot is to be printed in display
4 type. The heading is to contain a ballot title, the name of the
5 county, the state, the words "Primary Election" and the month,
6 day and year of the election. The ballot title of the political
7 party ballots is to contain the words "Official Ballot of the
8 (Name) Party" and the official symbol of the political party
9 may be included in the heading. The ballot title of any separate
10 paper ballot or portion of any electronic or voting machine
11 ballot for the board of education is to contain the words

12 “Nonpartisan Ballot of Election of Members of the
13 _____ County Board of Education”. The districts for
14 which less than two candidates may be elected and the number
15 of available seats are to be specified and the names of the
16 candidates are to be printed without reference to political party
17 affiliation and without designation as to a particular term of
18 office. Any other ballot or portion of a ballot on a question is to
19 have a heading which clearly states the purpose of the election
20 according to the statutory requirements for that question.

21 (b) (1) For paper ballots, the heading of the ballot is to be
22 separated from the rest of the ballot by heavy lines and the
23 offices shall be arranged in columns with the following
24 headings, from left to right across the ballot: “National Ticket”,
25 “State Ticket”, “County Ticket” and, in a presidential election
26 year, “National Convention” or, in a nonpresidential election
27 year, “District Ticket”. The columns are to be separated by
28 heavy lines. Within the columns, the offices are to be arranged
29 in the order prescribed in section thirteen-a of this article.

30 (2) For voting machines, electronic voting devices and any
31 ballot tabulated by electronic means, the offices are to appear
32 in the same sequence as prescribed in section thirteen-a of this
33 article and under the same headings as prescribed in subsection
34 (a) of this section. The number of pages, columns or rows,
35 where applicable, may be modified to meet the limitations of
36 ballot size and composition requirements subject to approval by
37 the secretary of state.

38 (3) The title of each office is to be separated from preceding
39 offices or candidates by a line and is to be printed in bold type
40 no smaller than eight point. Below the office is to be printed the
41 number of the district, if any, the number of the division, if any,
42 and the words “Vote for _____” with the number to be
43 nominated or elected or “Vote For Not More Than _____”
44 in multicandidate elections. For offices in which there are

45 limitations relating to the number of candidates which may be
46 nominated, elected or appointed to or hold office at one time
47 from a political subdivision within the district or county in
48 which they are elected, there is to be a clear explanation of the
49 limitation, as prescribed by the secretary of state, printed in
50 bold type immediately preceding the names of the candidates
51 for those offices on the ballot in every voting system. For
52 counties in which the number of county commissioners exceeds
53 three and the total number of members of the county commis-
54 sion is equal to the number of magisterial districts within the
55 county, the office of county commission is to be listed sepa-
56 rately for each district to be filled with the name of the magiste-
57 rial district and the words "Vote for One" printed below the
58 name of the office.

59 (c) The location for indicating the voter's choices on the
60 ballot is to be clearly shown. For paper ballots, other than those
61 tabulated electronically, the official primary ballot is to contain
62 a square formed in dark lines at the left of each name on the
63 ballot, arranged in a perpendicular column of squares before
64 each column of names.

65 (d) (1) The name of every candidate certified by the
66 secretary of state or the board of ballot commissioners is to be
67 printed in capital letters in no smaller than eight-point type on
68 the ballot for the appropriate precincts. Subject to the rules
69 promulgated by the secretary of state, the name of each
70 candidate is to appear in the form set out by the candidate on
71 the certificate of announcement, but in no case may the name
72 misrepresent the identity of the candidate nor may the name
73 include any title, position, rank, degree or nickname implying
74 or inferring any status as a member of a class or group or
75 affiliation with any system of belief.

76 (2) The city of residence of every candidate, the state of
77 residence of every candidate residing outside the state, the

78 county of residence of every candidate for an office on the
79 ballot in more than one county and the magisterial district of
80 residence of every candidate for an office subject to magisterial
81 district limitations are to be printed in lower case letters beneath
82 the names of the candidates.

83 (3) The arrangement of names within each office must be
84 determined as prescribed in section thirteen-a of this article.

85 (4) If the number of candidates for an office exceeds the
86 space available on a column or ballot label page and requires
87 that candidates for a single office be separated, to the extent
88 possible, the number of candidates for the office on separate
89 columns or pages are to be nearly equal and clear instructions
90 given the voter that the candidates for the office are continued
91 on the following column or page.

92 (e) When an insufficient number of candidates has filed for
93 a party to make the number of nominations allowed for the
94 office or for the voters to elect sufficient members to the board
95 of education or to executive committees, the vacant positions on
96 the ballot shall be filled with the words "No Candidate Filed":
97 *Provided*, That in paper ballot systems which allow for write-
98 ins to be made directly on the ballot, a blank line shall be placed
99 in any vacant position in the office of board of education or for
100 election to any party executive committee. A line shall separate
101 each candidate from every other candidate for the same office.
102 Notwithstanding any other provision of this code, if there are
103 multiple vacant positions on a ballot for one office, the multiple
104 vacant positions which would otherwise be filled with the
105 words "No Candidate Filed" may be replaced with a brief
106 detailed description, approved by the secretary of state, indicat-
107 ing that there are no candidates listed for the vacant positions.

108 (f) In presidential election years, the words "For election in
109 accordance with the plan adopted by the party and filed with the

110 secretary of state” is to be printed following the names of all
111 candidates for delegate to national convention.

112 (g) All paper ballots are to be printed in black ink on paper
113 sufficiently thick so that the printing or marking cannot be
114 discernible from the back. Ballot cards and paper for printing
115 ballots using electronically sensible ink are to meet minimum
116 requirements of the tabulating systems.

117 (h) Ballots and ballot cards are to contain perforated tabs at
118 the top of the ballots and are to be printed with unique sequen-
119 tial numbers from one to the highest number representing the
120 total number of ballots or ballot cards printed. On paper ballots,
121 the ballot is to be bordered by a solid line at least one sixteenth
122 of an inch wide and the ballot is to be trimmed to within
123 one-half inch of that border.

124 (i) On the back of every official ballot or ballot card the
125 words “Official Ballot” with the name of the county and the
126 date of the election are to be printed. Beneath the date of the
127 election there are to be two blank lines followed by the words
128 “Poll Clerks”.

129 (j) Absent voters’ ballots are to be in all respects like other
130 official ballots except that three blank lines are to be printed on
131 the back of the ballot or ballot card in the lower left corner with
132 the words “Ballot Commissioners” printed underneath.

133 (k) The face of sample paper ballots and sample ballot
134 labels are to be like other official ballots or ballot labels except
135 that the word “sample” is to be prominently printed across the
136 front of the ballot in a manner that ensures the names of
137 candidates are not obscured and the word “sample” may be
138 printed in red ink. No printing may be placed on the back of the
139 sample.

§3-5-15. Ascertaining and certifying primary election results.

1 When the polls are closed in an election precinct where
2 only a single election board has served, the receiving board
3 shall perform all of the duties prescribed in this section. When
4 the polls are closed in an election precinct where two election
5 boards have served, both the receiving and counting boards
6 shall together conclude the counting of the votes cast, the
7 tabulating and summarizing of the number of the votes cast,
8 unite in certifying and attesting to the returns of the election and
9 join in making out the certificates of the result of the election
10 provided for in this article. They shall not adjourn until the
11 work is completed.

12 In all election precincts, as soon as the polls are closed and
13 the last voter has voted, the receiving board shall first process
14 the absentee ballots according to the provisions of section eight,
15 article three of this chapter. After the absentee ballots to be
16 counted have been deposited in the ballot box, the election
17 officers shall proceed to ascertain the result of the election in
18 the following manner:

19 (a) The receiving board shall ascertain from the poll books
20 and record separately on the proper form the total number of
21 voters of each party and nonpartisan voters who have voted.

22 (1) The number of provisional ballots of each party shall be
23 counted and subtracted from the number of voters of the same
24 party, which result should equal the number of ballots of that
25 party deposited in the ballot box.

26 (2) The total of all voters, including both partisan and
27 nonpartisan voters, minus the total of all provisional ballots,
28 should equal the number of nonpartisan ballots deposited in the
29 ballot box.

30 (3) The commissioners and clerks shall also report, over
31 their signatures, the number of each type of ballots spoiled and
32 the number of each type of ballots not voted.

33 (b) The procedure for counting ballots, whether performed
34 throughout the day by the counting board, as provided in
35 section thirty-three, article one of this chapter, or after the close
36 of the polls by the receiving board or by the two boards
37 together, shall be as follows:

38 (1) The ballot box shall be opened and all votes shall be
39 tallied in the presence of the entire election board;

40 (2) One of the commissioners shall take one ballot from the
41 box at a time and shall determine if the ballot is properly signed
42 by the two poll clerks of the receiving board. If not properly
43 signed, the ballot shall be placed in an envelope for the purpose
44 without unfolding it. If properly signed, the commissioner shall
45 announce which type of ballot it is, and hand the ballot to a
46 team of commissioners of opposite politics, who shall together
47 read the votes marked on the ballot for each office. Write-in
48 votes for nomination for any office and write-in votes for
49 election for any person other than an official write-in candidate
50 shall be disregarded;

51 (3) The commissioner responsible for removing the ballots
52 from the box shall keep a tally of the number of ballots of each
53 party and any nonpartisan ballot as they are removed, and
54 whenever the number of ballots of a particular party shall equal
55 the number of voters entered on the poll book for that party
56 minus the number of provisional ballots of that party, as
57 determined according to subsection (a) of this section, any other
58 ballot found in the ballot box shall be placed in the same
59 envelope with unsigned ballots not counted, without unfolding
60 the same, or allowing anyone to examine or know the contents

61 thereof, and the number of excess ballots of each party shall be
62 recorded on the envelope;

63 (4) Each poll clerk shall keep an accurate tally of the votes
64 cast by marking in ink on tally sheets, which shall be provided
65 for the purpose so as to show the number of votes received by
66 each candidate for each office;

67 (5) When the votes have been read from a ballot, the ballot
68 shall be immediately strung on a thread, with separate threads
69 for each party's ballots and for nonpartisan ballots.

70 (c) As soon as the results at the precinct are ascertained, the
71 commissioners and clerks shall make out and sign four certifi-
72 cates of result, for each party represented, of the vote for all
73 candidates of each party represented, on a form prescribed by
74 the secretary of state, giving the complete returns of the election
75 at the polling place, which form shall include the following
76 oath:

77 "We, the undersigned commissioners and poll clerks of the
78 primary election held at precinct No. of
79 district of County, W.Va., on the day of
80, 20...., do hereby certify that having been first duly
81 sworn, we have carefully and impartially ascertained the result
82 of said election at said precinct for the candidates on the official
83 ballot of the party, and the same is as follows:

84 The election officers shall enter the name of each office and
85 the full name of each candidate on the ballot, and the number of
86 votes, in words and numbers, received by each. The election
87 officers shall also enter the full name of every official write-in
88 candidate for election to offices to be filled in the primary,
89 except delegate to national convention, and the number of votes
90 for each. Three of the certificates of result of election, for each
91 party, shall be sealed in separately addressed envelopes,

92 furnished for the purpose, and shall be disposed of by the
93 precinct commissioners as follows: One of the sealed envelopes
94 containing the returns of each party shall be delivered to the
95 clerk of the circuit court and two shall be delivered to the clerk
96 of the county commission who shall, within forty-eight hours,
97 mail one of the sealed returns for each precinct by certified mail
98 to the secretary of state. The one not sealed up shall be posted
99 on the outside of the front door of the polling place.

100 (d) All ballots voted for candidates of each party shall be
101 sealed up in separate envelopes and the commissioners and
102 clerks shall each sign across the seal.

§3-5-19. Vacancies in nominations; how filled; fees.

1 (a) If any vacancy shall occur in the party nomination of
2 candidates for office nominated at the primary election or by
3 appointment under the provisions of section eleven of this
4 article, the vacancies may be filled, subject to the following
5 requirements and limitations:

6 (1) Each appointment made under this section shall be
7 made by the executive committee of the political party for the
8 political division in which the vacancy occurs: *Provided*, That
9 if the executive committee holds a duly called meeting in
10 accordance with section nine, article one of this chapter but
11 fails to make an appointment or fails to certify the appointment
12 of the candidate to the proper filing officer within the time
13 required, the chairperson of the executive committee may make
14 the appointment not later than two days following the deadline
15 for the executive committee.

16 (2) Each appointment made under this section is complete
17 only upon the receipt by the proper filing officer of the certifi-
18 cate of appointment by the executive committee, or its chairper-
19 son, as the case may be, the certificate of announcement of the

20 candidate as prescribed in section seven of this article and,
21 except for appointments made under subdivision (4), (5), (6) or
22 (7) of this subsection, the filing fee or waiver of fee as pre-
23 scribed in section eight or eight-a of this article. The proper
24 filing officer is the officer with whom the original certificate of
25 nomination is regularly filed for that office.

26 (3) If a vacancy in nomination is caused by the failure of a
27 candidate to file for an office, or by withdrawal of a candidate
28 no later than the third Tuesday following the close of candidate
29 filing pursuant to the provisions of section eleven of this article,
30 a nominee may be appointed by the executive committee and
31 certified to the proper filing officer no later than the Thursday
32 preceding the primary election.

33 (4) If a vacancy in nomination is caused by the disqualifica-
34 tion of a candidate and the vacancy occurs not later than eighty-
35 four days before the general election, a nominee may be
36 appointed by the executive committee and certified to the
37 proper filing officer not later than seventy-eight days before the
38 general election. A candidate may be determined ineligible if a
39 written request is made by an individual with information to
40 show a candidate's ineligibility to the state election commission
41 no later than ninety-five days before the general election
42 explaining grounds why a candidate is not eligible to be placed
43 on the general election ballot or not eligible to hold the office,
44 if elected. The state election commission shall review the
45 reasons for the request. If the commission finds the circum-
46 stances warrant the disqualification of the candidate, the
47 commission may authorize appointment by the executive
48 committee to fill the vacancy. Upon receipt of the authorization
49 a nominee may be appointed by the executive committee and
50 certified to the proper filing officer no later than seventy-eight
51 days before the general election.

52 (5) If a vacancy in nomination is caused by the incapacity
53 of the candidate and if the vacancy occurs not later than
54 eighty-four days before the general election, a nominee may be
55 appointed by the executive committee and certified to the
56 proper filing officer no later than seventy-eight days before the
57 general election.

58 (6) If a vacancy in nomination is caused by the withdrawal
59 of the candidate no later than ninety-eight days before the
60 general election due to extenuating personal circumstances
61 which will prevent the candidate from serving in the office if
62 elected and if the candidate or the chairperson of the executive
63 committee for the political division applies in writing to the
64 state election commission no later than ninety-five days before
65 the general election for permission to remove the candidate's
66 name from the general election ballot, the state election
67 commission shall review the reasons for the request. If the
68 commission finds the circumstances warrant the withdrawal of
69 the candidate, the commission shall authorize appointment by
70 the executive committee to fill the vacancy. Upon receipt of the
71 authorization, a nominee may be appointed by the executive
72 committee and certified to the proper filing officer no later than
73 seventy-eight days before the general election.

74 (7) If a vacancy in nomination is caused by the death of the
75 candidate occurring no later than twenty-five days before the
76 general election, a nominee may be appointed by the executive
77 committee and certified to the proper filing officer no later than
78 twenty-one days following the date of death or no later than
79 twenty-two days before the general election, whichever date
80 occurs first.

81 (b) Except as otherwise provided in article ten of this
82 chapter, if any vacancy occurs in a partisan office or position
83 other than political party executive committee, which creates an
84 unexpired term for a position which would not otherwise appear

85 on the ballot in the general election, and the vacancy occurs
86 after the close of candidate filing for the primary election but
87 not later than eighty-four days before the general election, a
88 nominee of each political party may be appointed by the
89 executive committee and certified to the proper filing officer no
90 later than seventy-eight days before the general election.
91 Appointments shall be filed in the same manner as provided in
92 subsection (a) of this section, except that the filing fee shall be
93 paid before the appointment is complete.

94 (c) When a vacancy occurs in the board of education after
95 the close of candidate filing for the primary election but not
96 later than eighty-four days before the general election, a special
97 candidate filing period shall be established. Candidates seeking
98 election to any unexpired term for board of education shall file
99 a certificate of announcement and pay the filing fee to the clerk
100 of the circuit court no earlier than the first Monday in August
101 and no later than seventy-seven days before the general
102 election.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.

§3-6-4a. Filing requirements for write-in candidates.

§3-6-5. Rules and procedures in election other than primaries.

§3-6-6. Ballot counting procedures in paper ballot systems.

§3-6-7. Ballot irregularities; procedures.

§3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping.

§3-6-3. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall prepare
2 a sample official general election ballot for all political party or
3 independent nominees, nonpartisan candidates for election, if
4 any, and all ballot issues to be voted for at the general election,
5 according to the provisions of this article and articles four and
6 four-a of this chapter, as appropriate to the voting system, and

7 for any ballot issue, according to the provisions of law authoriz-
8 ing the election.

9 (b) The facsimile sample general election ballot shall be
10 published as follows:

11 (1) For counties in which two or more qualified newspapers
12 publish a daily newspaper, not more than twenty-six nor less
13 than twenty days preceding the general election, the ballot
14 commissioners shall publish the sample official general election
15 ballot as a Class I-0 legal advertisement in the two qualified
16 daily newspapers of different political parties within the county
17 having the largest circulation in compliance with the provisions
18 of article three, chapter fifty-nine of this code;

19 (2) For counties having no more than one daily newspaper,
20 or having only one or more qualified newspapers which publish
21 weekly, not more than twenty-six nor less than twenty days
22 preceding the primary election, the ballot commissioners shall
23 publish the sample official general election ballot as a Class I
24 legal advertisement in the qualified newspaper within the
25 county having the largest circulation in compliance with the
26 provisions of article three, chapter fifty-nine of this code; and

27 (3) Each facsimile sample ballot shall be a photographic
28 reproduction of the official sample ballot or ballot pages and
29 shall be printed in a size no less than eighty percent of the
30 actual size of the ballot, at the discretion of the ballot commis-
31 sioners: *Provided*, That when the ballots for the precincts within
32 the county contain different senatorial, delegate, magisterial or
33 executive committee districts or when the ballots for precincts
34 within a city contain different municipal wards, the facsimile
35 shall be altered to include each of the various districts in the
36 appropriate order. If, in order to accommodate the size of each
37 ballot, the ballot or ballot pages must be divided onto more than
38 one page, the arrangement and order shall be made to conform

39 as nearly as possible to the arrangement of the ballot. The
40 publisher of the newspaper shall submit a proof of the ballot
41 and the arrangement to the ballot commissioners for approval
42 prior to publication.

43 (c) The ballot commissioners of each county shall prepare,
44 in the form and manner prescribed by the secretary of state, an
45 official list of offices and nominees for each office which will
46 appear on the general election ballot for each political party or
47 as independent nominees and, as the case may be, for the
48 nonpartisan candidates to be voted for at the general election:

49 (1) All information which appears on the ballot, including
50 the names of parties for which a straight ticket may be cast,
51 instructions relating to straight ticket voting, instructions as to
52 the number of candidates for whom votes may be cast for the
53 office, any additional language which will appear on the ballot
54 below the name of the office, any identifying information
55 relating to the candidates, such as residence, magisterial district
56 or presidential preference, and the ballot numbers of the
57 candidates for punch card systems shall be included in the list
58 in the order specified in subdivision (2) of this subsection.
59 Following the names of all candidates, the list shall include the
60 full title, text and voting positions of any issue to appear on the
61 ballot.

62 (2) The order of the straight ticket positions, offices and
63 candidates for each office and the manner of designating the
64 parties shall be as follows: (A) The straight ticket positions
65 shall be designated "straight (party name) ticket", with the
66 parties listed in the order in which they appear on the ballot,
67 from left to right or from top to bottom, as the case may be; (B)
68 the offices shall be listed in the same order in which they appear
69 on the ballot; (C) the candidates within each office for which
70 one is to be elected shall be listed in the order they appear on
71 the ballot, from left to right or from top to bottom, as the case

72 may be, and the candidate's political party affiliation or
73 independent status shall be indicated by the one or two letter
74 initial specifying the affiliation, placed in parenthesis to the
75 right of the candidate's name; and (D) the candidates within
76 each office for which more than one is to be elected shall be
77 arranged by political party groups in the order they appear on
78 the ballot and the candidate's affiliation shall be indicated as
79 provided in part (C) of this subdivision.

80 (d) The official list of candidates and issues as provided in
81 subsection (c) of this section shall be published as follows:

82 (1) For counties in which two or more qualified newspapers
83 publish a daily newspaper, on the last day on which a newspa-
84 per is published immediately preceding the general election, the
85 ballot commissioners shall publish the official list of nominees
86 and issues as a Class I-0 legal advertisement in the two quali-
87 fied daily newspapers of different political parties within the
88 county having the largest circulation in compliance with the
89 provisions of article three, chapter fifty-nine of this code;

90 (2) For counties having no more than one daily paper, or
91 having only one or more qualified newspapers which publish
92 weekly, on the last day on which a newspaper is published
93 immediately preceding the general election, the ballot commis-
94 sioners shall publish the sample official list of nominees and
95 issues as a Class I legal advertisement in the qualified newspa-
96 per within the county having the largest circulation in compli-
97 ance with the provisions of article three, chapter fifty-nine of
98 this code;

99 (3) The publication of the official list of nominees for each
100 party and for nonpartisan candidates shall be in single or double
101 columns, as required to accommodate the type size require-
102 ments as follows: (A) The words "official list of nominees and
103 issues", the name of the county, the words "General Election"

104 and the date of the election shall be printed in all capital letters
105 and in bold type no smaller than fourteen point; (B) the
106 designation of the straight ticket party positions shall be printed
107 in all capital letters in bold type no smaller than twelve point
108 and the title of the office shall be printed in bold type no
109 smaller than twelve point and any voting instructions or other
110 language printed below the title shall be printed in bold type no
111 smaller than ten point; and (C) the names of the candidates and
112 the initial within parenthesis designating the candidate's
113 affiliation shall be printed in all capital letters in bold type no
114 smaller than ten point and the residence information shall be
115 printed in type no smaller than ten point; and

116 (4) When any ballot issue is to appear on the ballot, the title
117 of that ballot shall be printed in all capital letters in bold type no
118 smaller than twelve point. The text of the ballot issue shall
119 appear in no smaller than ten point type. The ballot commis-
120 sioners may require the publication of the ballot issue under this
121 subsection in the facsimile sample ballot format in lieu of the
122 alternate format.

123 (e) Notwithstanding the provisions of subsections (c) and
124 (d) of this section, beginning with the general election to be
125 held in the year two thousand, the ballot commissioners of any
126 county may choose to publish a facsimile sample general
127 election ballot, instead of the official list of candidates and
128 issues, for purposes of the last publication required before any
129 general election.

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by write-in
2 votes to an office, except delegate to national convention,
3 which is to be filled in a primary, general or special election
4 held under the provisions of this chapter shall file a write-in
5 candidate's certificate of announcement as provided in this

6 section. No certificate of announcement may be accepted and
7 no person may be certified as a write-in candidate for a political
8 party nomination for any office or for election as delegate to
9 national convention.

10 (a) The write-in candidate's certificate of announcement
11 shall be in a form prescribed by the secretary of state on which
12 the candidate shall make a sworn statement before a notary
13 public or other officer authorized to give oaths containing the
14 following information:

15 (1) The name of the office sought and the district and
16 division, if any;

17 (2) The legal name of the candidate and the first and last
18 name by which the candidate may be identified in seeking the
19 office;

20 (3) The specific address designating the location at which
21 the candidate resides at the time of filing, including number and
22 street or rural route and box number and city, state and zip
23 code;

24 (4) A statement that the person filing the certificate of
25 announcement is a candidate for the office in good faith; and

26 (5) The words "subscribed and sworn to before me this
27 _____ day of _____, ____" and a space for the
28 signature of the officer giving the oath.

29 (b) The certificate of announcement shall be filed with the
30 filing officer for the political division of the office as prescribed
31 in section seven, article five of this chapter.

32 (c) The certificate of announcement shall be filed with and
33 received by the proper filing officer as follows:

34 (1) Except as provided in subdivisions (2) and (3) of this
35 subsection, the certificate of announcement for any office shall
36 be received no later than the close of business on the twenty-
37 first day before the election at which the office is to be filled;

38 (2) When a vacancy occurs in the nomination of candidates
39 for an office on the ballot resulting from the death of the
40 nominee or from the disqualification or removal of a nominee
41 from the ballot by a court of competent jurisdiction not earlier
42 than the twenty-first day nor later than the fifth day before the
43 general election, the certificate shall be received no later than
44 the close of business on the fifth day before the election or the
45 close of business on the day following the occurrence of the
46 vacancy, whichever is later;

47 (3) When a vacancy occurs in an elective office which
48 would not otherwise appear on the ballot in the election, but
49 which creates an unexpired term of one or more years which,
50 according to the provisions of this chapter, is to be filled by
51 election in the next ensuing election and the vacancy occurs no
52 earlier than the twenty-first day and no later than the fifth day
53 before the general election, the certificate shall be received no
54 later than the close of business on the fifth day before the
55 election or the close of business on the day following the
56 occurrence of the vacancy, whichever is later.

57 (d) Any eligible person who files a completed write-in
58 candidate's certificate of announcement with the proper filing
59 officer within the required time shall be certified by that filing
60 officer as an official write-in candidate:

61 (1) The secretary of state shall, immediately following the
62 filing deadline, post the names of all official write-in candidates
63 for offices on the ballot in more than one county and certify the
64 name of each official write-in candidate to the clerks of the
65 circuit court of the appropriate counties.

66 (2) The clerk of the circuit court shall, immediately
67 following the filing deadline, post the names of all official
68 write-in candidates for offices on the ballot in one county and
69 certify and deliver to the clerk of the county commission and
70 the election officials of the appropriate precincts the names of
71 all official write-in candidates and the office sought by each for
72 statewide, district and county offices on the ballot in the
73 precinct for which valid write-in votes will be counted and the
74 names shall be posted at the office where absentee voting is
75 conducted and at the precincts in accordance with section
76 twenty, article one of this chapter.

§3-6-5. Rules and procedures in election other than primaries.

1 The provisions of article one of this chapter relating to
2 elections generally shall govern and control arrangements and
3 election officials for the conduct of elections under this article.
4 The following rules and procedures shall govern the voting for
5 candidates in general and special elections:

6 (a) If the voter desires to vote a straight ticket, or in other
7 words, for each and every candidate for one party for whatever
8 office nominated, the voter shall either:

9 (1) Mark the position designated for a straight ticket in the
10 manner appropriate to the voting system; or

11 (2) Mark the voting position for each and every candidate
12 of the chosen party in the manner appropriate to the voting
13 system.

14 (b) If the voter desires to vote a mixed ticket, or in other
15 words, for candidates of different parties, the voter shall either:

16 (1) Omit marking any straight ticket voting position and
17 mark, in the manner appropriate to the voting system, the name

18 of each candidate for whom he or she desires to vote on
19 whatever ticket the name may be; or

20 (2) Mark the position designated for a straight ticket for the
21 party for some of whose candidates he or she desires to vote
22 and then mark the name of any candidate of any other party for
23 whom he or she may desire to vote, in which case the cross
24 mark in the circular space above the name of the party straight
25 ticket mark will cast his or her vote for every candidate on the
26 ticket of the party except for offices for which candidates are
27 marked on other party tickets and the marks for the candidates
28 will cast a vote for them; or

29 (3) Write with ink or other means or affix a sticker or label
30 or place an ink-stamped impression of the name of an official
31 write-in candidate for an office for whom he or she desires to
32 vote in the space designated for write-in votes for the particular
33 voting system or for paper ballot systems, write or place the
34 name and office designation in any position on the face of the
35 ballot which makes the intention of the voter clear as to both the
36 office and the candidate chosen.

37 (c) If in marking either a straight or mixed ticket as above
38 defined, a straight ticket voting position is marked, and also one
39 or more marks are made for candidates on the same ticket for
40 offices for which candidates on other party tickets are not
41 individually marked, the marks before the name of candidate on
42 the ticket so marked shall be treated as surplusage and ignored.

43 (d) When a voter casts a straight ticket vote and also writes
44 in any name for an office, the straight ticket vote for that office
45 shall be rejected, whether or not a vote can be counted for a
46 write-in candidate.

47 (e) The secretary of state may proscribe devices for casting
48 write-in votes which would cause mechanical difficulty with

49 voting machines or electronic devices or which would obliterate
50 or deface a paper ballot or any portion thereof, but the secretary
51 of state shall preserve the right to vote by a write-in vote for
52 those candidates who have filed and have been certified as
53 official write-in candidates under the provisions of section four-
54 a of this article.

55 (f) If the voter marks more names than there are persons to
56 be elected to an office or if, for any reason, it is impossible to
57 determine the voter's choice for an office to be filled, the ballot
58 shall not be counted for the office. The intention of the voter
59 shall be deemed to be clear if the write-in vote cast for an office
60 contains both the first and last name of an official write-in
61 candidate for that office; and if no two official write-in candi-
62 dates for that office share a first or last name, either the first
63 name or last name alone shall be deemed to express the clear
64 intention of the voter.

65 (g) Except as otherwise specifically provided in this
66 chapter, no ballot shall be rejected for any technical error which
67 does not make it impossible to determine the voter's choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

1 When the polls are closed in an election precinct where
2 only a single election board has served, the receiving board
3 shall perform all of the duties prescribed in this section. When
4 the polls are closed in an election precinct where two election
5 boards have served, both the receiving and counting boards
6 shall together conclude the counting of the votes cast, the
7 tabulating and summarizing of the number of the votes cast,
8 unite in certifying and attesting to the returns of the election and
9 join in making out the certificates of the result of the election
10 provided for in this article. They shall not adjourn until the
11 work is completed.

12 In all election precincts, as soon as the polls are closed and
13 the last voter has voted, the receiving board shall proceed to
14 ascertain the result of the election in the following manner:

15 (a) In counties in which the clerk of the county commission
16 has determined that the absentee ballots should be counted at
17 the precincts in which the absent voters are registered, the
18 receiving board must first process the absentee ballots and
19 deposit the ballots to be counted in the ballot box. The receiving
20 board shall then proceed as provided in subsections (b) and (c)
21 of this section. In counties in which the absentee ballots are
22 counted at the central counting center, the receiving board shall
23 proceed as provided in subsections (b) and (c) of this section.

24 (b) The receiving board shall ascertain from the pollbooks
25 and record on the proper form the total number of voters who
26 have voted. The number of ballots challenged shall be counted
27 and subtracted from the total, the result should equal the
28 number of ballots deposited in the ballot box. The commission-
29 ers and clerks shall also report, over their signatures, the
30 number of ballots spoiled and the number of ballots not voted.

31 (c) The procedure for counting ballots, whether performed
32 throughout the day by the counting board as provided in section
33 thirty-three, article one of this chapter or after the close of the
34 polls by the receiving board or by the two boards together, shall
35 be as follows:

36 (1) The ballot box shall be opened and all votes shall be
37 tallied in the presence of the entire election board;

38 (2) One of the commissioners shall take one ballot from the
39 box at a time and shall determine if the ballot is properly signed
40 by the two poll clerks of the receiving board. If not properly
41 signed, the ballot shall be placed in an envelope for the purpose,
42 without unfolding it. Any ballot which does not contain the

43 proper signatures shall be challenged. If an accurate accounting
44 is made for all ballots in the precinct in which the ballot was
45 voted and no other challenge exists against the voter, the ballot
46 shall be counted at the canvas. If properly signed, the commis-
47 sioner shall hand the ballot to a team of commissioners of
48 opposite politics, who shall together read the votes marked on
49 the ballot for each office. Write-in votes for election for any
50 person other than an official write-in candidate shall be
51 disregarded. When a voter casts a straight ticket vote and also
52 casts a write-in vote for an office, the straight ticket vote for
53 that office shall be rejected whether or not a vote can be
54 counted for a write-in candidate;

55 (3) The commissioner responsible for removing the ballots
56 from the box shall keep a tally of the number of ballots as they
57 are removed and whenever the number shall equal the number
58 of voters entered on the pollbook minus the number of provi-
59 sional ballots, as determined according to subsection (a) of this
60 section, any other ballot found in the ballot box shall be placed
61 in the same envelope with unsigned ballots not counted, without
62 unfolding the same or allowing anyone to examine or know the
63 contents thereof, and the number of excess ballots shall be
64 recorded on the envelope;

65 (4) Each poll clerk shall keep an accurate tally of the votes
66 cast by marking in ink on tally sheets, which shall be provided
67 for the purpose, so as to show the number of votes received by
68 each candidate for each office and for and against each issue on
69 the ballot; and

70 (5) When the reading of the votes is completed, the ballot
71 shall be immediately strung on a thread.

§3-6-7. Ballot irregularities; procedures.

1 If two or more ballots are found folded or rolled together
2 and the names voted for thereon be the same, one of them only
3 shall be counted; but if the names voted for thereon be different,
4 in any particular, neither of them shall be counted except as
5 hereinbefore provided; and in either case, the commissioners of
6 election shall, in writing in ink, place a common number on the
7 ballots and state thereon that they were folded or rolled together
8 when voted. If any ballot be found to contain more than the
9 proper number of names for any office, the ballot shall not be
10 counted as to the office. In any election for state senator, if a
11 person is voted for on any ballot who is not a resident of the
12 proper county, as required by section four, article VI of the
13 constitution, the ballot shall not be counted for the office. Any
14 ballot or part of a ballot from which it is impossible to deter-
15 mine the elector's choice of candidates shall not be counted as
16 to the candidates affected thereby.

**§3-6-9. Canvass of returns; declaration of results; recounts;
recordkeeping.**

1 (a) The commissioners of the county commission shall be
2 ex officio a board of canvassers and, as such, shall keep in a
3 well-bound book, marked "election record", a complete record
4 of all their proceedings in ascertaining and declaring the results
5 of every election in their respective counties. They shall
6 convene as the canvassing board at the courthouse on the fifth
7 day (Sundays excepted) after every election held in their
8 county, or in any district thereof, and the officers in whose
9 custody the ballots, pollbooks, registration records, tally sheets
10 and certificates have been placed shall lay them before the
11 board for examination. They may, if considered necessary,
12 require the attendance of any of the commissioners, poll clerks
13 or other persons present at the election to appear and testify
14 respecting the election and make other orders as shall seem
15 proper to procure correct returns and ascertain the true results
16 of the election in their county; but in this case all the questions

17 to the witnesses and all the answers thereto and evidence shall
18 be taken down in writing and filed and preserved. All orders
19 made shall be entered upon the record. They may adjourn, from
20 time to time, but no longer than absolutely necessary. When a
21 majority of the commissioners are not present, the meeting shall
22 stand adjourned until the next day and so from day to day, until
23 a quorum is present. All meetings of the commissioners sitting
24 as a board of canvassers shall be open to the public. The board
25 shall proceed to open each sealed package of ballots laid before
26 them and, without unfolding them, count the number in each
27 package and enter the number upon their record. The ballots
28 shall then be again sealed up carefully in a new envelope and
29 each member of the board shall write his or her name across the
30 place where the envelope is sealed. After canvassing the returns
31 of the election, the board shall publicly declare the results of the
32 election; however, they shall not enter an order certifying the
33 election results for a period of forty-eight hours after the
34 declaration.

35 (b) Within the 48-hour period a candidate voted for at the
36 election may demand the board to open and examine any of the
37 sealed packages of ballots and recount them; but they shall seal
38 the ballots again, along with the envelope above named, and the
39 clerk of the county commission and each member of the board
40 shall write his or her name across the places where it is sealed
41 and endorse in ink, on the outside: "Ballots of the election held
42 at precinct No.____, in the district of _____, and
43 county of _____, on the _____ day of
44 _____." In computing the 48-hour period as used in
45 this section, Saturdays, Sundays and legal holidays shall be
46 excluded: *Provided*, That at the end of the 48-hour period, an
47 order shall be entered certifying all election results except for
48 those offices in which a recount has been demanded.

49 (c) If a recount has been demanded, the board shall have an
50 additional twenty-four hours after the end of the 48-hour period

51 in which to send notice to all candidates who filed for the office
52 in which a recount has been demanded of the date, time and
53 place where the board will convene to commence the recount.
54 The notice shall be served under the provisions of subdivision
55 (d) of this section. The recount shall be set for no sooner than
56 three days after the serving of the notice: *Provided*, That after
57 the notice is served, candidates so served shall have an addi-
58 tional twenty-four hours in which to notify the board, in
59 writing, of their intention to preserve their right to demand a
60 recount of precincts not requested to be recounted by the
61 candidate originally requesting a recount of ballots cast:
62 *Provided, however*, That there shall be only one recount of each
63 precinct, regardless of the number of requests for a recount of
64 any precinct. A demand for the recount of ballots cast at any
65 precinct may be made during the recount proceedings only by
66 the candidate originally requesting the recount and those
67 candidates who notify the board, pursuant to this subdivision,
68 of their intention to preserve their right to demand a recount of
69 additional precincts.

70 (d) Any sheriff of the county in which the recount is to
71 occur shall deliver a copy thereof in writing to the candidate in
72 person; or if the candidate is not found, by delivering the copy
73 at the usual place of abode of the candidate and giving informa-
74 tion of its purport, to the spouse of the candidate or any other
75 person found there who is a member of his or her family and
76 above the age of sixteen years; or if neither the spouse of the
77 candidate nor any other person be found there and the candidate
78 is not found, by leaving the copy posted at the front door of the
79 place of abode. Any sheriff, thereto required, shall serve a
80 notice within his or her county and make return of the manner
81 and time of service; for a failure so to do, he or she shall forfeit
82 twenty dollars. The return shall be evidence of the manner and
83 time of service.

84 (e) Every candidate who demands a recount shall be
85 required to furnish bond in a reasonable amount with good
86 sufficient surety to guarantee payment of the costs and the
87 expenses of the recount in the event the result of the election is
88 not changed by the recount; but the amount of the bond shall in
89 no case exceed three hundred dollars.

90 (f) After the board of canvassers has made their certificates
91 and declared the results as hereinafter provided, they shall
92 deposit the sealed packages of ballots, absent voter ballots,
93 registration records, pollbooks, tally sheets and precinct
94 certificates with the clerks of the county commissions and
95 circuit courts from whom they were received, who shall
96 carefully preserve them for twenty-two months: *Provided*, That
97 the clerk may use these records to update the voter registration
98 records in accordance with subsection (d), section eighteen,
99 article two of this chapter. If there is no contest pending as to
100 any election and their further preservation is not required by
101 any order of a court, the ballots, pollbooks, tally sheets and
102 certificates shall be destroyed by fire or otherwise, without
103 opening the sealed packages of ballots. If there is a contest
104 pending, they shall be destroyed as soon as the contest is ended.

105 (g) If the result of the election is not changed by the
106 recount, the costs and expenses thereof shall be paid by the
107 party at whose instance the recount was made.

ARTICLE 7. CONTESTED ELECTIONS.

§3-7-1. Contests for state offices and judgeships; procedure.

§3-7-4. Contests of seats in Legislature; notices and procedure.

§3-7-1. Contests for state offices and judgeships; procedure.

1 If the election of governor, secretary of state, treasurer,
2 auditor, attorney general, commissioner of agriculture, a judge
3 of the supreme court of appeals or a judge of a circuit court, is

4 contested, the contestant shall give notice, with specifications
5 and affidavit, to the person whose election is contested within
6 ten days after the election is certified and within ten days
7 thereafter the return notice shall be given to the contestant. The
8 parties shall finish taking depositions within forty days after the
9 notice is delivered. The depositions shall be transmitted to the
10 clerk of the House of Delegates, to be delivered by him or her
11 to the joint committee or special court hereinafter provided for.
12 In other respects the regulations contained in this article
13 respecting contests for a seat in the Legislature shall be ob-
14 served, so far as they are applicable.

§3-7-4. Contests of seats in Legislature; notices and procedure.

1 Any person intending to contest the election of another as
2 senator or delegate shall, within ten days after the election is
3 certified, give him or her notice thereof in writing and a list of
4 the votes he or she will dispute, with the objections to each, and
5 of the votes rejected for which he or she will contend. If the
6 contestant objects to the legality of the election or the qualifica-
7 tion of the person returned, the notice shall set forth the facts on
8 which the objection is founded. The person whose election is
9 contested shall, within ten days after receiving the notice,
10 deliver to the contestant a like list of the votes he or she will
11 dispute and of the objection to each, and of the rejected votes he
12 or she will claim; and, if he or she has any objection to the
13 qualification of the contestant, shall specify in the notice the
14 facts on which the objection is founded. Each party shall
15 append to the notice an affidavit that the matters therein set
16 forth, so far as they are stated of his or her knowledge, are true
17 and that, so far as they are stated on the information of others,
18 he or she believes them to be true. If new facts are discovered
19 by either party after he or she has given notice, he or she may
20 give an additional notice or notices to his or her adversary, with
21 specifications and affidavit as above prescribed.

22 The notice of contest shall be presented to the proper
23 branch of the Legislature, within ten days after its meeting.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

- §3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.
- §3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.
- §3-8-5. Detailed accounts and verified financial statements required.
- §3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

1 (a) Except candidates for party committeemen and commit-
2 teewomen, in primary and other elections and federal commit-
3 tees required to file under the provisions 2 U. S. C. §434, all
4 candidates for nomination or election and all persons or
5 organizations of any kind advocating or opposing a nomination,
6 election or defeat of any candidate shall keep records of receipts
7 and expenditures which are made for political purposes. All of
8 the receipts and expenditures are subject to regulation by the
9 provisions of this article. Verified financial statements of the
10 records and expenditures shall be made and filed as public
11 records by all candidates and by their financial agents, represen-
12 tatives or any person acting for and on behalf of any candidate
13 and by the treasurers of all political party committees.

14 (b) In addition to any other reporting required by the
15 provisions of this chapter, any independent expenditure in the
16 amount of one thousand dollars or more for any statewide,
17 legislative or multicounty judicial candidate or in the amount of
18 five hundred dollars or more for any county office, single-
19 county judicial candidate, committee supporting or opposing a

20 candidate on the ballot in more than one county, any municipal
21 candidate on a municipal election ballot, which is made after
22 the eleventh day but more than twelve hours before the day of
23 any election shall be reported, on a form prescribed by the
24 secretary of state, within twenty-four hours after the expendi-
25 ture is made or debt is incurred for a communication, to the
26 secretary of state by hand-delivery, facsimile or other means to
27 assure receipt by the secretary of state within the 24-hour
28 period.

29 (c) For purposes of this section, "independent expenditure"
30 means an expenditure made by a person other than a candidate
31 or committee for a communication which expressly advocates
32 the election or defeat of a clearly identified candidate but which
33 is made independently of a candidate's campaign and which has
34 not been made with the cooperation or consent of, or in
35 consultation with, or at the request or suggestion of, any
36 candidate or any of his or her agents or authorized committees.
37 An expenditure which does not meet the criteria for independ-
38 ence established in this subsection is considered a contribution.

39 (d) Any independent expenditure must include a clear and
40 conspicuous public notice which identifies the name of the
41 person who paid for the expenditure and states that the commu-
42 nication is not authorized by the candidate or his or her commit-
43 tee.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

1 (a) No person shall act as the treasurer of any political
2 committee, or as financial agent for any candidate for nomina-
3 tion or election to any office to be filled by the voters of the
4 entire state, or candidates for nomination or election for any
5 office, encompassing an election district larger than a county,

6 or candidates for nomination for legislative office, or any
7 person or organization advocating or opposing the nomination,
8 election or defeat of any candidate, encompassing an election
9 district larger than a county, unless a written statement desig-
10 nating him or her as the treasurer or financial agent is filed with
11 the secretary of state at least twenty-eight days before the
12 election at which he or she is to act and must be received before
13 midnight, eastern standard time, of that day or if mailed, shall
14 be postmarked before that hour: *Provided*, That a change of
15 treasurer may be made at any time by filing a written statement
16 with the secretary of state.

17 (b) No person shall act as treasurer of any committee or as
18 financial agent for any candidate to be nominated or elected by
19 the voters of a county or a district therein, except legislative
20 candidates, or as the treasurer or financial agent for a candidate
21 for the nomination or election to any other office, unless a
22 written statement designating him or her as the treasurer or
23 financial agent is filed with the clerk of the county commission
24 at least twenty-eight days before the election at which he or she
25 is to act and must be received before midnight, eastern standard
26 time, of that day or if mailed, shall be postmarked before that
27 hour: *Provided*, That a change of treasurer may be made at any
28 time by filing a written statement with the clerk of the county
29 commission.

30 (c) Notwithstanding the provisions of subsections (a) and
31 (b) of this section, a filing designating a treasurer or financial
32 agent for a state or county political executive committee may be
33 made anytime before the committee either accepts or spends
34 funds on behalf of the committee. Once a designation is made
35 by a state or county political executive committee, no additional
36 designations are required under this section until a successor
37 treasurer or financial agent is designated. A state or county
38 political executive committee may terminate a designation
39 made pursuant to this section by making a written request to

40 terminate the designation and by stating in the request that the
 41 committee has no funds remaining in the committee’s account.
 42 This written request shall be made with either the secretary of
 43 state or the clerk of the county commission as provided by
 44 subsections (a) and (b) of this section.

45 (d) As used in this article:

46 The term “person” means an individual, partnership,
 47 committee, association, corporation, and any other organization
 48 or group of persons; and

49 The term “financial agent” means any person acting for and
 50 by himself or herself, or any two or more natural persons acting
 51 together or cooperating in a financial way to aid or take part in
 52 the nomination or election of any candidate for public office, or
 53 to aid or promote the success or defeat of any political party or
 54 principle at any election, or any proposition submitted to a vote
 55 at a public election.

**§3-8-5. Detailed accounts and verified financial statements
 required.**

1 (a) Every candidate, financial agent, person and association
 2 of persons, organization of any kind, including every corpora-
 3 tion, directly or indirectly, supporting a political committee
 4 established pursuant to paragraph (C), subdivision (1), subsec-
 5 tion (b), section eight of this article or engaging in other
 6 activities permitted by this section and also including the
 7 treasurer or equivalent officer of the association or organiza-
 8 tion, advocating or opposing the nomination, election or defeat
 9 of any candidate, and the treasurer of every political party
 10 committee shall keep detailed accounts of every sum of money
 11 or other thing of value received by him or her, including all
 12 loans of money or things of value, and of all expenditures and
 13 disbursements made, liabilities incurred, by the candidate,

14 financial agent, person, association or organization or commit-
15 tee, for political purposes, or by any of the officers or members
16 of the committee, or any person acting under its authority or on
17 its behalf.

18 (b) Every person or association of persons required to keep
19 detailed accounts under this section shall file with the officers
20 hereinafter prescribed a detailed itemized sworn statement,
21 according to the following provisions and times:

22 (1) On the last Saturday in March or within six days
23 thereafter, and annually whenever the total of all financial
24 transactions relating to an election exceed five hundred dollars
25 a statement which shall include all financial transactions which
26 have taken place by the date of that statement, subsequent to
27 any previous statement filed within the previous five years
28 under this section;

29 (2) Not less than ten nor more than seventeen days preced-
30 ing each primary or other election, a statement which shall
31 include all financial transactions which have taken place by the
32 date of the statement, subsequent to the previous statement, if
33 any;

34 (3) Not less than twenty-five nor more than thirty-one days
35 after each primary or other election, a statement which shall
36 include all financial transactions which have taken place by the
37 date of the statement, subsequent to the previous statement; and

38 (4) On the first Saturday in September or within six days
39 thereafter, preceding the general election day whenever the total
40 of all financial transactions relating to an election exceed five
41 hundred dollars or whenever any loans are outstanding, a
42 statement which shall include all financial transactions which
43 have taken place by the date of the statement, subsequent to the
44 previous statement.

45 (c) Every person who shall announce as a write-in candi-
46 date for any elective office and his or her financial agent or
47 election organization of any kind shall comply with all of the
48 requirements of this section after public announcement of the
49 person's candidacy has been made.

50 (d) For purposes of this section, the term "financial
51 transactions" includes all contributions or loans received and all
52 repayments of loans or expenditures made to promote the
53 candidacy of any person by any candidate or any organization
54 advocating or opposing the nomination, election or defeat of
55 any candidate to be voted on.

**§3-8-12. Additional acts forbidden; circulation of written matter;
newspaper advertising; solicitation of contributions;
intimidation and coercion of employees; promise of
employment or other benefits; limitations on contri-
butions; public contractors; penalty.**

1 (a) No person may publish, issue or circulate, or cause to be
2 published, issued or circulated, any anonymous letter, circular,
3 placard, radio or television advertisement or other publication
4 expressly advocating the election or defeat of a clearly identi-
5 fied candidate.

6 (b) No owner, publisher, editor or employee of a newspaper
7 or other periodical may insert, either in its advertising or
8 reading columns, any matter, paid for or to be paid for, which
9 tends to influence the voting at any election, unless directly
10 designating it as a paid advertisement and stating the name of
11 the person authorizing its publication and the candidate in
12 whose behalf it is published.

13 (c) No person may, in any room or building occupied for
14 the discharge of official duties by any officer or employee of
15 the state or a political subdivision of the state, solicit orally or

16 by written communication delivered within the room or
17 building, or in any other manner, any contribution of money or
18 other thing of value for any party or political purpose, from any
19 postmaster or any other officer or employee of the federal
20 government, or officer or employee of the state, or a political
21 subdivision of the state. No officer, agent, clerk or employee of
22 the federal government, or of this state, or any political subdivi-
23 sion of the state, who may have charge or control of any
24 building, office or room, occupied for any official purpose, may
25 knowingly permit any person to enter any building, office or
26 room, occupied for any official purpose for the purpose of
27 soliciting or receiving any political assessments from, or
28 delivering or giving written solicitations for, or any notice of,
29 any political assessments to, any officer or employee of the
30 state, or a political subdivision of the state.

31 (d) Except as provided in section eight of this article, no
32 person entering into any contract with the state or its subdivi-
33 sions, or any department or agency of the state, either for
34 rendition of personal services or furnishing any material,
35 supplies or equipment or selling any land or building to the
36 state, or its subdivisions, or any department or agency of the
37 state, if payment for the performance of the contract or payment
38 for the material, supplies, equipment, land or building is to be
39 made, in whole or in part, from public funds may, during the
40 period of negotiation for or performance under the contract or
41 furnishing of materials, supplies, equipment, land or buildings,
42 directly or indirectly, make any contribution to any political
43 party, committee or candidate for public office or to any person
44 for political purposes or use; nor may any person or firm solicit
45 any contributions for any purpose during any period.

46 (e) No person may, directly or indirectly, promise any
47 employment, position, work, compensation or other benefit
48 provided for, or made possible, in whole or in part, by act of the
49 Legislature, to any person as consideration, favor or reward for

50 any political activity for the support of or opposition to any
51 candidate, or any political party in any election.

52 (f) No person may, directly or indirectly, make any contri-
53 bution in excess of the value of one thousand dollars in connec-
54 tion with any campaign for nomination or election to or on
55 behalf of any statewide or national elective office, or in excess
56 of the value of one thousand dollars, in connection with any
57 other campaign for nomination or election to or on behalf of
58 any other elective office in the state or any of its subdivisions,
59 or in connection with or on behalf of any committee or other
60 organization or person engaged in furthering, advancing or
61 advocating the nomination or election of any candidate for any
62 of the offices.

63 (g) (1) Notwithstanding the provisions of subsection (f) of
64 this section to the contrary, the aggregate contributions made to
65 a state party executive committee or state party legislative
66 caucus committee are to be permitted only pursuant to the
67 limitations imposed by the provisions of this subsection.

68 (2) No person may, directly or indirectly, make contribu-
69 tions to a state party executive committee or state party
70 legislative caucus committee which, in the aggregate, exceed
71 the value of one thousand dollars in any calendar year.

72 (h) The limitations on contributions contained in this
73 section do not apply to transfers between and among a state
74 party executive committee or a state party's legislative caucus
75 political committee from national committees of the same
76 political party: *Provided*, That transfers permitted by this
77 subsection may not exceed fifty thousand dollars in the aggre-
78 gate in any calendar year to any state party executive committee
79 or state party legislative caucus political committee: *Provided*,
80 *however*, That the moneys transferred may only be used for

81 voter registration and get-out-the-vote activities of the state
82 committees.

83 (i) No person may solicit any contribution from any
84 nonelective salaried employee of the state government or of any
85 of its subdivisions or coerce or intimidate any nonelective
86 salaried employee into making a contribution. No person may
87 coerce or intimidate any nonsalaried employee of the state
88 government or any of its subdivisions into engaging in any form
89 of political activity. The provisions of this subsection may not
90 be construed to prevent any employee from making a contribu-
91 tion or from engaging in political activity voluntarily, without
92 coercion, intimidation or solicitation.

93 (j) No person may solicit a contribution from any other
94 person without informing the other person at the time of the
95 solicitation of the amount of any commission, remuneration or
96 other compensation that the solicitor or any other person will
97 receive or expect to receive as a direct result of the contribution
98 being successfully collected. Nothing in this subsection may be
99 construed to apply to solicitations of contributions made by any
100 person serving as an unpaid volunteer.

101 (k) No person may place any letter, circular, flyer, adver-
102 tisement, election paraphernalia, solicitation material or other
103 printed or published item tending to influence voting at any
104 election in a roadside receptacle unless it is: (1) Approved for
105 placement into a roadside receptacle by the business or entity
106 owning the receptacle; and (2) contains a written acknowledg-
107 ment of the approval. This subdivision does not apply to any
108 printed material contained in a newspaper or periodical pub-
109 lished or distributed by the owner of the receptacle. The term
110 "roadside receptacle" means any container placed by a newspa-
111 per or periodical business or entity to facilitate home or
112 personal delivery of a designated newspaper or periodical to its
113 customers.

114 (l) Any person violating any provision of this section is
115 guilty of a misdemeanor and, upon conviction thereof, shall be
116 fined not more than one thousand dollars, or confined in a
117 regional or county jail for not more than one year, or, in the
118 discretion of the court, be subject to both fine and confinement.

ARTICLE 10. FILLING VACANCIES.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

1 Any vacancy in the office of county commissioner or clerk
2 of county commission shall be filled by the county commission
3 of the county, unless the number of vacancies in a county
4 commission deprive that body of a quorum, in which case the
5 governor of the state shall fill any vacancy in the county
6 commission necessary to create a quorum thereof. Persons
7 appointed shall be of the same political party as the officeholder
8 vacating the office and shall continue in office until the next
9 general election is certified, or until the completion of the term
10 if the term ends on the thirty-first day of December following
11 the next general election : *Provided*, That in the event a quorum
12 of the county commission cannot agree upon a person to fill a
13 vacancy in the office of county commissioner it shall be the
14 mandatory, nondiscretionary duty of each county commis-
15 sioner, within sixty days from the date the vacancy occurs, to
16 submit in person to the chief judge of the circuit court of the
17 county, the name of one person who is a member of the same
18 political party as was the person whose vacancy is being filled
19 and was such member for at least one year next preceding the
20 filling of the vacancy and who is legally qualified and willing
21 to fill the vacancy. The judge shall thereupon, in the presence
22 of the quorum of the county commission, cause each name to be

23 written on a separate piece of paper, shall fold or roll up the
24 pieces of paper so as to resemble each other and so that the
25 name written thereon shall not be visible on the outside, and
26 shall deposit the pieces of paper in a box from which one of the
27 county commissioners, selected by lot under the supervision of
28 the judge, shall, in the presence of each other and the judge,
29 draw one of the names. The person whose name is so drawn
30 shall be the county commission's choice to fill the vacancy. The
31 circuit court shall have jurisdiction to compel compliance with
32 the provisions of this proviso.

33 Notice of the election shall be given by order of the county
34 commission and published as prescribed in section six of this
35 article. Nomination of candidates to fill the office for an
36 unexpired term in the office of county commissioner or clerk of
37 the county commission shall be made in the manner prescribed
38 for making nominations to fill a vacancy in the office of the
39 clerk of the circuit court.

40 In the event that the election for an unexpired term is held
41 at the same time as the election for a full term for county
42 commissioner, the full term shall be counted first and the
43 unexpired term shall be counted second. If the candidate with
44 the highest number of votes for the unexpired term resides in
45 the same magisterial district as the candidate with the highest
46 number of votes for the full term, the candidate for the full term
47 shall be seated. The candidate with the next highest number of
48 votes for the unexpired term residing in a different magisterial
49 district shall be seated for the unexpired term.

**§3-10-8. Vacancies in offices of prosecuting attorney, sheriff,
assessor and surveyor.**

1 Any vacancy occurring in the office of prosecuting attor-
2 ney, sheriff, assessor or county surveyor shall be filled by the
3 county commission by appointment of a person of the same

4 political party as the officeholder vacating the office. The
5 appointed person shall hold the office until the next general
6 election is certified, or until the completion of the term if the
7 term ends on the thirty-first day of December following the next
8 general election. Notice of an election to fill a vacancy in any
9 of the offices named in this section shall be given by the county
10 commission, or by the president thereof in vacation, and
11 published or posted in the manner prescribed in section six of
12 this article. Nomination of candidates to fill any vacancy shall
13 be made in the manner prescribed in section six of this article
14 for nominating candidates to fill a vacancy in the office of the
15 clerk of the circuit court.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 6. ANNEXATION.

Part II. Annexation by Election.

§8-6-2. Petition for annexation.

1 (a) Five percent or more of the freeholders of a municipal-
2 ity desiring to have territory annexed thereto may file a petition
3 in writing with the governing body thereof setting forth the
4 change proposed in the metes and bounds of the municipality
5 and asking that a vote be taken upon the proposed change. The
6 petition shall be verified and shall be accompanied by an
7 accurate survey map showing the territory to be annexed to the
8 corporate limits by the proposed change.

9 (b) The petitioners shall obtain a surety bond in an amount
10 set by the governing body sufficient to cover the cost of the
11 election. The bond shall be forfeited if a majority of the votes
12 cast are against the proposed annexation.

13 (c) The governing body shall, upon receipt of the bond,
14 order a vote of the qualified voters of the municipality to be

15 taken upon the proposed annexation on a date and at a time and
16 place to be named in the order.

17 (d) The governing body shall, at the same time, order a vote
18 of all of the qualified voters of the additional territory and of all
19 of the freeholders of the additional territory whether they reside
20 or have a place of business therein or not, to be taken upon the
21 question on the same day at some convenient place in or near
22 the additional territory.

23 (e) The governing body shall cause the order for the
24 election to be published, at the cost of the municipality, as a
25 Class II-0 legal advertisement in compliance with the provi-
26 sions of article three, chapter fifty-nine of this code. The
27 publication area is the municipality and the additional territory.
28 The first publication must be at least fourteen days prior to the
29 date upon which the vote is to be taken. The order for the
30 election shall contain an accurate description by metes and
31 bounds of the additional territory proposed to be annexed to the
32 corporate limits by the proposed change, a summary of the
33 municipality's plan for providing services to the additional
34 territory and, if practicable, shall also contain a popular
35 description of the additional territory.

36 (f) The election shall be held, superintended and conducted
37 and the results thereof ascertained, certified, returned and
38 canvassed in the same manner by the same individuals as
39 elections for municipal officers. The election is reviewable by
40 the circuit court of the county in which the municipality or the
41 major portion thereof, including the area proposed to be
42 annexed, is located. The order may be reviewed by the circuit
43 court as an order of a county commission ordering an election
44 may be reviewed under section sixteen, article five of this
45 chapter.

46 (g) The ballots, or ballot labels where voting machines are
47 used, shall have written or printed on them the words:

48 // For Annexation

49 // Against Annexation

50 (h) Any freeholder which is a firm or corporation may vote
51 by its manager, president or executive officer duly designated
52 in writing by the firm or corporation.

53 (i) An individual who is a qualified voter and freeholder of
54 the municipality or the additional territory shall be entitled to
55 vote only once.

56 (j) For purposes of this section, the term “qualified voter of
57 the additional territory” includes a firm or corporation in the
58 additional territory regardless of whether the firm or corpora-
59 tion is a freeholder. A firm or corporation may vote by its
60 manager, president, or executive officer duly designated in
61 writing by the firm or corporation. In any instance where a
62 freeholder leases or rents real property to a firm or corporation
63 the freeholder and the firm or corporation shall determine
64 which entity will be entitled to vote in the annexation election.

65 (k) When an election is held in any municipality in accor-
66 dance with the provisions of this section, another election
67 relating to the same proposed change or any part thereof shall
68 not be held for a period of one year.

69 (l) If a majority of all of the legal votes cast in the munici-
70 pality and a majority of all the legal votes cast in the territory
71 are in favor of the proposed annexation, then the governing
72 body shall proceed as specified in the immediately succeeding
73 section of this article.

CHAPTER 101

(Com. Sub. for H. B. 3070 — By Delegates Trump and Staton)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to elections generally; and providing that a mass convention of a political party, to elect delegates to the state convention, be held in the county instead of the various magisterial districts.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-21. Party conventions to nominate presidential electors; candidates; organization; duties.

1 Candidates for presidential electors shall be nominated by
2 the delegated representatives of the political party assembled in
3 a state convention to be held during the months of June, July or
4 August next preceding any general election at which presiden-
5 tial electors are to be elected. The state executive committee of
6 the political party, by resolution, shall designate the place and
7 fix the date of the convention, shall prescribe the number of
8 delegates thereto, and shall apportion the delegates among the
9 several counties of the state in proportion to the vote cast in the
10 state for the party's candidate for governor at the last preceding

11 general election at which a governor was elected. The state
12 executive committee shall also ascertain and designate all
13 offices for which candidates are to be nominated at the conven-
14 tion.

15 At least sixty days prior to the date fixed for holding any
16 state convention, the chairman of the party's state executive
17 committee shall cause to be delivered to the party's county
18 executive committee in each county of the state a copy of the
19 resolutions fixing the time and place for holding the state
20 convention and prescribing the number of delegates from each
21 county to the convention. Within ten days after receipt of the
22 copy of the resolutions, the party executive committee of each
23 county shall meet and, by resolution, shall apportion the
24 delegates to the state convention among the several magisterial
25 districts of the county, on a basis of the vote received in the
26 county by the candidate of the party for governor at the last
27 preceding general election at which a governor was elected, but
28 in such apportionment of county delegates each magisterial
29 district shall be entitled to at least one delegate to the state
30 convention. The party's county executive committee shall call
31 a meeting of the members of the political party in mass conven-
32 tion in the county, which meeting shall be held at least thirty
33 days prior to the date fixed for the state convention and at
34 which meeting the members of the political party in each
35 magisterial district shall elect the number of delegates to which
36 the district is entitled in the state convention.

37 The meeting place in the county shall be as central and
38 convenient as can reasonably be selected, and all recognized
39 members of the political party shall be entitled to participate in
40 any mass convention and in the selection of delegates. Notice
41 of the time and place of holding the county mass convention
42 and of the person who shall act as temporary chairman thereof
43 shall be given by publication as a Class II-O legal advertise-
44 ment in compliance with the provisions of article three, chapter

45 fifty-nine of this code, and the publication area for the publica-
46 tion shall be the county. The first publication shall be made not
47 more than fifteen days and the second publication shall be made
48 not less than five days prior to the date fixed for holding the
49 convention. The notice published shall specify the number of
50 delegates which each magisterial district in the county is
51 entitled to elect to the state convention.

52 Upon assembling, the mass convention of the county, shall
53 choose a chairman and a secretary, who, within five days after
54 the holding of the convention, shall certify to the chairman of
55 the state executive committee of the political party and the
56 chairman of the county committee of the political party, the
57 names and addresses of the parties selected as delegates to the
58 state convention.

59 If, after the election, a vacancy exists for a delegate from
60 any magisterial district, the party's county executive committee,
61 within ten days after the mass convention, shall appoint a
62 member of the political party in the magisterial district to fill
63 the vacancy, and shall certify the appointment to the chairman
64 of the state executive committee of the political party.

65 All contests over the selection of delegates to conventions
66 shall be heard and determined by the party executive committee
67 of the county from which the delegates are chosen, and the
68 county executive committee shall, upon written petition of any
69 contest, meet for a hearing and make a determination within ten
70 days after the holding of a county mass convention. The circuit
71 court of the county and the supreme court of appeals of the state
72 shall have concurrent original jurisdiction to review, by
73 mandamus or other proper proceeding, the decision of a county
74 executive committee in any contest.

75 The delegates chosen and certified by and from the several
76 magisterial districts in the state and, in the event of any contest,

77 those prevailing in the contest, shall make up the state conven-
78 tion. The number present of those entitled to participate in any
79 convention shall cast the entire vote to which the county is
80 entitled in the convention, and it shall require a majority vote to
81 nominate any candidate for office.

82 All nominations made at state conventions shall be certified
83 within fifteen days thereafter, by the chairman and the secretary
84 of the convention, to the secretary of state, who shall certify
85 them to the clerk of the circuit court of each county concerned,
86 and the names of the persons so nominated shall be printed
87 upon the regular ballot to be voted at the ensuing general
88 election, except that the names of the presidential elector
89 candidates shall not be printed thereon.

90 The delegates to any state convention may formulate and
91 promulgate the party platform or declaration of party principles
92 as to them shall seem advisable.

CHAPTER 102

**(H. B. 2110 — By Delegates Varner, Mezzatesta,
Williams, Manuel, Shelton and Stemple)**

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to the Legislature declaring that lawful design, marketing, manufacture, or sale of firearms or ammunition to the public is not an unreasonably dangerous activity; and providing that the right to

institute suit against firearms manufacturers, dealers or sellers is the strict prerogative of the state.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eighteen, to read as follows:

**ARTICLE 18. LIMITATIONS OF ACTIONS REGARDING FIREARMS
MANUFACTURE AND SALE.**

§55-18-1. Legislative declarations and purpose.

§55-18-2. Authority to bring suit against manufacturers, sellers, trade associations or dealers of firearms.

§55-18-1. Legislative declarations and purpose.

1 The Legislature hereby finds and declares:

2 (a) The lawful design, marketing, manufacture or sale of
3 firearms or ammunition to the public is not an unreasonably
4 dangerous activity and does not constitute a nuisance per se;

5 (b) To the extent the constitution of this state and the
6 United States protect citizens' rights to keep and bear arms, the
7 Legislature finds and declares that it is within the strict preroga-
8 tive of its own authority, and not the authority of any county or
9 municipality, to determine whether any manufacturer, dealer or
10 seller of firearms has engaged in any act or omission that would
11 create a cognizable action for damages, injunction or otherwise.

**§55-18-2. Authority to bring suit against manufacturers, sellers,
trade associations or dealers of firearms.**

1 The authority to bring suit and the right to recover against
2 any firearms or ammunition manufacturer, seller, trade associa-
3 tion or dealer of firearms by or on behalf of any county or
4 municipality in this state for damages, abatement or injunctive
5 relief resulting from or relating to the design, manufacture,

6 marketing, or sale of firearms or ammunition to the public is
7 reserved exclusively to the state: *Provided*, That nothing
8 contained in this article may prohibit a county or municipality
9 from bringing an action for breach of contract or warranty as to
10 firearms or ammunition purchased by the county or municipal-
11 ity.

CHAPTER 103

(Com. Sub. for H. B. 2714 — By Delegates H. White,
Hrutkay and R. M. Thompson)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-c, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the donation of fire fighting and fire rescue equipment and insurance policies dealing with immunity coverage provisions.

Be it enacted by the Legislature of West Virginia:

That section eight-c, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS;
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

§8-15-8c. Donation of equipment.

1 (a) Effective the first day of July, two thousand two, no
2 person, company or other organization who donates fire control
3 or rescue equipment, including federal excess or surplus

4 property, to a volunteer fire department is subject to civil
5 liability for any personal injury, property damages or death
6 resulting from any defect in the equipment unless the person,
7 company or organization acted with malice, gross negligence,
8 recklessness or intentional misconduct which proximately
9 caused the personal injury, property damages or death.

10 (b) For purposes of this section, “fire control or rescue
11 equipment” means a vehicle, fire fighting tool, protective gear,
12 breathing apparatus or other supply or tool used in fire fighting
13 or fire rescue. No breathing apparatus may be donated unless,
14 prior to the donation, it has been recertified to the manufac-
15 turer’s specifications by a technician approved by the manufac-
16 turer.

17 (c) Unless the insured has executed a specific written
18 rejection of such coverage in the policy, any insurer who has
19 sold, issued or delivered an insurance policy providing liability
20 coverage to any person, company or other organization who
21 donates fire control or rescue equipment is barred and estopped
22 from asserting the civil immunity granted to the insured by this
23 section against claims or suits covered by the terms of the
24 policy, up to the limits of the policy.

25 The limitation on civil liability set forth in the provisions of
26 this section applies only to policies of insurance issued or
27 renewed on or after the first day of July, two thousand one.

CHAPTER 104

**(Com. Sub. for S. B. 39 — By Senators Rowe, Helmick,
Fanning and Ross)**

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the criminal offense for a false fire alarm to a felony when it is done with intent to cause injury to persons or property to divert attention from another offense.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-27. Penalties.

1 (a) Any person who violates any regulations promulgated
2 by the state fire commission as provided in section five of this
3 article is guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined not more than one hundred dollars or confined in
5 the county or regional jail not more than ninety days, or both.

6 Each day during which any illegal erection, construction,
7 reconstruction, alteration, maintenance or use continues after
8 knowledge or official notice that it is illegal is a separate
9 offense.

10 (b) Except as provided by the provisions of subsection (c)
11 of this section, any person who violates the provisions of
12 section twenty-one of this article shall be guilty of a misde-
13 meanor and, upon conviction thereof, shall be fined for a first
14 offense not more than one hundred dollars or confined in the
15 county or regional jail for not more than thirty days or both
16 fined and confined and for a second and each subsequent
17 offense fined not less than one hundred dollars nor more than
18 five hundred dollars or confined in the county or regional jail
19 for not less than ninety days nor more than one year, or both.

20 (c) Any person who violates the provisions of section
21 twenty-one of this article with the intent to cause injury to the
22 person of another, to cause destruction of the property of
23 another or to divert the attention of law enforcement or fire
24 personnel to help effectuate the commission of another crime
25 shall be guilty of a felony and, upon conviction thereof, shall be
26 confined in a state correctional facility for not less than one nor
27 more than three years, or fined not more than five thousand
28 dollars, or both.

29 (d) Any officer who fails to perform any duty required of
30 him or her by this article or who violates any of its provisions
31 is guilty of a misdemeanor and, upon conviction thereof, shall
32 be fined not less than twenty-five dollars nor more than fifty
33 dollars for each failure or violation.

34 (e) Any person who violates any other provision of this
35 article is guilty of a misdemeanor and, upon conviction thereof,
36 shall be fined not more than one hundred dollars or confined in
37 the county or regional jail not more than ninety days, or both.

CHAPTER 105

**(H. B. 3011 — By Delegates Michael, Leach, Proudfoot,
Browning, Warner, R. M. Thompson and Border)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state fire commission to establish standards and procedures to implement the provisions of the section.

Be it enacted by the Legislature of West Virginia:

That section nine, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-9. Powers, duties and authority of state fire commission and state fire marshal.

1 (a) The state fire commission may employ personnel, fix
2 their compensation and, within funds available to do so, incur
3 expenses as necessary in the performance of the duties of its
4 office.

5 (b) The state fire commission is responsible for fire
6 programs within this state, including the state fire marshal's
7 office, training, uniform standards and certification, finance and
8 planning and fire prevention.

9 (c) All state and area training and education in fire service
10 shall be coordinated by the state fire commission. The state fire
11 marshal shall ensure that these programs are operated through-
12 out the state at a level consistent with needs identified by the
13 commissioner.

14 (d) The state fire commission shall develop minimum
15 training levels for firefighters, minimum levels of equipment
16 needed to protect life and property within fire service areas,
17 minimum performance standards the departments must meet in
18 response times, communications, minimum levels of water flow
19 and pressure and other performance measures as considered
20 necessary to meet the overall goals of improved fire prevention
21 and control. The state fire commission may make recommenda-
22 tions to the state insurance commissioner regarding town
23 classifications for fire insurance rates.

24 (e) The formation of any new fire department, including
25 volunteer fire departments, requires the concurrence of the state
26 fire commission. The state fire commission shall develop a
27 method of certification which can be applied to all fire depart-
28 ments and volunteer fire departments.

29 (f) The state fire commission shall develop a plan for fire
30 prevention and control which shall include, but not be limited
31 to, the following areas: Manpower needs; location of training
32 centers; location of fire prevention and control units; communi-
33 cations; fire-fighting facilities; water sources; vehicular needs;
34 public education and information; public participation; stan-
35 dardization in record keeping; evaluation of personnel; report-
36 ing of fire hazards; programs on mutual aid; location of public
37 safety agencies; outline of fire prevention programs; and
38 accessibility of fire prevention information.

39 (g) The state fire commission shall establish fire protection
40 areas and at such times as funds are available shall establish
41 field offices for inspection, planning and certification.

42 (h) The state fire marshal may accept, on behalf of the state
43 fire commission, gifts, grants, court ordered civil forfeiture
44 proceedings and bequests of funds or property from individuals,
45 foundations, corporations, the federal government, governmen-
46 tal agencies and other organizations or institutions. The state
47 fire marshal, acting on behalf of the state fire commission, may
48 enter into, sign and execute any agreements and do and perform
49 any acts that may be necessary, useful, desirable or convenient
50 to effectuate the purposes of this article. Moneys from gifts,
51 grants, civil forfeiture proceedings and bequests received by the
52 state fire marshal shall be deposited into the special account set
53 forth in subsection (c), section twelve-b of this article, and the
54 state fire marshal, with the approval of the state fire commis-
55 sion, has the authority to make expenditures of, or use of any
56 tangible property, in order to effectuate the purposes of this
57 article.

58 (i) The state fire commission shall establish standards and
59 procedures by policy to implement the provisions of this section
60 with regard to the following:

61 (1) Fire prevention and control;

62 (2) Uniform standards of performance, equipment and
63 training;

64 (3) Certification;

65 (4) Training and education in fire service; and

66 (5) The creation, operation and responsibilities of fire
67 departments throughout the state.

CHAPTER 106

(Com. Sub. for H. B. 2359 — By Mr. Speaker, Mr. Kiss)

[Passed February 28, 2003; in effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact sections twelve-b and twenty-two, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the fire marshal fees fund; eliminating the transfer of ten percent of the fees collected by the state fire marshal to general revenue; and transferring a portion of the insurance company tax to the fund.

Be it enacted by the Legislature of West Virginia:

That sections twelve-b and twenty-two, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.

§29-3-22. Tax on insurance companies.

§29-3-12b. Fees.

1 (a) The state fire marshal may establish fees in accordance
2 with the following:

3 (1) *For blasting.* — Any person storing, selling or using
4 explosives shall first obtain a permit from the state fire marshal.
5 The permit shall be valid for one year. The state fire marshal
6 may charge a fee for the permit.

7 (2) *For inspections of schools or day-care facilities.* — The
8 state fire marshal may charge a fee of up to twenty-five dollars
9 per annual inspection for inspection of schools or day-care
10 facilities: *Provided*, That only one such fee may be charged per
11 year for any building in which a school and a day-care facility
12 are colocated: *Provided, however*, That any school or day-care
13 facility may not be charged for an inspection more than one
14 time per twelve-month period.

15 (3) *For inspections of hospitals or nursing homes.* — The
16 state fire marshal may charge an inspection fee of up to one
17 hundred dollars per annual inspection of hospitals or nursing
18 homes: *Provided*, That any hospital or nursing home may not
19 be charged for an inspection more than one time per
20 twelve-month period.

21 (4) *For inspections of personal care homes or board and*
22 *care facilities.* — The state fire marshal may charge an inspec-
23 tion fee of up to fifty dollars per annual inspection for inspec-
24 tions of personal care homes or board and care facilities:

25 *Provided*, That any personal care home or board and care
26 facility may not be charged for an inspection more than one
27 time per twelve-month period.

28 (5) *For inspections of residential occupancies.* — The state
29 fire marshal may charge an inspection fee of up to one hundred
30 dollars for each inspection of a residential occupancy. For
31 purposes of this subdivision, “residential occupancies” are those
32 buildings in which sleeping accommodations are provided for
33 normal residential purposes.

34 (6) *For inspections of mercantile occupancies.* — The state
35 fire marshal may charge an inspection fee of up to one hundred
36 dollars for inspections of mercantile occupancies: *Provided*,
37 That if the inspection is in response to a complaint made by a
38 member of the public, the state fire marshal shall obtain from
39 the complainant an advance inspection fee of twenty-five
40 dollars. This fee shall be returned to the complainant if, after
41 the state fire marshal has made the inspection, he or she finds
42 that the complaint was accurate and justified, and he or she
43 shall thereafter collect an inspection fee of up to one hundred
44 dollars from the mercantile occupancy. If, after the inspection
45 has been performed, it appears to the state fire marshal that the
46 complaint was not accurate or justified, the state fire marshal
47 shall keep the twenty-five dollar advance inspection fee
48 obtained from the complainant and may not collect any fees
49 from the mercantile occupant. For purposes of this section,
50 “mercantile occupancy” includes stores, markets and other
51 rooms, buildings or structures for the display and sale of
52 merchandise.

53 (7) *For business occupancies.* — The state fire marshal
54 may charge an inspection fee of up to one hundred dollars for
55 inspections of business occupancies: *Provided*, That the
56 provisions in subdivision (6) of this section shall apply regard-
57 ing complaints by members of the public. For purposes of this

58 section, “business occupancies” are those buildings used for the
59 transaction of business, other than mercantile occupancies, for
60 the keeping of accounts and records and similar purposes.

61 (8) *For inspections of assembly occupancies.* — The state
62 fire marshal may charge an inspection fee not more than one
63 time per twelve-month period for the inspection of assembly
64 occupancies. The inspection fee shall be assessed as follows:
65 For Class C assembly facilities, an inspection fee not to exceed
66 fifty dollars; for Class B assembly facilities, an inspection fee
67 not to exceed seventy-five dollars; and for Class A facilities, an
68 inspection fee not to exceed one hundred dollars.

69 For purposes of this subdivision, an “assembly occupancy”
70 includes, but is not limited to, all buildings or portions of
71 buildings used for gathering together fifty or more persons for
72 such purposes as deliberation, worship, entertainment, eating,
73 drinking, amusement or awaiting transportation. For purposes
74 of this section, a “Class C assembly facility” is one that
75 accommodates fifty to three hundred persons; a “Class B
76 facility” is one which accommodates more than three hundred
77 persons but less than one thousand persons; and a “Class A
78 facility” is one which accommodates more than one thousand
79 persons.

80 (b) The state fire marshal may collect fees for the fire safety
81 review of plans and specifications for new and existing con-
82 struction. Fees shall be paid by the party or parties receiving the
83 review.

84 (1) *Structural barriers and fire safety plans review.* — The
85 fee is one dollar for each one thousand dollars of construction
86 cost up to the first one million dollars. Thereafter, the fee is
87 forty cents for each one thousand dollars of construction cost.

88 (2) *Sprinkler system review.* — The fee charged for the
89 review of an individual sprinkler system is as follows: Number

90 of heads: One to two hundred — eighty-five dollars; two
91 hundred one to three hundred — one hundred dollars; three
92 hundred one to seven hundred fifty — one hundred twenty
93 dollars; over seven hundred fifty — one hundred twenty dollars
94 plus ten cents per head over seven hundred fifty.

95 (3) *Fire alarm systems review.* — The fee charged for the
96 review of a fire alarm system is fifty dollars for each ten
97 thousand square feet of space with a fifty dollar minimum
98 charge.

99 (4) *Range hood extinguishment system review.* — The fee
100 is twenty-five dollars per individual system reviewed.

101 (5) *Carpet specifications.* — The fee for carpet review and
102 approval is twenty dollars per installation.

103 (c) All fees authorized and collected pursuant to this article
104 and article three-b of this chapter shall be paid to the state fire
105 commission and thereafter deposited into the special account in
106 the state treasury known as the “fire marshal fees fund”.
107 Expenditures from the fund shall be for the purposes set forth
108 in this article and articles three-b and three-c of this chapter and
109 are not authorized from collections but are to be made only in
110 accordance with appropriation by the Legislature and in
111 accordance with the provisions of article three, chapter twelve
112 of this code and upon fulfillment of the provisions of article
113 two, chapter five-a of this code. Any balance remaining in the
114 special account at the end of any fiscal year shall be
115 reappropriated to the next fiscal year.

116 (d) If the owner or occupant of any occupancy arranges a
117 time and place for an inspection with the state fire marshal and
118 is not ready for the occupancy to be inspected at the appointed
119 time and place, the owner or occupant thereof shall be charged
120 the inspection fee provided in this section unless at least forty-

121 eight hours prior to the scheduled inspection the owner or
122 occupant requests the state fire marshal to reschedule the
123 inspection. In the event a second inspection is required by the
124 state fire marshal as a result of the owner or occupant failing to
125 be ready for the inspection when the state fire marshal arrives,
126 the state fire marshal shall charge the owner or occupant of the
127 occupancy the inspection fees set forth above for each inspec-
128 tion trip required.

129 (e) The fees provided for in this section shall remain in
130 effect until such time as the Legislature has approved rules
131 promulgated by the state fire marshal, in accordance with the
132 provisions of article three, chapter twenty-nine-a of this code,
133 establishing a schedule of fees for services.

§29-3-22. Tax on insurance companies.

1 Every insurance company doing business in this state,
2 except farmers' mutual fire insurance companies, shall pay to
3 the state insurance commissioner annually on or before the first
4 day of March, in addition to the taxes now required by law to be
5 paid by the companies, one half of one percent of the taxable
6 premiums of the companies on insurance against the hazard of
7 fire and on that portion of all other taxable premiums reason-
8 ably applicable to insurance against the hazard of fire which are
9 included in other coverages, and received by it for insurance on
10 property or risks in this state during the calendar year next
11 preceding as shown by their annual statement under oath to the
12 insurance department. The money so received by the state
13 insurance commissioner is paid by him or her into the treasury
14 and credited to the special revenue fund created in section
15 twelve-b of this article.

CHAPTER 107

(Com. Sub. for H. B. 3155 — By Delegates Amores, Craig,
Varner, Armstead, Brown and Kominar)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to confidentiality of trade secrets; modifying review and notification procedures associated with release of information required for air quality permits; and allowing air quality board to hear appeal of agency decisions.

Be it enacted by the Legislature of West Virginia:

That section ten, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

- 1 (a) All air quality data, emission data, permits, compliance
- 2 schedules, orders of the director, board orders and any other
- 3 information required by a federal implementation program (all
- 4 for convenience hereinafter referred to in this section as
- 5 “records, reports, data or information”) obtained under this
- 6 article shall be available to the public, except that upon a
- 7 showing satisfactory to the director, by any person, that records,
- 8 reports, data or information or any particular part thereof, to

9 which the director has access under this article if made public,
10 would divulge methods or processes entitled to protection as
11 trade secrets of the person, the director shall consider these
12 records, reports, data or information or a particular portion
13 thereof confidential: *Provided*, That this confidentiality does
14 not apply to the types and amounts of air pollutants discharged
15 and that these records, reports, data or information may be
16 disclosed to other officers, employees or authorized representa-
17 tives of the state or of the federal environmental protection
18 agency concerned with enforcing this article, the federal Clean
19 Air Act, as amended, or the federal Resource Conservation and
20 Recovery Act, as amended, when relevant to any official
21 proceedings thereunder: *Provided, however*, That the officers,
22 employees or authorized representatives of the state or federal
23 environmental protection agency protect these records, reports,
24 data or information to the same degree required of the director
25 by this section. The director shall promulgate legislative rules
26 regarding the protection of records, reports, data or information,
27 or trade secrets, as required by this section.

28 (b) Upon receipt of a request for records, reports, data or
29 information which constitute trade secrets and prior to making
30 a final determination to grant or deny the request, the director
31 shall notify the person claiming that any record, report, data or
32 information is entitled to protection as a trade secret, and allow
33 the person an opportunity to respond to the request in writing.

34 (c) All requests to inspect or copy documents must state
35 with reasonable specificity the documents or type of documents
36 sought to be inspected or copied. Within five business days of
37 the receipt of a request, the director or his or her designate shall
38 by order: (1) Advise the person making the request of the time
39 and place at which the person may inspect and copy the
40 documents, which, if the request addresses information claimed
41 as confidential, may not be sooner than thirty days following
42 the date of the determination to disclose, unless an earlier

43 disclosure date is agreed to by the person claiming the confi-
44 dentiality; or (2) deny the request, stating in writing the reasons
45 for denial. If the request addresses information claimed as
46 confidential, notice of the action taken pursuant to this subsec-
47 tion shall also be provided to the person asserting the claim of
48 confidentiality.

49 Any person adversely affected by a determination, by order
50 or otherwise, regarding information confidentiality under this
51 article may appeal the determination to the air quality board
52 pursuant to the provisions of article one, chapter twenty-two-b
53 of this code. The filing of a timely notice of appeal shall stay
54 any determination, by order or otherwise, to disclose confiden-
55 tial information pending a final decision on the appeal. The
56 scope of review is limited to the question of whether the
57 records, reports, data or other information, or any particular part
58 thereof sought to be inspected or copied, are entitled to be
59 treated as confidential under subsection (a) of this section. The
60 air quality board shall afford evidentiary protection in appeals
61 as is necessary to protect the confidentiality of the information
62 at issue, including the use of in camera proceedings and the
63 sealing of records where appropriate.

64 (d) In lieu of the provision of chapter twenty-nine-b of this
65 code, the provision of this section shall apply to determinations
66 of confidentiality.

CHAPTER 108

**(H. B. 3009 — By Mr. Speaker, Mr. Kiss, and Delegates Varner,
Amores, Browning, Kominar, Palumbo and Swartzmiller)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excluding certain records from disclosure under the freedom of information act collected in response to and in preparation for terrorist acts or threats of terrorist acts; definitions; and exceptions.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

1 (a) The following categories of information are specifically
2 exempt from disclosure under the provisions of this article:

3 (1) Trade secrets, as used in this section, which may
4 include, but are not limited to, any formula, plan pattern,
5 process, tool, mechanism, compound, procedure, production
6 data, or compilation of information which is not patented which
7 is known only to certain individuals within a commercial
8 concern who are using it to fabricate, produce or compound an
9 article or trade or a service or to locate minerals or other
10 substances, having commercial value, and which gives its users
11 an opportunity to obtain business advantage over competitors;

12 (2) Information of a personal nature such as that kept in a
13 personal, medical or similar file, if the public disclosure thereof
14 would constitute an unreasonable invasion of privacy, unless
15 the public interest by clear and convincing evidence requires
16 disclosure in the particular instance: *Provided*, That nothing in
17 this article shall be construed as precluding an individual from

18 inspecting or copying his or her own personal, medical or
19 similar file;

20 (3) Test questions, scoring keys and other examination data
21 used to administer a licensing examination, examination for
22 employment or academic examination;

23 (4) Records of law-enforcement agencies that deal with the
24 detection and investigation of crime and the internal records
25 and notations of such law-enforcement agencies which are
26 maintained for internal use in matters relating to law enforce-
27 ment;

28 (5) Information specifically exempted from disclosure by
29 statute;

30 (6) Records, archives, documents or manuscripts describing
31 the location of undeveloped historic, prehistoric, archaeologi-
32 cal, paleontological and battlefield sites or constituting gifts to
33 any public body upon which the donor has attached restrictions
34 on usage or the handling of which could irreparably damage
35 such record, archive, document or manuscript;

36 (7) Information contained in or related to examination,
37 operating or condition reports prepared by, or on behalf of, or
38 for the use of any agency responsible for the regulation or
39 supervision of financial institutions, except those reports which
40 are by law required to be published in newspapers;

41 (8) Internal memoranda or letters received or prepared by
42 any public body;

43 (9) Records assembled, prepared or maintained to prevent,
44 mitigate or respond to terrorist acts or the threat of terrorist acts,
45 the public disclosure of which threaten the public safety or the
46 public health;

47 (10) Those portions of records containing specific or unique
48 vulnerability assessments or specific or unique response plans,
49 data, databases, and inventories of goods or materials collected
50 or assembled to respond to terrorist acts; and communication
51 codes or deployment plans of law enforcement or emergency
52 response personnel;

53 (11) Specific intelligence information and specific investi-
54 gative records dealing with terrorist acts or the threat of a
55 terrorist act shared by and between federal and international
56 law-enforcement agencies, state and local law enforcement and
57 other agencies within the department of military affairs and
58 public safety;

59 (12) National security records classified under federal
60 executive order and not subject to public disclosure under
61 federal law that are shared by federal agencies, and other
62 records related to national security briefings to assist state and
63 local government with domestic preparedness for acts of
64 terrorism;

65 (13) Computing, telecommunications and network security
66 records, passwords, security codes or programs used to respond
67 to or plan against acts of terrorism which may be the subject of
68 a terrorist act;

69 (14) Security or disaster recovery plans, risk assessments,
70 tests, or the results of those tests;

71 (15) Architectural or infrastructure designs, maps or other
72 records that show the location or layout of the facilities where
73 computing, telecommunications or network infrastructure used
74 to plan against or respond to terrorism are located or planned to
75 be located; and

76 (16) Codes for facility security systems; or codes for secure
77 applications for such facilities referred to in subdivision (15),
78 subsection (a) of this section.

79 (b) As used in subdivisions (9) through (16), subsection (a)
80 of this section, the term “terrorist act” means an act that is
81 likely to result in serious bodily injury or damage to property or
82 the environment and is intended to:

83 (1) Intimidate or coerce the civilian population;

84 (2) Influence the policy of a branch or level of government
85 by intimidation or coercion;

86 (3) Affect the conduct of a branch or level of government
87 by intimidation or coercion; or

88 (4) Retaliate against a branch or level of government for a
89 policy or conduct of the government.

90 (c) Nothing in the provisions of subdivisions (9) through
91 (16), subsection (a) of this section, should be construed to make
92 subject to the provisions of this chapter any evidence of an
93 immediate threat to public health or safety unrelated to a
94 terrorist act or the threat thereof which comes to the attention
95 of a public entity in the course of conducting a vulnerability
96 assessment response or similar activity.

CHAPTER 109

(H. B. 2891 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to gasoline and special fuel excise tax; and repealing requirement that tax commissioner annually report by county and individual gas pump within each county amount of gasoline and special fuel excise tax collected.

Be it enacted by the Legislature of West Virginia:

That section three, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of fifteen and one-half
2 cents per gallon on all gasoline or special fuel, which tax shall
3 be computed in accordance with the appropriate measure of tax
4 as prescribed in this article: *Provided*, That beginning the first
5 day of May, one thousand nine hundred ninety-three, the tax
6 levied by this article is twenty and one-half cents per gallon:
7 *Provided, however*, That on and after the first day of August,
8 two thousand seven, the tax levied by this article is fifteen and
9 one-half cents per gallon.

CHAPTER 110

(H. B. 2840 — By Delegates Leach, Craig, Morgan,
Smirl, Sobonya and Howard)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor;
in Effect Ninety Days From Passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four and six-a,
chapter twenty-six, acts of the Legislature, regular session, one

thousand nine hundred twenty-five (municipal charters), as last amended by chapter one hundred ninety-four, acts of the Legislature, regular session, one thousand nine hundred eighty-three, all relating to the Greater Huntington Park and Recreation District; increasing the number of members on the board.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four and six-a, chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as last amended by chapter one hundred ninety-four, acts of the Legislature, regular session, one thousand nine hundred eighty-three, be amended and reenacted, all to read as follows:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

§2. Greater Huntington Park and Recreation District; composition, terms of office; political affiliation; no commissioner may hold another elected public office; compensation; expenses; no commissioner may be personally interested in contacts or property controlled by the board.

1 (a) The purpose of the board of park commissioners of the
2 city of Huntington as heretofore created and established by the
3 acts hereby amended and reenacted, shall be to establish, own,
4 develop and operate a park system for the benefit, health,
5 safety, welfare, pleasure and relaxation of the inhabitants of the
6 Greater Huntington Park and Recreation District and shall
7 hereafter be known as the "Greater Huntington Park and
8 Recreation District".

9 (b) The park district shall be governed by eleven commis-
10 sioners; ten of whom shall be elected from Cabell County, but
11 no more than two of whom shall be elected from any one
12 magisterial district, and one of whom shall be elected from

13 Westmoreland magisterial district in the county of Wayne. The
14 commissioners shall be elected pursuant to paragraph (1),
15 subdivision (1) of this subsection.

16 (1) Commissioners of the park district shall be elected in
17 the general election for state officers on the first Tuesday after
18 the first Monday in November and in the manner prescribed by
19 law for the nomination and election of district officers, except
20 as provided in this subsection.

21 At the general election in the year, one thousand nine
22 hundred eighty-four, there shall be elected six commissioners.
23 One commissioner shall be elected from the Westmoreland
24 magisterial district in the county of Wayne. Five commissioners
25 shall be elected from the county of Cabell. In Westmoreland
26 district of Cabell County the person receiving the highest
27 number of votes shall be elected for a term of six years. In
28 Cabell County, the three persons receiving the highest number
29 of votes shall be elected for a term of six years, the person
30 receiving the next highest number of votes shall be elected for
31 a term of four years, and the remaining elected commissioner
32 shall be elected for a term of two years.

33 Beginning at the general election in the year, one thousand
34 nine hundred eighty-six and every sixth year thereafter, there
35 shall be elected three commissioners who shall be elected for a
36 term of six years.

37 Beginning at the general election in the year, one thousand
38 nine hundred eighty-eight and every sixth year thereafter, there
39 shall be elected three commissioners who shall be elected for a
40 term of six years.

41 Beginning at the general election in the year, one thousand
42 nine hundred ninety and every sixth year thereafter, there shall

43 be elected four commissioners who shall be elected for a term
44 of six years.

45 Beginning at the general election in the year, two thousand
46 four, and every sixth year thereafter, there shall be elected four
47 commissioners from the county of Cabell who shall be elected
48 for a term of six years.

49 Beginning at the general election in the year, two thousand
50 six, and every sixth year thereafter, there shall be elected three
51 commissioners from the county of Cabell who shall be elected
52 for a term of six years.

53 Beginning at the general election in the year, two thousand
54 eight, and every sixth year thereafter, there shall be elected four
55 commissioners who shall be elected for a term of six years. One
56 commissioner shall be elected from the Westmoreland magiste-
57 rial district in the county of Wayne. Three commissioners shall
58 be elected from the county of Cabell.

59 (2) The commissioners in office upon the effective date of
60 this act under the authority of the acts hereby amended and
61 reenacted, shall continue in office for the term for which they
62 were elected.

63 (c) No elected commissioner shall hold any other elected or
64 appointed public office.

65 (d) Commissioners shall receive no compensation for their
66 services as commissioners, but they shall be entitled to reim-
67 bursement for all reasonable and necessary expenses actually
68 incurred in the performance of their duties as commissioners.

69 (e) Commissioners shall have no personal financial interest,
70 directly or indirectly, in any contract entered into by the park
71 district, or hold any remunerative position in connection with
72 the establishment, construction, improvement, extension,

73 development, maintenance or operation of any of the property
74 under their control as commissioners.

§3. Vacancies in office of park commissioners.

1 Any vacancy which may occur in the office of an elected
2 commissioner, by death, resignation, refusal to serve, or
3 otherwise, shall be filled by the park district within sixty days
4 thereafter, by appointment of a suitable person, and the person
5 so appointed shall hold office until the next election for
6 commissioners, when a person shall be elected for the remain-
7 der of the unexpired term of commissioner.

§4. Oath of commissioners; election of officers; election of other officers; duties of officers; bond of secretary; secretary pro tempore.

1 (a) After appointment or election, and before entering upon
2 his duties as commissioner, each new commissioner shall take
3 the following oath as administered by the county clerk of Cabell
4 or Wayne County as appropriate and convenient:

5 "I do solemnly swear that I will faithfully
6 perform the duties as a member of the Greater Huntington Park
7 and Recreation District during the term for which I was elected,
8 to the best of my ability according to law."

9 (b) At the park district's first meeting and every year
10 thereafter, it shall elect one of its members as president, and
11 another member as vice-president. The park district shall elect
12 a secretary who need not be a member of the park district, as
13 well as elect a member of the park district who shall serve as
14 treasurer. The park district shall have the power to appoint from
15 among its members such other officers as it deems necessary
16 and to delegate such duties and authority to these other officers
17 as is consistent with carrying out the purposes of this charter.
18 Any officer may be removed from office, upon adequate notice

19 and hearing, although not relieved of his duties as a commis-
20 sioner, by a vote of the majority of commissioners present and
21 voting.

22 (c) The officers of the park district shall have the following
23 specified duties and any duty which is reasonably inferred
24 therefrom and which is consistent with carrying out the
25 purposes of this charter.

26 (1) *President.* — The president shall perform such duties as
27 ordinarily devolve upon the president officer of a deliberative
28 body, except that he shall have a vote upon each and every
29 question as every other commissioner, but he shall have only
30 one vote on each question. Additionally, the president shall: (a)
31 Act as chief administrative officer and legal representative of
32 the park district; (b) represent and speak for the park district to
33 other organizations and to the public; (c) appoint committees
34 and delegate duties; and (d) sign letters or documents necessary
35 to carry out the will of the park district.

36 (2) *Vice-president.* — The vice-president shall assume the
37 duties of the president in case of the absence or incapacity of
38 the president and shall become president on the death, resigna-
39 tion or permanent incapacity of the president as determined by
40 the park district.

41 (3) *Secretary.* — The secretary shall be the chief recording
42 and corresponding officer and the custodian of the records of
43 the park district. The duties of the secretary shall be to: (a) Take
44 careful and authentic notes of the proceedings of the meetings
45 as a basis for preparing the minutes; (b) prepare and certify the
46 correctness of the minutes and enter them in the official minute
47 book; (c) read or circulate the minutes to the commissioners for
48 correction and approval; (d) enter any corrections approved by
49 the commissioners in the minute book and initial them; (e)
50 record and attest by his signature the approved minutes as the

51 official minutes of the park district, with the date of approval;
52 (f) provide the presiding officer of the assembly with the exact
53 wording of a pending motion or of one previously acted on ; (g)
54 prepare a list of members and call the roll when directed by the
55 presiding officer; (h) read all papers, documents or communica-
56 tions as directed by the presiding officer; (i) bring to each
57 meeting the minute book, a copy of ordinances, rules and
58 policies, a list of the members, a list of standing and special
59 committees, and a copy of the parliamentary authority adopted
60 by the organization; (j) search the minutes for information
61 requested by officers or members; (k) assist the presiding
62 officer before each meeting in preparing a detailed agenda; (l)
63 preserve all records, reports and official documents of the park
64 district except those specifically assigned to the custody of
65 others as well as preserve all papers containing evidence of
66 title, contracts and obligations; (m) prepare and send required
67 notices of meetings and proposals; (n) provide the chairman of
68 each special committee with a list of his committee members,
69 a copy of the motion referring the subject to the committee, and
70 instructions and other documents that may be useful; (o)
71 provide the chairman of each standing committee with a copy
72 of all proposals referred to it, instructions, or material that may
73 be useful; (p) authenticate official documents by his signature;
74 (q) carry on the official correspondence of the park district as
75 directed, except correspondence assigned to other officers; (r)
76 make available the minute book for public inspection as a
77 public record; (s) codify and preserve all ordinances enacted by
78 the park district.

79 For this service the secretary, who is not a commissioner,
80 may receive such compensation as the park district may allow.
81 Before entering upon the duties of his office, the secretary shall
82 enter into a bond with one or more sureties deemed sufficient
83 by the park district and approved by the park district, condi-
84 tioned upon the faithful performance of his duties, the bond to
85 be payable to the Greater Huntington Park and Recreation

86 District in such penal sum as the park district determines, which
87 bond shall be filed with the park district for safekeeping. In the
88 secretary's absence, the park district may appoint a secretary
89 pro tempore.

90 (4) *Treasurer.* — The treasurer shall be responsible for the
91 collection, safekeeping, investing and expenditure of all funds
92 and assets of the park district, and for keeping an accurate
93 financial record thereof which record shall be available for
94 public inspection. Before entering upon the duties of his office,
95 the treasurer shall enter into a bond with one or more sureties
96 deemed sufficient by the park district, and approved by the park
97 district, conditioned upon the faithful discharge of his duties
98 and the account for and paying over, as may be required, all
99 moneys which may come into his possession by virtue of his
100 office. Such bond shall be in such penal sum as the park district
101 may require, payable to the Greater Huntington Park and
102 Recreation District and filed with the park district for safekeep-
103 ing.

§6a. Comprehensive plan.

1 No later than the first day of January, two thousand four,
2 and every fifth year thereafter, the park district shall prepare
3 and make public a comprehensive plan as to the future develop-
4 ment of the park district.

CHAPTER 111

(H. B. 2669 — By Delegates Mahan, Cann, Kominar and Faircloth)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article eighteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terminating the hazardous waste management annual certification fee and the hazardous waste management fee fund.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article eighteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-22. Appropriation of funds; hazardous waste management fund.

1 (a) The net proceeds of all fines, penalties and forfeitures
2 collected under this article shall be appropriated as directed by
3 article XII, section 5 of the constitution of West Virginia. For
4 the purposes of this section, the net proceeds of the fines,
5 penalties and forfeitures shall be considered the proceeds
6 remaining after deducting therefrom those sums appropriated
7 by the Legislature for defraying the cost of administering this
8 article. All permit application fees collected under this article
9 shall be paid into the state treasury into a special fund desig-
10 nated "The Hazardous Waste Management Fund." In making
11 the appropriation for defraying the cost of administering this
12 article, the Legislature shall first take into account the sums
13 included in that special fund prior to deducting additional sums
14 as may be needed from the fines, penalties and forfeitures
15 collected pursuant to this article.

16 (b) Effective on the first day of July, two thousand three,
17 and for the next two fiscal years, there is imposed an annual
18 certification fee for facilities that manage hazardous waste, as
19 defined by the federal Resource Conservation and Recovery
20 Act, as amended. The fee will be set by rule promulgated by the

21 secretary in accordance with the provisions of article three,
22 chapter twenty-nine-a of this code. The rule shall be a product
23 of a negotiated rule-making process with the facilities subject
24 to the rule. The rule shall, at a minimum, establish different fee
25 rates for facilities based on criteria established in the rule. The
26 total amount of fees generated shall raise no more funds than
27 are necessary and adequate to meet the matching requirements
28 for all federal grants which support the hazardous waste
29 management program, but shall not exceed seven hundred
30 thousand dollars per year.

31 (c) The revenues collected from the annual certification fee
32 shall be deposited in the state treasury to the credit of the
33 "Hazardous Waste Management Fee Fund," which is hereby
34 established. Moneys of the fund, together with any interest or
35 other return earned thereon, shall be expended to meet the
36 matching requirements of federal grant programs which support
37 the hazardous waste management program. Expenditures from
38 the fund shall be for the purposes set forth in this article and are
39 not authorized from collections, but are to be made only in
40 accordance with appropriation by the Legislature and in
41 accordance with the provisions of article three, chapter twelve
42 of this code and upon the fulfillment of the provisions set forth
43 in article two, chapter five-a of this code: *Provided*, That for the
44 fiscal year ending the thirtieth day of June, two thousand four,
45 expenditures are authorized from collections rather than
46 pursuant to an appropriation by the Legislature. Amounts
47 collected which are found from time to time to exceed the funds
48 needed for purposes set forth in this article may be transferred
49 to other accounts by appropriation of the Legislature.

50 (d) The fee provided for in subsection (b) of this section
51 and the fund established in subsection (c) of this section shall
52 terminate on the thirtieth day of June, two thousand six.

CHAPTER 112

(S. B. 336 — By Senators Ross, Minard, Snyder, Boley and Minear)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to uniform application forms for credentialing, recredentialing and updating information for health care practitioners.

Be it enacted by the Legislature of West Virginia:

That section two, article one-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended to read as follows:

ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.

§16-1A-2. Development of uniform credentialing application forms.

1 Notwithstanding any provision of this code to the contrary,
2 the secretary of the department of health and human resources
3 and the insurance commissioner shall jointly propose rules for
4 legislative approval in accordance with the provisions of article
5 three, chapter twenty-nine-a of this code governing the develop-
6 ment and use of uniform application forms for credentialing,
7 recredentialing or updating information of health care practitio-
8 ners required to use the forms.

CHAPTER 113

**(Com. Sub. for S. B. 405 — By Senators Plymale, Helmick,
Prezioso, Love, Hunter, Rowe, Jenkins, Ross, Oliverio,
Dempsey, Minard and Smith)**

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to repeal article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles five-d and five-t of said chapter, all relating to the changing of personal care homes and residential board and care homes to assisted living residences; defining assisted living; defining limited and intermittent nursing care; establishing limitations and exceptions to definitions; clarifying licensure requirements; specifying duties of licensees; providing for residents to contract for additional services; clarifying responsibilities of property owners; providing for emergency rules; extending the care home advisory board for an additional six months; and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

That article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that articles five-d and five-t of said chapter be amended and reenacted, all to read as follows:

Article

5D. Assisted Living Residences.

5T. Care Home Advisory Board.

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

- §16-5D-1. Purpose.
- §16-5D-2. Definitions.
- §16-5D-3. Powers, duties and rights of secretary.
- §16-5D-4. Administrative and inspection staff.
- §16-5D-5. Rules; minimum standards for assisted living residences.
- §16-5D-6. License required; application; fees; duration; renewal.
- §16-5D-7. Cost disclosure; surety for residents' funds.
- §16-5D-8. Investigation of complaints.
- §16-5D-9. Inspections.
- §16-5D-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
- §16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.
- §16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.
- §16-5D-13. Judicial review.
- §16-5D-14. Legal counsel and services for the secretary.
- §16-5D-15. Unlawful acts; penalties; injunctions; private right of action.
- §16-5D-16. Availability of reports and records.
- §16-5D-17. Licenses and rules in force.
- §16-5D-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

§16-5D-1. Purpose.

1 (a) It is the policy of this state to encourage and promote
2 the development and utilization of resources to ensure the
3 effective care and treatment of persons who are dependent upon
4 the services of others by reason of physical or mental impair-
5 ment who may require limited and intermittent nursing care,
6 including those individuals who qualify for and are receiving
7 services coordinated by a licensed hospice. Such care and
8 treatment requires a living environment for such persons which,
9 to the extent practicable, will approximate a normal home
10 environment. To this end, the guiding principle for administra-
11 tion of the laws of the state is that such persons shall be
12 encouraged and assisted in securing necessary care and treat-
13 ment in noninstitutional surroundings.

14 (b) In recognition that for many such persons effective care
15 and treatment can only be secured from proprietary, voluntary
16 and governmental assisted living residences, it is the policy of
17 this state to encourage, promote and require the maintenance of
18 assisted living residences so as to ensure protection of the rights
19 and dignity of those using the services of assisted living
20 residences.

21 (c) The provisions of this article are hereby declared to be
22 remedial and shall be liberally construed to effectuate its
23 purposes and intents.

§16-5D-2. Definitions.

1 (a) As used in this article, unless a different meaning
2 appears from the context:

3 (1) "Assisted living residence" means any living facility,
4 residence or place of accommodation, however named, avail-
5 able for four or more residents, in this state which is advertised,
6 offered, maintained or operated by the ownership or manage-
7 ment, whether for a consideration or not, for the express or
8 implied purpose of having personal assistance or supervision,
9 or both, provided to any residents therein who are dependent
10 upon the services of others by reason of physical or mental
11 impairment and who may also require nursing care at a level
12 that is not greater than limited and intermittent nursing care:
13 *Provided*, That the care or treatment in a household, whether for
14 compensation or not, of any person related by blood or mar-
15 riage, within the degree of consanguinity of second cousin to
16 the head of the household, or his or her spouse, may not be
17 deemed to constitute an assisted living residence within the
18 meaning of this article. Nothing contained in this article applies
19 to hospitals, as defined under section one, article five-b of this
20 chapter; or state institutions, as defined under section three,
21 article one, chapter twenty-five of this code or section six,

22 article one, chapter twenty-seven of this code; or personal care
23 homes operated by the federal government or the state; or
24 institutions operated for the treatment and care of alcoholic
25 patients; or offices of physicians; or hotels, boarding homes or
26 other similar places that furnish to their guests only room and
27 board; or to homes or asylums operated by fraternal orders
28 pursuant to article three, chapter thirty-five of this code;

29 (2) "Deficiency" means a statement of the rule and the fact
30 that compliance has not been established and the reasons
31 therefor;

32 (3) "Department" means the state department of health and
33 human resources;

34 (4) "Division" means the bureau for public health of the
35 state department of health and human resources;

36 (5) "Limited and intermittent nursing care" means direct
37 hands on nursing care of an individual who needs no more than
38 two hours of nursing care per day for a period of time no longer
39 than ninety consecutive days per episode: *Provided*, That such
40 time limitations shall not apply to an individual who, after
41 having established a residence in an assisted living residence,
42 subsequently qualifies for and receives services coordinated by
43 a licensed hospice and such time limitations shall not apply to
44 home health services provided by a medicare-certified home
45 health agency. Limited and intermittent nursing care may only
46 be provided by or under the supervision of a registered profes-
47 sional nurse and in accordance with rules proposed by the
48 secretary for legislative approval in accordance with the
49 provisions of article three, chapter twenty-nine-a of this code;

50 (6) "Nursing care" means those procedures commonly
51 employed in providing for the physical, emotional and
52 rehabilitational needs of the ill or otherwise incapacitated which
53 require technical skills and knowledge beyond that which the

54 untrained person possesses, including, but not limited to, such
55 procedures as: Irrigations, catheterization, special procedures
56 contributing to rehabilitation and administration of medication
57 by any method which involves a level of complexity and skill
58 in administration not possessed by the untrained person;

59 (7) "Person" means an individual and every form of
60 organization, whether incorporated or unincorporated, including
61 any partnership, corporation, trust, association or political
62 subdivision of the state;

63 (8) "Personal assistance" means personal services, includ-
64 ing, but not limited to, the following: Help in walking, bathing,
65 dressing, feeding or getting in or out of bed, or supervision
66 required because of the age or mental impairment of the
67 resident;

68 (9) "Resident" means an individual living in an assisted
69 living residence for the purpose of receiving personal assistance
70 or limited and intermittent nursing services;

71 (10) "Secretary" means the secretary of the state depart-
72 ment of health and human resources or his or her designee; and

73 (11) "Substantial compliance" means a level of compliance
74 with the rules such that identified deficiencies pose no greater
75 risk to resident health or safety than the potential for causing
76 minimal harm.

77 (b) The secretary may define in rules any term used herein
78 which is not expressly defined.

§16-5D-3. Powers, duties and rights of secretary.

1 In the administration of this article, the secretary has the
2 following powers, duties and rights:

3 (a) To enforce rules and standards for assisted living
4 residences which are adopted, promulgated, amended or
5 modified by the secretary;

6 (b) To exercise as sole authority all powers relating to the
7 issuance, suspension and revocation of licenses of assisted
8 living residences;

9 (c) To enforce rules adopted, promulgated, amended or
10 modified by the secretary governing the qualification of
11 applicants for assisted living residences, including, but not
12 limited to, educational requirements, financial requirements,
13 personal and ethical requirements;

14 (d) To receive and disburse federal funds and to take
15 whatever action not contrary to law as may be proper and
16 necessary to comply with the requirements and conditions for
17 the receipt of federal funds;

18 (e) To receive and disburse for authorized purposes any
19 moneys appropriated for the division by the Legislature;

20 (f) To receive and disburse for purposes authorized by this
21 article, any funds that may come to the division by gift, grant,
22 donation, bequest or devise, according to the terms thereof, as
23 well as funds derived from the division's operation or other-
24 wise;

25 (g) To make contracts and to execute all instruments
26 necessary or convenient in carrying out the secretary's func-
27 tions and duties; and all such contracts, agreements and
28 instruments shall be executed by the secretary;

29 (h) To appoint officers, agents, employees and other
30 personnel and fix their compensation;

31 (i) To offer and sponsor educational and training programs
32 for assisted living residences' administrative, management and
33 operational personnel;

34 (j) To undertake survey, research and planning projects and
35 programs relating to administration and operation of assisted
36 living residences and to the health, care, treatment and service
37 in general of residents of assisted living residences;

38 (k) To assess civil penalties for violations of assisted living
39 residence standards in accordance with section ten of this
40 article;

41 (l) To inspect any assisted living residence and any records
42 maintained therein subject to the provisions of section ten of
43 this article;

44 (m) To establish and implement procedures, including
45 informal conferences, investigations and hearings, subject to
46 applicable provisions of article three, chapter twenty-nine-a of
47 this code, and to enforce compliance with the provisions of this
48 article and with rules issued hereunder by the secretary;

49 (n) To subpoena witnesses and documents, administer oaths
50 and affirmations and to examine witnesses under oath for the
51 conduct of any investigation or hearing. Upon failure of a
52 person without lawful excuse to obey a subpoena to give
53 testimony and upon reasonable notice to all persons affected
54 thereby, the secretary may apply to the circuit court of the
55 county in which the hearing is to be held or to the circuit court
56 of Kanawha County for an order compelling compliance;

57 (o) To make complaint or cause proceedings to be instituted
58 against any person for the violation of the provisions of this
59 article or of rules issued hereunder by the secretary. Such action
60 may be taken by the secretary without the sanction of the
61 prosecuting attorney of the county in which proceedings are

62 instituted if the prosecuting attorney fails or refuses to dis-
63 charge his or her duty. The circuit court of Kanawha County or
64 the circuit court of the county in which the conduct has oc-
65 curred shall have jurisdiction in all civil enforcement actions
66 brought under this article and may order equitable relief without
67 bond. In no such case may the secretary or any person acting
68 under the secretary's direction be required to give security for
69 costs;

70 (p) To delegate authority to the secretary's employees and
71 agents to perform all functions of the secretary except the
72 making of final decisions in adjudications; and

73 (q) To submit an annual report to the governor, the Legisla-
74 ture and the public. The report shall describe the assisted living
75 residence licensing and investigatory activities of the division
76 during the year and the nature and status of other activities of
77 the division and may include comment on the acts, policies,
78 practices or procedures of any public or private agency that
79 affect the rights, health or welfare of residents of assisted living
80 residences. The annual report shall include a list of all assisted
81 living residences in the state and such of the following informa-
82 tion as the secretary determines to apply: Whether the assisted
83 living residences are proprietary or nonproprietary; the classifi-
84 cation of each assisted living residence; the name of the owner
85 or owners; the total number of beds; the number of private and
86 semiprivate rooms; the costs per diem for private residents; the
87 number of full-time employees and their professions; recre-
88 ational programs; services and programs available as well as the
89 costs thereof; and whether or not those assisted living resi-
90 dences listed accept medicare and medicaid residents. The
91 report shall also contain the division's recommendations as to
92 changes in law or policy which it deems necessary or appropri-
93 ate for the protection of the rights, health or welfare of residents
94 of assisted living residences in the state.

§16-5D-4. Administrative and inspection staff.

1 The secretary may, as he or she determines necessary,
2 employ administrative employees, inspectors or other persons
3 as may be necessary to properly carry out the provisions of this
4 article. All employees of the division shall be members of the
5 state civil service system. Inspectors and other employees as
6 may be duly designated by the secretary shall act as the
7 secretary's representatives and, under the direction of the
8 secretary, shall enforce the provisions of this article and all duly
9 promulgated rules of the secretary and, in the discharge of
10 official duties, shall have the right of entry into any place
11 maintained as an assisted living residence at any time.

§16-5D-5. Rules; minimum standards for assisted living residences.

1 (a) The secretary shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to carry out the purposes and intent
4 of this article and to enable the secretary to exercise the powers
5 and perform the duties conferred upon the secretary by this
6 article.

7 (b) The secretary shall propose rules establishing minimum
8 standards of operation of assisted living residences, including,
9 but not limited to, the following:

10 (1) Administrative policies, including:

11 (A) An affirmative statement of the right of access to
12 assisted living residences by members of recognized commu-
13 nity organizations and community legal services programs
14 whose purposes include rendering assistance without charge to
15 residents, consistent with the right of residents to privacy; and

16 (B) A statement of the rights and responsibilities of
17 residents;

18 (2) Minimum numbers and qualifications of personnel,
19 including management, medical and nursing, aides, orderlies
20 and support personnel, according to the size and classification
21 of the assisted living residence;

22 (3) Safety requirements;

23 (4) Sanitation requirements;

24 (5) Protective and personal services to be provided;

25 (6) Dietary services to be provided;

26 (7) Maintenance of health records;

27 (8) Social and recreational activities to be made available;

28 (9) Physical facilities;

29 (10) Requirements related to provision of limited and
30 intermittent nursing; and

31 (11) Such other categories as the secretary determines to be
32 appropriate to ensure resident's health, safety and welfare.

33 (c) The secretary shall include in rules detailed standards
34 for each of the categories of standards established pursuant to
35 subsections (b) and (d) of this section and shall classify such
36 standards as follows:

37 (1) Class I standards are standards the violation of which,
38 as the secretary determines, would present either an imminent
39 danger to the health, safety or welfare of any resident or a
40 substantial probability that death or serious physical harm
41 would result;

42 (2) Class II standards are standards which the secretary
43 determines have a direct or immediate relationship to the
44 health, safety or welfare of any resident, but which do not
45 create imminent danger;

46 (3) Class III standards are standards which the secretary
47 determines have an indirect or a potential impact on the health,
48 safety or welfare of any resident.

49 (d) An assisted living residence shall attain substantial
50 compliance with standards established pursuant to this section
51 and such other requirements for a license as may be established
52 by rule under this article.

§16-5D-6. License required; application; fees; duration; renewal.

1 (a) There shall be one assisted living residence license for
2 each assisted living residence. Subject to the provisions of
3 section seventeen of this article, no person may establish,
4 operate, maintain, offer or advertise an assisted living residence
5 within this state unless and until he or she obtains a valid
6 license therefor as provided in this article, which license
7 remains unsuspended, unrevoked and unexpired. No public
8 official or employee may place any person in, or recommend
9 that any person be placed in, or directly or indirectly cause any
10 person to be placed in, any assisted living residence, as defined
11 in section two of this article, which is being operated without a
12 valid license from the secretary. The licensee shall be responsi-
13 ble for, and shall have complete control of, the operation and
14 premises of the assisted living residence and the personal
15 assistance and supervision provided to the residents: *Provided,*
16 That the secretary may review any leases or any contracts,
17 subcontracts, agreements or arrangements for the provision of
18 on-site services to the residents of an assisted living residence
19 to ensure the proper care, safety and welfare of current or
20 potential residents. Nothing in this article shall be construed to

21 prevent or prohibit the ability of a resident of an assisted living
22 residence to contract or arrange for, and to receive, privately
23 paid nursing care or personal assistance in addition to those
24 services provided by the licensee, subject to the consent and
25 cooperation of the licensee and consistent with the duties and
26 responsibilities imposed by this section.

27 (b) Nothing in this article shall be construed to require the
28 licensing of landlords or property owners who are not involved
29 in the provision of supervision, personal assistance, limited and
30 intermittent nursing care or other on-site professional services
31 for the residents of an assisted living residence or in the
32 advertising, recruitment of residents, transportation of residents
33 or other substantial and ongoing services for the operation or
34 maintenance of the assisted living residence.

35 (c) The procedure for obtaining a license shall be as
36 follows:

37 (1) The applicant shall submit an application to the secre-
38 tary on a form to be prescribed by the secretary, containing such
39 information as may be necessary to show that the applicant is
40 in compliance with the standards for assisted living residences
41 as established by this article and the rules lawfully promulgated
42 by the secretary hereunder. The application and any exhibits
43 thereto shall provide the following information:

44 (A) The name and address of the applicant;

45 (B) The name, address and principal occupation:

46 (i) Of each person who, as a stockholder or otherwise, has
47 a proprietary interest of ten percent or more in the applicant;

48 (ii) Of each officer and director of a corporate applicant;

49 (iii) Of each trustee and beneficiary of an applicant which
50 is a trust; and

51 (iv) Where a corporation has a proprietary interest of
52 twenty-five percent or more in an applicant, the name, address
53 and principal occupation of each officer and director of the
54 corporation;

55 (C) The name and address of the owner of the premises of
56 the assisted living residence or proposed assisted living
57 residence, if he or she is a different person from the applicant,
58 and in such case, the name and address:

59 (i) Of each person who, as a stockholder or otherwise, has
60 a proprietary interest of ten percent or more in the owner;

61 (ii) Of each officer and director of a corporate applicant;

62 (iii) Of each trustee and beneficiary of the owner if it is a
63 trust; and

64 (iv) Where a corporation has a proprietary interest of
65 twenty-five percent or more in the owner, the name and address
66 of each officer and director of the corporation;

67 (D) Where the applicant is the lessee or the assignee of the
68 assisted living residence or the premises of the proposed
69 assisted living residence, a signed copy of the lease and any
70 assignment thereof;

71 (E) The name and address of the assisted living residence
72 or the premises of the proposed assisted living residence;

73 (F) The proposed bed quota of the assisted living residence
74 and the proposed bed quota of each unit thereof;

75 (G) An organizational plan for the assisted living residence
76 indicating the number of persons employed or to be employed,
77 the positions and duties of all employees;

78 (H) The name and address of the individual who is to serve
79 as administrator;

80 (I) Such evidence of compliance with applicable laws and
81 rules governing zoning, buildings, safety, fire prevention and
82 sanitation as the secretary may require; and

83 (J) Such additional information as the secretary may
84 require.

85 (d) Upon receipt and review of an application for license
86 made pursuant to subsection (a) of this section and inspection
87 of the applicant assisted living residence pursuant to section ten
88 of this article, the secretary shall issue a license if he or she
89 finds:

90 (1) That an individual applicant, and every partner, trustee,
91 officer, secretary and controlling person of an applicant which
92 is not an individual, is a person responsible and suitable to
93 operate or to direct or participate in the operation of an assisted
94 living residence by virtue of financial capacity, appropriate
95 business or professional experience, a record of compliance
96 with lawful orders of the department, if any, and lack of
97 revocation of a license during the previous five years;

98 (2) That the assisted living residence is under the supervi-
99 sion of an administrator who is qualified by training and
100 experience; or

101 (3) That the assisted living residence is in substantial
102 compliance with standards established pursuant to section five
103 of this article and such other requirements for a license as the
104 secretary may establish by rule under this article.

105 (e) The secretary may deny an initial or renewal license if
106 the information provided in an application or report is known
107 by the applicant to be false or the applicant fails to report
108 required information or for any other reason permitted by law
109 or rules promulgated pursuant to this article.

110 (f) Any license granted by the secretary shall state the
111 maximum bed capacity for which it is granted, the date the
112 license was issued and the expiration date. Licenses shall be
113 issued for a period not to exceed one year for assisted living
114 residences: *Provided*, That any such license in effect for which
115 timely application for renewal, together with payment of the
116 proper fee has been made to the state division of health in
117 conformance with the provisions of this article and the rules
118 issued thereunder and prior to the expiration date of the license,
119 shall continue in effect until: (1) One year following the
120 expiration date of the license; or (2) the date of the revocation
121 or suspension of the license pursuant to the provisions of this
122 article; or (3) the date of issuance of a new license, whichever
123 date first occurs. Each license shall be issued only for the
124 premises and persons named in the application and is not
125 transferable or assignable: *Provided, however*, That in the case
126 of the transfer of ownership of an assisted living residence with
127 an unexpired license, the application of the new owner for a
128 license shall have the effect of a license for a period of three
129 months when filed with the secretary. Every license shall be
130 posted in a conspicuous place in the assisted living residence
131 for which it is issued so as to be accessible to and in plain view
132 of all residents and visitors of the assisted living residence.

133 (g) An original license shall be renewable, conditioned
134 upon the licensee filing timely application for the extension of
135 the term of the license accompanied by the fee and contingent
136 upon evidence of compliance with the provisions of this article
137 and rules promulgated by the secretary hereunder; the applica-
138 tion shall be accompanied by:

139 (1) The information required in paragraphs (A), (B) and
140 (C), subdivision (1) of this subsection.

141 (2) A balance sheet of the assisted living residence as of the
142 end of its fiscal year, setting forth assets and liabilities at such
143 date, including all capital, surplus, reserve, depreciation and
144 similar accounts;

145 (3) A statement of operations of the assisted living resi-
146 dence as of the end of its fiscal year, setting forth all revenues,
147 expenses, taxes, extraordinary items and other credits or
148 charges; and

149 (4) A statement of any changes in the name, address,
150 management or ownership information on file with the secre-
151 tary.

152 (h) In the case of an application for a renewal license, if all
153 requirements of section five of this article are not met, the
154 secretary may in his or her discretion issue a provisional
155 license, provided that care given in the assisted living residence
156 is adequate for resident needs and the assisted living residence
157 has demonstrated improvement and evidences potential for
158 substantial compliance within the term of the license: *Provided,*
159 That a provisional renewal may not be issued for a period
160 greater than one year, may not be renewed and may not be
161 issued to any assisted living residence with uncorrected
162 violations of any Class I standard, as defined in subsection (c),
163 section five of this article.

164 (i) A nonrefundable application fee in the amount of
165 sixty-five dollars for an original assisted living residence
166 license shall be paid at the time application is made for the
167 license. An average cost of all direct costs for the initial
168 licensure for the preceding ten facilities based on the size of the
169 facility's licensed bed capacity shall be borne by the applicant
170 and shall be received by the secretary prior to the issuance of an

171 initial or amended license. The license fee for renewal of a
172 license shall be at the rate of six dollars per bed per year for
173 assisted living residences except the annual rate per bed may be
174 assessed for licenses issued for less than one year. The secretary
175 may annually adjust the licensure fees for inflation based upon
176 the consumer price index. The bed capacity for the holder of
177 each license shall be determined by the secretary. All license
178 fees shall be due and payable to the secretary, annually, and in
179 the manner set forth in the rules promulgated by the secretary.
180 The fee and application shall be submitted to the secretary who
181 shall retain both the application and fee pending final action on
182 the application. All fees received by the secretary under the
183 provisions of this article shall be deposited in accordance with
184 section thirteen, article one of this chapter.

§16-5D-7. Cost disclosure; surety for residents' funds.

1 (a) Each assisted living residence shall disclose in writing
2 to all prospective residents a complete and accurate list of all
3 costs which may be incurred by them. Residents are not liable
4 for any cost not so disclosed.

5 (b) If the assisted living residence handles any money for
6 residents within the assisted living residence, the licensee or his
7 or her authorized representative shall give a bond in an amount
8 consistent with this subsection and with such surety as the
9 secretary shall approve. The bond shall be upon condition that
10 the licensee shall hold separately and in trust all residents'
11 funds deposited with the licensee, shall administer the funds on
12 behalf of the resident in the manner directed by the depositor,
13 shall render a true and complete account to the depositor and
14 the secretary when requested, and at least quarterly to the
15 resident, and upon termination of the deposit, shall account for
16 all funds received, expended and held on hand. The licensee
17 shall file a bond in a sum to be fixed by the secretary based
18 upon the magnitude of the operations of the applicant, but

19 which sum may not be less than two thousand five hundred
20 dollars.

21 (c) Every person injured as a result of any improper or
22 unlawful handling of the money of a resident of an assisted
23 living residence may bring an action in a proper court on the
24 bond required to be posted by the licensee pursuant to this
25 subsection for the amount of damage suffered as a result thereof
26 to the extent covered by the bond. Whenever the secretary
27 determines that the amount of any bond which is filed pursuant
28 to this subsection is insufficient to adequately protect the
29 money of residents which is being handled or whenever the
30 amount of any bond is impaired by any recovery against the
31 bond, the secretary may require the licensee to file an additional
32 bond in such amount as necessary to adequately protect the
33 money of residents being handled.

34 (d) The provisions of subsection (b) of this section do not
35 apply if the licensee handles less than twenty-five dollars per
36 resident and less than five hundred dollars for all residents in
37 any month.

§16-5D-8. Investigation of complaints.

1 (a) The secretary shall establish by rule procedures for
2 prompt investigation of all complaints of alleged violations by
3 assisted living residences of applicable requirements of state
4 law or rules, except for such complaints that the secretary
5 determines are willfully intended to harass a licensee or are
6 without any reasonable basis. Such procedures shall include
7 provisions for ensuring the confidentiality of the complainant
8 and of any other person so named in the complaint and for
9 promptly informing the complainant and the assisted living
10 residence involved of the results of the investigation.

11 (b) If, after its investigation, the secretary determines that
12 the complaint has merit, the secretary shall take appropriate

13 disciplinary action and shall advise any injured party of the
14 possibility of a civil remedy under this article.

15 (c) No assisted living residence may discharge or in any
16 manner discriminate against any resident or employee for the
17 reason that the resident or employee has filed a complaint or
18 participated in any proceeding specified in this article. Viola-
19 tion of this prohibition by any assisted living residence consti-
20 tutes ground for the suspension or revocation of the license of
21 the assisted living residence as provided in section eleven of
22 this article. Any type of discriminatory treatment of a resident
23 or employee by whom, or upon whose behalf, a complaint has
24 been submitted to the secretary, or any proceeding instituted
25 under this article, within one hundred twenty days of the filing
26 of the complaint or the institution of the action, shall raise a
27 rebuttable presumption that the action was taken by the assisted
28 living residence in retaliation for the complaint or action.

§16-5D-9. Inspections.

1 (a) The secretary and any duly designated employee or
2 agent thereof shall have the right to enter upon and into the
3 premises of any assisted living residence at any time for which
4 a license has been issued, for which an application for license
5 has been filed with the secretary, or which the secretary has
6 reason to believe is being operated or maintained as an assisted
7 living residence without a license. If entry is refused by the
8 owner or person in charge of the assisted living residence, the
9 secretary shall apply to the circuit court of the county in which
10 the assisted living residence is located or the circuit court of
11 Kanawha County for an order authorizing inspection and the
12 court shall issue an appropriate order if it finds good cause.

13 (b) The secretary, by the secretary's authorized employees
14 or agents, shall conduct at least one inspection prior to issuance
15 of a license pursuant to section six of this article and shall

16 conduct periodic unannounced inspections thereafter to
17 determine compliance by the assisted living residence with
18 applicable statutes and rules promulgated thereunder. All
19 assisted living residences shall comply with rules of the state
20 fire commission. The state fire marshal, by his or her employ-
21 ees or authorized agents, shall make all fire, safety and like
22 inspections. The secretary may provide for such other inspec-
23 tions as the secretary may deem necessary to carry out the
24 intent and purpose of this article. If after investigating a
25 complaint the secretary determines that the complaint is
26 substantiated and that an immediate and serious threat to a
27 resident's health or safety exists, the secretary may invoke any
28 remedies available pursuant to section eleven of this article.
29 Any assisted living residence aggrieved by a determination or
30 assessment made pursuant to this section shall have the right to
31 an administrative appeal as set forth in section twelve of this
32 article.

**§16-5D-10. Reports of inspections; plans of correction; assess-
ment of penalties and use of funds derived there-
from; hearings.**

1 (a) Reports of all inspections made pursuant to section nine
2 of this article shall be in writing and filed with the secretary and
3 shall list all deficiencies in the assisted living residence's
4 compliance with the provisions of this article and the rules
5 adopted by the secretary hereunder. The secretary shall send a
6 copy of the report to the assisted living residence by certified
7 mail, return receipt requested, and shall specify a time within
8 which the assisted living residence shall submit a plan for
9 correction of deficiencies, which plan shall be approved,
10 rejected or modified by the secretary. The surveyors shall allow
11 audio taping of the exit conference for licensure inspections
12 with all costs directly associated with the taping to be paid by
13 the assisted living residence provided that an original tape is
14 provided to surveyors at the end of taping.

15 (b) Upon an assisted living residence's failure to submit a
16 plan of correction which is approved by the secretary, or to
17 correct any deficiency within the time specified in an approved
18 plan of correction, the secretary may assess civil penalties as
19 hereinafter provided or may initiate any other legal or disciplin-
20 ary action as provided by this article.

21 (c) Nothing in this section may be construed to prohibit the
22 secretary from enforcing a rule, administratively or in court,
23 without first affording formal opportunity to make correction
24 under this section, where, in the opinion of the secretary, the
25 violation of the rule jeopardizes the health or safety of residents
26 or where the violation of the rule is the second or subsequent
27 violation occurring during a period of twelve full months.

28 (d) Civil penalties assessed against assisted living resi-
29 dences shall be classified according to the nature of the viola-
30 tion as defined in subsection (c), section five of this article and
31 rules promulgated thereunder by the secretary, as follows: For
32 each violation of a Class I standard, a civil penalty of not less
33 than fifty nor more than five hundred dollars shall be imposed;
34 for each violation of a Class II standard, a civil penalty of not
35 less than twenty-five nor more than fifty dollars shall be
36 imposed; for each violation of a Class III standard, a civil
37 penalty of not less than ten nor more than twenty-five dollars
38 shall be imposed. Each day a violation continues, after the date
39 of citation, shall constitute a separate violation. The date of
40 citation is the date the facility receives the written statement of
41 deficiencies.

42 (e) The secretary shall assess a civil penalty not to exceed
43 two thousand dollars against any individual who notifies, or
44 causes to be notified, an assisted living residence of the time or
45 date on which an inspection is scheduled to be conducted under
46 this article.

47 (f) If the secretary assesses a penalty under this section, the
48 secretary shall cause delivery of notice of the penalty by
49 personal service or by certified mail. The notice shall state the
50 amount of the penalty, the action or circumstance for which the
51 penalty is assessed, the requirement that the action or circum-
52 stance violates and the basis upon which the secretary assessed
53 the penalty and selected the amount of the penalty.

54 (g) The secretary shall, in a civil judicial proceeding,
55 recover any unpaid assessment which has not been contested
56 under section twelve of this article within thirty days of receipt
57 of notice of the assessment or which has been affirmed under
58 the provisions of that section and not appealed within thirty
59 days of receipt of the secretary's final order or which has been
60 affirmed on judicial review, as provided in section thirteen of
61 this article. All money collected by assessments of civil
62 penalties or interest shall be paid into a special resident benefit
63 account and shall be applied by the secretary only for the
64 protection of the health or property of residents of assisted
65 living residences operated within the state that the secretary
66 finds to be deficient, including payment for the costs of
67 relocation of residents to other facilities, operation of an
68 assisted living residence pending correction of deficiencies or
69 closure and reimbursement of residents for personal funds lost.

70 (h) The opportunity for a hearing on an action taken under
71 this section shall be as provided in section twelve of this article.
72 In addition to any other rights of appeal conferred upon an
73 assisted living residence pursuant to this section, an assisted
74 living residence shall have the right to request a hearing and
75 seek judicial review pursuant to sections twelve and thirteen of
76 this article to contest the citing by the secretary of a deficiency
77 on an inspection report, irrespective of whether the deficiency
78 results in the imposition of a civil penalty.

§16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.

1 (a) The secretary shall, by order, impose a ban on the
2 admission of residents or reduce the bed quota of the assisted
3 living residence, or any combination thereof, where he or she
4 finds upon inspection of the assisted living residence that the
5 licensee is not providing adequate care under the assisted living
6 residence's existing bed quota and that reduction in quota or
7 imposition of a ban on admissions, or any combination thereof,
8 would place the licensee in a position to render adequate care.
9 Any notice to a licensee of reduction in quota or ban on new
10 admissions shall include the terms of the order, the reasons
11 therefor and the date set for compliance.

12 (b) The secretary may suspend or revoke a license issued
13 under this article if he or she finds upon inspection that there
14 has been a substantial failure to comply with the provisions of
15 this article or the standards or rules promulgated pursuant
16 hereto.

17 (c) Whenever a license is limited, suspended or revoked
18 pursuant to this section, the secretary shall file an administra-
19 tive complaint stating facts constituting a ground or grounds for
20 the limitation, suspension or revocation. Upon the filing of the
21 administrative complaint, the secretary shall notify the licensee
22 in writing of the filing of the administrative complaint, enclos-
23 ing a copy of the complaint, and shall advise the licensee of the
24 availability of a hearing pursuant to section twelve of this
25 article. The notice and copy of the administrative complaint
26 shall be served on the licensee by certified mail, return receipt
27 requested.

28 (d) The suspension, expiration, forfeiture or cancellation by
29 operation of law or order of the secretary of a license issued by
30 the secretary or the withdrawal of an application for a license
31 after it has been filed with the secretary, may not deprive the
32 secretary of the secretary's authority to institute or continue a
33 disciplinary proceeding or a proceeding for the denial of a
34 license application against the licensee or applicant upon any
35 ground provided by law or to enter an order denying the license
36 application or suspending or revoking the license or otherwise
37 taking disciplinary action on any such ground.

38 (e) In addition to other remedies provided in this article,
39 upon petition from the secretary, the circuit court of the county
40 in which the conduct has occurred or is occurring, or the circuit
41 court of Kanawha County, may determine that an assisted living
42 residence's deficiencies under this article constitute an emer-
43 gency immediately jeopardizing the health, safety, welfare or
44 rights of its residents and issue an order to:

45 (1) Close the assisted living residence;

46 (2) Transfer residents in the assisted living residence to
47 other facilities; or

48 (3) Appoint temporary management to oversee the opera-
49 tion of the assisted living residence and to assure the health,
50 safety, welfare and rights of the assisted living residence's
51 residents where there is a need for temporary management
52 while:

53 (A) There is an orderly closure of the assisted living
54 residence; or

55 (B) Improvements are made in order to bring the assisted
56 living residence into compliance with all the applicable
57 requirements of this article.

58 (f) If the secretary petitions a circuit court for the closure of
59 an assisted living residence, the transfer of residents or the
60 appointment of a temporary management, the circuit court shall
61 hold a hearing no later than seven days thereafter, at which time
62 the secretary and the licensee or operator of the assisted living
63 residence may participate and present evidence.

64 (g) A circuit court may divest the licensee or operator of
65 possession and control of an assisted living residence in favor
66 of temporary management. The temporary management shall be
67 responsible to the court and shall have such powers and duties
68 as the court may grant to direct all acts necessary or appropriate
69 to conserve the property and promote the health, safety, welfare
70 and rights of the residents of the assisted living residence,
71 including, but not limited to, the replacement of management
72 and staff, the hiring of consultants, the making of any necessary
73 expenditures to close the assisted living residence or to repair
74 or improve the assisted living residence so as to return it to
75 compliance with applicable requirements and the power to
76 receive, conserve and expend funds, including payments on
77 behalf of the licensee or operator of the assisted living resi-
78 dence. Priority shall be given to expenditures for current direct
79 resident care or the transfer of residents.

80 (h) The person charged with temporary management: (i)
81 Shall be an officer of the court; (ii) shall be paid by the li-
82 censee; (iii) is not liable for conditions at the assisted living
83 residence which existed or originated prior to his or her
84 appointment; (iv) is not personally liable, except for his or her
85 own gross negligence and intentional acts which result in
86 injuries to persons or damage to property at the assisted living
87 residence during his or her temporary management.

88 (i) No person may impede the operation of temporary
89 management. There shall be an automatic stay for a ninety-day
90 period subsequent to the establishment of temporary manage-

91 ment of any action that would interfere with the functioning of
92 the assisted living residence, including, but not limited to,
93 cancellation of insurance policies, termination of utility
94 services, attachments to working capital accounts, foreclosures,
95 evictions and repossessions of equipment used in the assisted
96 living residence.

97 (j) A temporary management established for the purpose of
98 making improvements in order to bring the assisted living
99 residence into compliance with applicable requirements may
100 not be terminated until the court has determined that the
101 assisted living residence has the management capability to
102 ensure continued compliance with all applicable requirements,
103 except if the court has not made such determination within six
104 months of the establishment of the temporary management, the
105 temporary management terminates by operation of law at that
106 time and the assisted living residence shall be closed. After the
107 termination of the temporary management, the person who was
108 responsible for the temporary management shall make an
109 accounting to the court and after deducting from receipts the
110 costs of the temporary management, expenditures and civil
111 penalties and interest no longer subject to appeal, in that order,
112 any excess shall be paid to the licensee or operator of the
113 assisted living residence.

114 (k) The assessments for penalties and for costs of actions
115 taken under this article shall have interest assessed at five
116 percent per annum beginning thirty days after receipt of notice
117 of the assessment or thirty days after receipt of the secretary's
118 final order following a hearing, whichever is later. All assess-
119 ments against an assisted living residence that are unpaid shall
120 be added to the assisted living residence's licensure fee and
121 may be filed as a lien against the property of the licensee or
122 operator of the assisted living residence. Funds received from
123 assessments shall be deposited as funds received as provided in
124 section ten of this article.

125 (l) The secretary shall have the power to promulgate
126 emergency rules that expand the power of the secretary in
127 excess of that provided in this article to the extent required to
128 comply with federal requirements, but any such rules shall
129 expand the power of the secretary to the minimum extent
130 required by federal requirements. The rules are subject to the
131 provisions of article three, chapter twenty-nine-a of this code.

132 (m) The opportunity for a hearing on an action by the
133 secretary taken under this section shall be as provided in section
134 twelve of this article.

**§16-5D-12. Administrative appeals for civil assessments, license
limitation, suspension or revocation.**

1 (a) Any licensee or applicant aggrieved by an order issued
2 pursuant to sections five, six, ten or eleven of this article may
3 request a formal or informal hearing with the secretary or
4 program manager in order to contest the order as contrary to
5 law or unwarranted by the facts or both. If the contested matter
6 is not resolved at the informal hearing, the licensee or applicant
7 may request a formal hearing before the secretary. An informal
8 hearing is not a prerequisite for requesting a formal hearing.

9 (b) Informal hearings shall be held within twenty business
10 days of the secretary's receipt of timely request for appeal
11 unless the licensee or applicant consents to a postponement or
12 continuance. In no event may the informal hearing occur more
13 than thirty business days after the secretary receives a timely
14 request for appeal. Neither the licensee or applicant nor the
15 secretary may be represented by an attorney at the informal
16 hearing. Within ten business days of the conclusion of the
17 informal hearing, the secretary, program manager or designee
18 shall issue an informal hearing order, including the basis for the
19 decision. If the order is not favorable to the licensee or appli-
20 cant, the licensee or applicant may request an appeal and a

21 formal hearing. The secretary shall notify the administrative
22 hearing examiner of the request for appeal within five business
23 days of receiving the request for an appeal and a formal
24 hearing.

25 (c) If the applicant or licensee requests a formal hearing
26 without a prior informal hearing or if an applicant or licensee
27 appeals the order issued as a result of the informal hearing, the
28 secretary shall proceed in accordance with the department's
29 rules of procedure for contested case hearings and declaratory
30 rulings and the pertinent provisions of article five, chapter
31 twenty-nine-a of this code.

32 (d) Following a formal hearing, the secretary shall make
33 and enter a written order either dismissing the complaint or
34 taking other action as is authorized in this article. The written
35 order of the secretary shall be accompanied by findings of fact
36 and conclusions of law as specified in section three, article five,
37 chapter twenty-nine-a of this code and a copy of the order and
38 accompanying findings and conclusions shall be served upon
39 the licensee and his or her attorney of record, if any, by certified
40 mail, return receipt requested. If the secretary suspends an
41 assisted living residence's license, the order shall also specify
42 the conditions giving rise to the suspension to be corrected by
43 the licensee during the period of suspension in order to entitle
44 the licensee to reinstatement of the license. If the secretary
45 revokes a license, the secretary may stay the effective date of
46 revocation by not more than ninety days upon a showing that
47 the delay is necessary to assure appropriate placement of
48 residents. The order of the secretary shall be final unless
49 vacated or modified upon judicial review of the order in
50 accordance with the provisions of section thirteen of this article.

51 (e) In addition to all other powers granted by this chapter,
52 the secretary may hold the case under advisement and make a
53 recommendation as to requirements to be met by the licensee in

54 order to avoid either suspension or revocation. In such a case,
55 the secretary shall enter an order accordingly and so notify the
56 licensee and his or her attorney of record, if any, by certified
57 mail, return receipt requested. If the licensee meets the require-
58 ments of the order, the secretary shall enter an order showing
59 satisfactory compliance and dismissing the complaint and shall
60 so notify the licensee and the licensee's attorney of record, if
61 any, by certified mail, return receipt requested.

§16-5D-13. Judicial review.

1 (a) Any licensee adversely affected by an order of the
2 secretary rendered after a hearing held in accordance with the
3 provisions of section twelve of this article is entitled to judicial
4 review thereof. All of the pertinent provisions of section four,
5 article five, chapter twenty-nine-a of this code shall apply to
6 and govern with like effect as if the provisions of said section
7 were set forth in extenso in this section.

8 (b) The judgment of the circuit court shall be final unless
9 reversed, vacated or modified on appeal to the supreme court of
10 appeals in accordance with the provisions of section one, article
11 six, chapter twenty-nine-a of this code.

§16-5D-14. Legal counsel and services for the secretary.

1 (a) Legal counsel and services for the secretary in all
2 administrative hearings and all proceedings in any circuit court
3 and the supreme court of appeals shall be provided by the
4 attorney general, his or her assistants or an attorney employed
5 by the secretary in proceedings in any circuit court by the
6 prosecuting attorney of the county as well, all without addi-
7 tional compensation.

8 (b) The governor may appoint counsel for the secretary who
9 shall perform such legal services in representing the interests of
10 residents in assisted living residences in matters under the

11 jurisdiction of the secretary as the governor shall direct. It shall
12 be the duty of such counsel to appear for the residents in all
13 cases where they are not represented by counsel. The compen-
14 sation of such counsel shall be fixed by the governor.

**§16-5D-15. Unlawful acts; penalties; injunctions; private right of
action.**

1 (a) Whoever advertises, announces, establishes or maintains
2 or is engaged in establishing or maintaining an assisted living
3 residence without a license granted under section six of this
4 article, or who prevents, interferes with or impedes in any way
5 the lawful enforcement of this article shall be guilty of a
6 misdemeanor and, upon conviction thereof, shall be punished
7 for the first offense by a fine of not more than one hundred
8 dollars or by imprisonment in jail for a period of not more than
9 ninety days, or by both such fine and imprisonment, at the
10 discretion of the court. For each subsequent offense, the fine
11 may be increased to not more than two hundred fifty dollars,
12 with imprisonment in jail for a period of not more than ninety
13 days, or both such fine and imprisonment at the discretion of
14 the court. Each day of a continuing violation after conviction
15 shall be considered a separate offense.

16 (b) The secretary may in his or her discretion bring an
17 action to enforce compliance with this article or any rule, or
18 order hereunder, whenever it appears to the secretary that any
19 person has engaged in, or is engaging in, an act or practice in
20 violation of this article or any rule or order hereunder, or
21 whenever it appears to the secretary that any person has aided,
22 abetted or caused or is aiding, abetting or causing such an act or
23 practice. Upon application by the secretary, the circuit court of
24 the county in which the conduct has occurred or is occurring
25 shall have jurisdiction to grant without bond a permanent or
26 temporary injunction, decree or restraining order.

27 (c) Whenever the secretary refuses to grant or renew a
28 license or revokes a license required by law to operate or
29 conduct an assisted living residence or orders a person to refrain
30 from conduct violating the rules of the secretary and the person
31 deeming himself aggrieved by the refusal, revocation or order
32 appeals the action of the secretary, the court may, during
33 pendency of the appeal, issue a restraining order or injunction
34 upon proof that the operation of the assisted living residence or
35 its failure to comply with the order of the secretary adversely
36 affects the well-being or safety of the residents of the assisted
37 living residence. Should a person who is refused a license or the
38 renewal of a license to operate or conduct an assisted living
39 residence or whose license to operate is revoked or who has
40 been ordered to refrain from conduct or activity which violates
41 the rules of the secretary, fail to appeal or should such appeal be
42 decided favorably to the secretary, then the court shall issue a
43 permanent injunction upon proof that the person is operating or
44 conducting an assisted living residence without a license as
45 required by law or has continued to violate the rules of the
46 secretary.

47 (d) Any assisted living residence that deprives a resident of
48 any right or benefit created or established for the well-being of
49 the resident by the terms of any contract, by any state statute or
50 rule or by any applicable federal statute or regulation shall be
51 liable to the resident for injuries suffered as a result of the
52 deprivation. Upon a finding that a resident has been deprived of
53 such a right or benefit and that the resident has been injured as
54 a result of the deprivation and unless there is a finding that the
55 assisted living residence exercised all care reasonably necessary
56 to prevent and limit the deprivation and injury to the resident,
57 compensatory damages shall be assessed in an amount suffi-
58 cient to compensate the resident for the injury. In addition,
59 where the deprivation of any right or benefit is found to have
60 been willful or in reckless disregard of the lawful rights of the
61 resident, punitive damages may be assessed. A resident may

62 also maintain an action pursuant to this section for any other
63 type of relief, including injunctive and declaratory relief,
64 permitted by law. Exhaustion of any available administrative
65 remedies may not be required prior to commencement of suit
66 hereunder.

67 (e) The amount of damages recovered by a resident, in an
68 action brought pursuant to this section, are exempt for purposes
69 of determining initial or continuing eligibility for medical
70 assistance under article four, chapter nine of this code and may
71 neither be taken into consideration nor required to be applied
72 toward the payment or part payment of the cost of medical care
73 or services available under said article.

74 (f) Any waiver by a resident or his or her legal representa-
75 tive of the right to commence an action under this section,
76 whether oral or in writing, shall be null and void as contrary to
77 public policy.

78 (g) The penalties and remedies provided in this section are
79 cumulative and shall be in addition to all other penalties and
80 remedies provided by law.

§16-5D-16. Availability of reports and records.

1 The secretary shall make available for public inspection and
2 at a nominal cost provide copies of all inspections and other
3 reports of assisted living residences filed with or issued by the
4 secretary. Nothing contained in this section may be construed
5 or deemed to allow the public disclosure of confidential
6 medical, social, personal or financial records of any resident.
7 The secretary shall propose rules for legislative approval in
8 accordance with the provisions of article three, chapter twenty-
9 nine-a of this code as may be necessary to give effect to the
10 provisions of this section and to preserve the confidentiality of
11 medical, social, personal or financial records of residents.

§16-5D-17. Licenses and rules in force.

1 (a) All licenses for personal care homes and residential
2 board and care homes which are in force on the first day of
3 July, two thousand three, shall continue in full force and effect
4 during the period for which issued unless sooner revoked as
5 provided in this article.

6 (b) All rules in effect on the first day of July, one thousand
7 nine hundred ninety-seven, which were adopted by the secretary
8 relating to licensing personal care homes and residential board
9 and care homes shall remain in full force and effect until
10 altered, amended or repealed by the secretary.

11 (c) Notwithstanding any other provisions of this article, the
12 secretary shall promulgate emergency rules pursuant to the
13 provisions of section fifteen, article three, chapter twenty-nine-a
14 of this code by the first date of September, two thousand three,
15 to implement this program.

**§16-5D-18. Separate accounts for residents' personal funds;
consent for use; records; penalties.**

1 (a) Each assisted living residence subject to the provisions
2 of this article shall hold in a separate account and in trust each
3 resident's personal funds deposited with the assisted living
4 residence.

5 (b) No person may use or cause to be used for any purpose
6 the personal funds of any resident admitted to any assisted
7 living residence unless consent for the use thereof has been
8 obtained from the resident or from a committee or guardian or
9 relative.

10 (c) Each assisted living residence shall maintain a true and
11 complete record of all receipts for any disbursements from the
12 personal funds account of each resident in the assisted living

13 residence, including the purpose and payee of each disburse-
14 ment, and shall render a true account of the record to the
15 resident or his or her representative upon demand and upon
16 termination of the resident's stay in the assisted living resi-
17 dence.

18 (d) Any person or corporation who violates any provision
19 of this section is guilty of a misdemeanor and, upon conviction
20 thereof, shall be fined not more than one thousand dollars or
21 imprisoned in jail not more than one year, or both fined and
22 imprisoned.

ARTICLE 5T. CARE HOME ADVISORY BOARD.

§16-5T-1. Care home advisory board created; membership; terms; meetings; compensation; termination.

1 (a) The care home advisory board, as previously created
2 and constituted under this section, is hereby continued to gather
3 information concerning personal care homes, as defined and
4 regulated in article five-d of this chapter, and residential board
5 and care homes, as defined and regulated in article five-h of this
6 chapter, and make its findings and recommendations to the
7 governor and the Legislature.

8 (b) The care home advisory board shall have seven mem-
9 bers: The president of the Senate or his or her designee; the
10 speaker of the House of Delegates or his or her designee; the
11 secretary of the department of health and human resources or
12 his or her designee; an operator of a facility originally licensed
13 as a personal care home in this state; an operator of a facility
14 originally licensed as a residential board and care home in this
15 state; and two members of the public at large, one of whom
16 shall be an advocate for consumer rights.

17 (c) The governor shall appoint the members to the board by
18 and with the advice and consent of the Senate. Appointments
19 under the provision of this article shall be for a three-year term

20 or the unexpired term, except in the initial appointments as
21 follows: One citizen member shall be appointed for a two-year
22 term; one citizen member shall be appointed for a three-year
23 term; and the care home operator members shall be appointed
24 for a one-year term. Subsequent appointments to the committee
25 shall be for three-year terms. No member shall serve more than
26 two successive terms.

27 (d) The advisory board shall meet at least four times
28 annually at the times and places in the state that it determines.
29 A majority of the members constitutes a quorum for the purpose
30 of conducting business. The secretary of the department of
31 health and human resources or his or her designee shall serve as
32 chair of the advisory board.

33 (e) Members of the advisory board are not entitled to
34 compensation for services performed as members, but are
35 entitled to reimbursement for all reasonable and necessary
36 expenses actually incurred in the performance of their duties,
37 which shall be paid from the funds of the department of health
38 and human resources.

39 (f) The care home advisory board shall continue to exist
40 until the last day of December, two thousand three, unless
41 sooner terminated, continued or reestablished by act of the
42 Legislature.

CHAPTER 114

**(S. B. 652 — By Senators Prezioso, Unger, Boley, Edgell, Ross,
Rowe, Sharpe, Smith and Weeks)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article eleven of said chapter, all relating to emergency hospitals; and renaming the Marion health care hospital the John Manchin, Sr., health care center.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article eleven of said chapter be amended and reenacted, all to read as follows:

Article

8. Emergency Hospitals.

11. State Extended Care and Emergency Facilities.

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

1 (a) The hospitals heretofore established and known,
 2 respectively, as Welch emergency hospital and Fairmont
 3 emergency hospital shall be continued and shall be managed,
 4 directed and controlled as prescribed in article eleven of this
 5 chapter: *Provided*, That the hospital established as Fairmont
 6 emergency hospital and later renamed the Marion health care
 7 hospital shall henceforth be known as the John Manchin, Sr.,
 8 health care center and any reference in this code to the Fairmont
 9 emergency hospital or the Marion health care hospital shall
 10 mean the John Manchin, Sr., health care center.

11 (b) The chief executive officer of each of said hospitals
 12 shall be the superintendent, who shall be a college graduate and
 13 have a minimum of two years' experience in either hospital

14 administration, health services administration or business
15 administration with broad knowledge of accounting, purchasing
16 and personnel practices as related to the rendition of health and
17 health-related services.

18 (c) For purposes of this section, "superintendent" means the
19 person having the fiscal responsibility of the hospital and the
20 authority to manage and administer the financial, business and
21 personnel affairs of the hospital. "Clinical director" means the
22 person having the responsibility for decisions involving clinical
23 and medical treatment of patients and who shall be a duly
24 qualified physician licensed to practice medicine in the state of
25 West Virginia.

26 (d) The provisions of this section relating to the qualifica-
27 tion of persons eligible to serve as superintendent shall not
28 apply to any person serving in the capacity of business manager
29 on the effective date hereof and who has served in such capacity
30 for at least six consecutive months next preceding such effec-
31 tive date.

ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.

§26-11-1. Management by director of health.

1 The director of health or his or her successor shall manage,
2 direct, control and govern the Andrew S. Rowan memorial
3 home, Denmar hospital, heretofore established and known as
4 Denmar state hospital, Hopemont hospital, heretofore known as
5 Hopemont state hospital, Pinecrest hospital, John Manchin, Sr.,
6 health care center, established as the Fairmont emergency
7 hospital and formerly known as the Marion health care hospital
8 and Welch emergency hospital and such other state health care
9 facilities as are or may hereafter be created by law.

10 The director shall designate the functions of each facility
11 and prescribe guidelines for the admission of persons thereto,

12 pursuant to rules and regulations promulgated by the board of
13 health, and shall supervise the business, personnel and clinical
14 responsibilities of each facility: *Provided*, That in prescribing
15 admission guidelines, precedence shall be given to persons
16 unable to pay therefor.

CHAPTER 115

(Com. Sub. for S. B. 510 — By Senators Hunter, Oliverio, Prezioso,
McCabe, Rowe, Caldwell, Unger and Ross)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twenty-eight, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia commission on holocaust education; providing for reimbursement of actual and necessary expenses; and authorizing the commission to accept gifts, donations and state funds as appropriated by the Legislature.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article twenty-eight, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 28. COMMISSION ON HOLOCAUST EDUCATION.

§5-28-2. Commission on holocaust education; compensation.

§5-28-3. Commission powers and duties.

§5-28-2. Commission on holocaust education; compensation.

1 (a) Effective the first day of July, two thousand one, there
2 is created the West Virginia commission on holocaust educa-
3 tion.

4 (b) The commission is composed of eleven members: Two
5 members currently serving on the state board of education,
6 selected by the board; the state superintendent of schools or his
7 or her designee; the director of the division of veterans' affairs;
8 one attorney from the attorney general's office, civil rights
9 division; one teacher who has completed professional develop-
10 ment related to holocaust education teaching at the high-school
11 level and one teacher who has completed professional develop-
12 ment related to holocaust education teaching at the junior-high
13 or middle-school level, each appointed by the governor with the
14 advice and consent of the Senate; and four state residents,
15 appointed by the governor, with the advice and consent of the
16 Senate, who shall be: Individuals who are holocaust scholars or
17 individuals experienced in the field of holocaust education or
18 survivors, second generation, eye-witness/liberators or individ-
19 uals recommended by the chair of the present holocaust
20 education commission, created by executive order, who, by
21 virtue of their interest, education or long-term involvement in
22 human rights, prejudice reduction and holocaust education have
23 demonstrated, through their past commitment and cooperation
24 with the existing holocaust commission on education, their
25 willingness to work for holocaust awareness and education in
26 West Virginia.

27 (c) Members of the commission shall be appointed for
28 terms of three years or until their prospective successors are
29 appointed and qualified. Members are eligible for reappoint-
30 ment. Any member of the commission who fails to attend more
31 than two consecutive meetings without an excuse approved by
32 the commission may be removed from the commission. All
33 vacancies shall be filled by appointment in the same manner as

34 the original appointment and the individual appointed to fill the
35 vacancy serves for the remainder of the unexpired term.

36 (d) The governor shall appoint a chairperson for the
37 commission for a term of three years and until his or her
38 successor is appointed and qualified.

39 (e) The speaker of the House of Delegates shall appoint a
40 member of the House of Delegates and the president of the
41 Senate shall appoint a member of the Senate to serve as
42 advisors to the commission.

43 (f) Members of the commission are not entitled to compen-
44 sation for services performed as members but may be reim-
45 bursed for actual and necessary expenses incurred for each day
46 engaged in the performance of their official commission duties
47 in a manner consistent with the guidelines of the travel manage-
48 ment office of the department of administration.

§5-28-3. Commission powers and duties.

1 (a) The commission shall:

2 (1) Provide, based upon the collective knowledge and
3 experience of its members, assistance and advice to public and
4 private schools, colleges and universities with respect to the
5 implementation of holocaust education and awareness pro-
6 grams;

7 (2) Meet with appropriate education officials and other
8 interested public and private organizations, including service
9 organizations, for the purpose of providing information,
10 planning, coordination or modification of courses of study or
11 programs dealing with the subject of the holocaust;

12 (3) Compile a roster of individual volunteers who are
13 willing to share their verifiable knowledge and experiences in

14 classrooms, seminars and workshops on the subject of the
15 holocaust. The volunteers may be survivors of the holocaust,
16 liberators of concentration camps, scholars, members of the
17 clergy, community relations professionals or other persons who,
18 by virtue of their experience, education or interest, have
19 experience with the holocaust;

20 (4) Coordinate events memorializing the holocaust and seek
21 volunteers who are willing and able to participate in commemo-
22 rative events that will enhance public awareness of the signifi-
23 cance of the holocaust; and

24 (5) Prepare annual reports for the governor and the Legisla-
25 ture regarding its findings and recommendations to facilitate the
26 inclusion of holocaust studies and special programs memorial-
27 izing the holocaust in educational systems in this state.

28 (b) The commission may accept and use for the benefit of
29 the people of West Virginia any gift or devise of any property
30 or thing which is lawfully given and is authorized to accept
31 state funds as the same may be appropriated by the Legislature.

CHAPTER 116

**(Com. Sub. for S. B. 338 — By Senators Plymale, Bailey, Prezioso,
Unger, Boley, Hunter, Rowe, Jenkins, Caldwell and Kessler)**

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-d, relating to the creation of a medicaid buy-in program for working individuals with disabili-

ties; establishing legislative intent; defining terms; establishing criteria for participation in the program; creating exceptions; establishing fees and premiums; providing for periodic review; and requiring the secretary of the department of health and human resources to fulfill certain reporting requirements, form an advisory counsel and propose legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That chapter nine of the code of West Virginia, one thousand, nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-d, to read as follows:

ARTICLE 4D. MEDICAID BUY-IN PROGRAM.

§9-4D-1. Legislative findings.

§9-4D-2. Definitions.

§9-4D-3. Medicaid buy-in program; funding.

§9-4D-4. Eligibility guidelines.

§9-4D-5. Exceptions to qualifying factors.

§9-4D-6. Fees, premiums and periodic reviews.

§9-4D-7. Benefits of the medicaid buy-in program.

§9-4D-8. Analytical criteria and reporting requirements.

§9-4D-9. Advisory council; rules.

§9-4D-1. Legislative findings.

1 (a) The Legislature finds that there are many individuals in
2 this state who have disabilities that qualify them for state or
3 federal assistance and who are nonetheless willing and able to
4 enter the workforce, but do not do so out of fear of losing
5 essential medical care. As a result, the state realizes increased
6 costs in fully supporting these disabled individuals who, in turn,
7 suffer under an additional disability of being deprived of the
8 additional income, dignity and self-sufficiency derived by being
9 engaged in competitive employment.

10 (b) The Legislature finds that establishing a medicaid buy-
11 in program for certain individuals with disabilities will assist

12 them in becoming independent of public assistance by enabling
13 them to enter the workforce without fear of losing essential
14 medical care.

§9-4D-2. Definitions.

1 As used in this article:

2 (1) "Approved accounts" means any retirement account that
3 the secretary has determined is not to be included as an asset in
4 determining the eligibility of an individual for participation in
5 the buy-in program. Approved accounts may include, but not be
6 limited to, private retirement accounts such as individual
7 retirement accounts; other individual accounts; and employer-
8 sponsored retirement plans such as 401(k) plans, Keogh plans
9 and employer pension plans.

10 (2) "Basic coverage group" means an optional coverage
11 group as defined by the Ticket to Work and Work Incentives
12 Improvement Act of 1999.

13 (3) "Copayment" is a fixed fee to be paid by the patient at
14 the time of each office visit, outpatient service or filling of
15 prescriptions.

16 (4) "Cost-sharing" means the eligible participant will
17 participate in the cost of the program by paying the enrollment
18 fee, monthly premiums and copayments if established by the
19 department.

20 (5) "Countable income" means income that does not exceed
21 two hundred fifty percent of the federal poverty level: *Provided,*
22 That for purposes of this article, countable income does not
23 include:

24 (A) The income of the individual's spouse, parent or
25 guardian with whom he or she resides; and

26 (B) Income disregarded under the state medicaid plan's
27 financial methodology, including income disregarded under the
28 federal supplemental security income program (42 U. S. C.
29 §1382) as impairment-related work expenses.

30 (6) "Countable resources" includes earned and unearned
31 income: *Provided*, That countable resources do not include:

32 (A) Liquid assets of up to five thousand dollars for an
33 individual;

34 (B) Liquid assets of up to ten thousand dollars for a family;

35 (C) Retirement accounts; and

36 (D) Independence accounts.

37 (7) "Department" means the department of health and
38 human resources.

39 (8) "Disability" means a medically determinable physical
40 or mental condition that:

41 (A) Can be expected to result in death or has lasted, or can
42 be expected to last, for a continuous period of not less than
43 twelve months; and

44 (B) Renders a person unable to engage in substantial
45 gainful activity; and

46 (C) Is a disability defined by social security administration
47 criteria and has been determined by either the social security
48 administration or the West Virginia department of health and
49 human resources.

50 (9) "Eligible buy-in participant" means an individual who:

51 (A) Is a resident of the state of West Virginia;

- 52 (B) Has a disability as defined herein;
- 53 (C) Is at least sixteen years of age and less than sixty-five
54 years of age;
- 55 (D) Is engaged in competitive employment, including self-
56 employment or nontraditional work that results in remuneration
57 at or above minimum wage in an integrated setting;
- 58 (E) Has countable resources that do not exceed the resource
59 limits as defined in this article; and
- 60 (F) Has countable income that does not exceed the income
61 limits as defined in this article.
- 62 (10) "Enrollment fee" means a one-time fee to participate
63 in the medicaid buy-in program.
- 64 (11) "Federal benefit rate" is the amount of monthly federal
65 or state benefits paid to persons with limited income and
66 resources who are age sixty-five or older, blind or disabled.
- 67 (12) "Federal poverty level" means the level of personal or
68 family income below which one is classified as poor according
69 to federal governmental standards, commonly referred to as the
70 federal poverty guidelines which are issued and printed each
71 year in the federal register.
- 72 (13) "Income" means money earned from employment
73 wages or self-employment earnings and unearned money
74 received from any other source.
- 75 (14) "Independence accounts" are department-approved
76 accounts established with the department solely by funds paid
77 from the earned income of an eligible buy-in participant to
78 cover expenses necessary to enhance or maintain his or her
79 independence or increase employment opportunities. Approved

80 expenditures from the funds may include: Educational ex-
81 penses; work-related expenses; home purchase or modification;
82 transportation; medical expenses; assistive technology and
83 related services; or for short-term living expenses in times of
84 qualified emergencies as determined by the department.

85 (15) "Liquid assets" are cash or assets payable in cash on
86 demand, including financial instruments that can be converted
87 to cash within twenty working days. For purposes of this article,
88 national, state and local holidays are not working days.

89 (16) "Premium" is a monthly fee paid by an eligible buy-in
90 participant to continue participation in the program.

91 (17) "Resources" are possessions that the eligible buy-in
92 participant owns that could be changed to cash and used for
93 food, clothing or shelter and that qualify as resources under the
94 applicable social security administration guidelines.

95 (18) "Retirement accounts" are moneys invested in ap-
96 proved retirement funds and accounts that are disregarded as an
97 asset by the department in determining the eligibility of an
98 individual for participation in the buy-in program.

§9-4D-3. Medicaid buy-in program; funding.

1 (a) The medicaid buy-in program for working individuals
2 with disabilities is hereby established to provide medicaid
3 benefits to individuals who are disabled and employed, as
4 authorized under Section 201 of the federal Ticket to Work and
5 Work Incentives Improvement Act of 1999 (P.L. 106-170, 42
6 U. S. C. 1396, *et seq.*). The medicaid buy-in program shall
7 become effective as of the first day of July, two thousand three.

8 (b) Funding for the buy-in program shall be from funds
9 appropriated by the Legislature, premiums paid, enrollment fees
10 and any federal matching funding available to the program.

§9-4D-4. Eligibility guidelines.

1 (a) To be eligible to participate in the buy-in program
2 beginning the first day of July, two thousand three, an individ-
3 ual shall:

4 (1) Be a resident of the state of West Virginia;

5 (2) Have a disability that is defined and determined by the
6 social security administration or the department;

7 (3) Be at least sixteen years of age but not more than sixty-
8 four years of age;

9 (4) Be engaged in competitive employment, including self-
10 employment or nontraditional work that results in remuneration
11 at or above minimum wage in an integrated setting;

12 (5) Have countable resources that do not exceed the
13 resource limit for the supplemental security income program;

14 (6) Have countable income that does not exceed two
15 hundred fifty percent of the federal poverty level;

16 (7) Have total countable unearned income, using the social
17 security income program methodology, that does not exceed the
18 federal benefit rate plus the general income exclusion; and

19 (8) Except as provided in section five of this article, not
20 have countable resources that exceed the resource limits for the
21 federal supplemental security income program.

22 (b) The secretary shall establish a method of providing
23 notice of the availability of participation in the medicaid buy-in
24 program. The secretary shall develop all forms and notices
25 necessary to implement the provisions of this article, including
26 forms for application to the program, determination of eligibil-

27 ity and continued participation and notices that advise all
28 eligible buy-in participants of the rights, benefits, obligations
29 and participation requirements of the program, including, but
30 not limited to, notice of fees, premiums, premium adjustments,
31 periodic review, length of time for which benefits may be paid
32 and disqualifying factors.

§9-4D-5. Exceptions to qualifying factors.

1 (a) An individual who is enrolled in the buy-in program and
2 who no longer meets the eligibility requirements of the basic
3 coverage group due to an improvement in the individual's
4 medical condition may continue to be eligible for medicaid
5 coverage under the buy-in program if the individual meets the
6 following requirements:

7 (1) The individual continues to have a severe medically
8 determinable impairment as determined by the department and
9 as defined and recognized by federal law;

10 (2) The individual is employed and earning a monthly wage
11 that is not less than the federal minimum hourly wage times
12 forty;

13 (3) The individual does not have income or countable
14 resources in excess of the limits established for the basic
15 coverage group;

16 (4) The individual is at least sixteen years of age and less
17 than sixty-five years of age;

18 (5) The individual pays any premiums or other cost sharing
19 required under this chapter; and

20 (6) The individual meets all other eligibility requirements
21 under this section.

22 (b) An individual who is enrolled in the buy-in program and
23 who is unable to maintain employment for involuntary reasons,
24 including temporary leave due to a health problem or involun-
25 tary termination, may continue to be eligible for Medicaid
26 coverage under the buy-in program if the individual meets the
27 following requirements:

28 (1) Within thirty days after the date on which the individual
29 becomes unemployed, the individual, or an authorized represen-
30 tative of the individual, submits a written request to the office
31 that the individual's medicaid coverage be continued;

32 (2) The individual maintains a connection to the workforce
33 during the individual's continued eligibility period by partici-
34 pating in at least one of the following activities:

35 (A) Enrollment in a state or federal vocational rehabilitation
36 program;

37 (B) Enrollment or registration with the office of workforce
38 development;

39 (C) Participation in a transition from school-to-work
40 program;

41 (D) Participation with an approved provider of employment
42 services;

43 (E) Provision of documentation from the individual's
44 employer that the individual is on temporary involuntary leave;

45 (F) The individual does not have income or countable
46 resources in excess of the limits established under this section;

47 (G) The individual is at least sixteen years of age and less
48 than sixty-five years of age;

49 (H) The individual pays any premiums or other cost sharing
50 required under this section; and

51 (I) The individual meets all other eligibility requirements
52 under this section.

53 (c) The department shall continue medicaid coverage under
54 the buy-in program for an individual described in subsection (b)
55 of this section for up to six months from the date of the individ-
56 ual's involuntary loss of employment.

57 (d) If an individual is ineligible for continued coverage
58 under the buy-in program because he or she fails to meet the
59 requirements of subsection (b) of this section or has already
60 fulfilled twelve months of continuing eligibility, the individual
61 shall be required to meet the eligibility requirements of another
62 available medicaid program in order to continue to be eligible
63 for medicaid benefits.

§9-4D-6. Fees, premiums and periodic reviews.

1 (a) The department shall charge a fifty-dollar enrollment
2 fee to all participants in the medicaid buy-in program. Upon
3 payment of the enrollment fee, the first month's premium
4 payment is waived. Medicaid coverage begins on the first day
5 of the month following payment of the enrollment fee.

6 (b) The department shall develop a sliding scale of premi-
7 ums for individuals participating in the buy-in program. The
8 sliding scale shall:

9 (1) Be based on the annual gross income of the individual;
10 and

11 (2) Provide for a minimum premium of fifteen dollars and
12 a maximum monthly premium not to exceed three and one-half
13 percent of the individual's gross monthly income.

14 (c) Subject to the minimum and maximum amounts
15 described in this section, the department may annually adjust
16 the scale of premiums charged for participation in the medicaid
17 buy-in program.

18 (d) The department shall biannually review the amount of
19 the premium that an individual is required to pay under this
20 section.

21 (e) The department may increase the premium required
22 only after conducting a review.

23 (f) The department shall decrease the premium that an
24 eligible buy-in participant is required to pay if:

25 (1) The individual notifies the office of a change in income
26 or family size; and

27 (2) The sliding scale adopted by the department applied to
28 the individual's changed circumstances prescribes a premium
29 for the individual that is lower than the premium the individual
30 is paying.

31 (g) The department shall establish administrative proce-
32 dures regarding premiums for the buy-in program, including:

33 (1) The effect of nonpayment of a premium; and

34 (2) The collection of premiums.

35 (h) The department shall establish criteria to base the
36 biannual redetermination of disability required for an individual
37 participating in the buy-in program on the individual's medical
38 evidence, including evidence of physical or mental impairment.

39 (i) In conducting the biannual redetermination described in
40 this section, the department may not determine that an individ-

41 ual participating in the buy-in program is no longer disabled
42 solely on the individual's:

43 (1) Participation in employment;

44 (2) Earned income; or

45 (3) Income from self-employment.

§9-4D-7. Benefits of the medicaid buy-in program

1 (a) Except as otherwise provided in this article, an eligible
2 buy-in participant shall receive the same benefits that he or she
3 would otherwise receive as a recipient of medicaid benefits,
4 including home health care services.

5 (b) Except as otherwise provided in this article, an eligible
6 buy-in participant is subject to the same obligations and
7 requirements, including cost sharing, that he or she would
8 otherwise be subject to as recipient of medicaid benefits.

§9-4D-8. Analytical criteria and reporting requirements.

1 (a) The secretary shall establish criteria to determine the
2 effectiveness of the medicaid buy-in program and continued
3 medicaid coverage through Section 1619 of the federal Social
4 Security Act (42 U. S. C. §1382h). The criteria shall include an
5 analysis of the following:

6 (1) The number of individuals with disabilities who are:

7 (A) Enrolled in the buy-in program; or

8 (B) Receiving medicaid through Section 1619 of the federal
9 Social Security Act (42 U. S. C. §1382h);

10 (2) The amount of state revenues resulting from premiums
11 paid by participants in the buy-in program; and

12 (3) The amount of state costs incurred as a result of
13 implementing the buy-in program, including administrative
14 costs and costs of providing services.

15 (b) In addition to the criteria required under subsection (b)
16 of this section, the secretary may establish criteria to determine
17 the following:

18 (1) Comparative costs of medicaid funded services for
19 participants in the buy-in program and work incentives created
20 through Section 1619 of the federal Social Security Act (42 U.
21 S. C. §1382h) before and after employment;

22 (2) The number of supplemental security income and social
23 security disability insurance recipients in West Virginia who
24 are no longer dependent on, or who have reduced dependence
25 on, public assistance or health care entitlement services, other
26 than medicaid or the children's health insurance program, due
27 to participation in the buy-in program or work incentives
28 created through Section 1619 of the federal Social Security Act
29 (42 U. S. C. §1382h);

30 (3) The number of individuals with severe disabilities who
31 are no longer dependent on, or who have reduced dependence
32 on, public benefits or services, other than medicaid or the
33 children's health insurance program, due to income or support
34 services received through participation in the buy-in program
35 or work incentives created through Section 1619 of the federal
36 Social Security Act (42 U. S. C. §1382h); and

37 (4) The change in the number of buy-in program partici-
38 pants or participants in work incentives created through Section
39 1619 of the federal Social Security Act (42 U. S. C. §1382h)
40 who have health care needs and related services covered
41 through employer based benefit programs.

42 (c) In evaluating the effectiveness of the state's work
43 incentives initiatives for individuals with disabilities, the secretary:

44 (1) Shall collaborate with other state agencies on data
45 collection; and

46 (2) May consult with an independent contractor to collect
47 data on the criteria required by this section.

48 (d) The department secretary shall provide an annual report
49 of its evaluation of the medicaid buy-in program performed
50 pursuant to the requirements of this section to the Legislature
51 no later than the last day of December of each year, beginning
52 in two thousand four.

§9-4D-9. Advisory council; rules.

1 (a) The secretary of the department of health and human
2 resources shall establish a medicaid buy-in program advisory
3 council, consisting of representatives from the state medicaid
4 agency, the state rehabilitation agency, the state office of family
5 support, the West Virginia statewide independent living
6 council, the West Virginia state rehabilitation council, the West
7 Virginia developmental disabilities council, the West Virginia
8 mental health planning council and the center for excellence in
9 disabilities at West Virginia university.

10 (b) The secretary shall submit proposed rules for review
11 and input to the advisory council prior to release for public
12 comment and shall consider any recommendations of the
13 advisory council before adopting final rules.

14 (c) The secretary shall propose emergency rules in accor-
15 dance with the provisions of section fifteen, article three,
16 chapter twenty-nine-a of this code to implement the provisions
17 of this article. Thereafter, the secretary shall propose additional
18 rules for legislative approval in accordance with the provisions

19 of said article three, chapter twenty-nine-a of this code as may
20 be needed to administer and maintain the medicaid buy-in
21 program.

CHAPTER 117

(S. B. 608 — By Senator Prezioso)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the continuance of summary certificate of need reviews for proposed behavioral health services necessary to maintain federal approval of the medicaid mentally retarded/developmentally disabled waiver program.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-19. Summary review for certain behavioral health facilities and services.

1 (a) A certificate of need as provided in article two-d,
2 chapter sixteen of this code is not required by an entity propos-
3 ing additional behavioral health care services, but only to the
4 extent necessary to gain federal approval of the medicaid

5 MR/DD waiver program, if a summary review is performed in
6 accordance with the provisions of this section.

7 (b) Prior to initiating any summary review, the secretary
8 shall direct the revision of the state mental health plan as
9 required by the provisions of 42 U. S. C. 300x and section four,
10 article one-a, chapter twenty-seven of this code. In developing
11 those revisions, the secretary is to appoint an advisory commit-
12 tee composed of representatives of the associations representing
13 providers, child care providers, physicians and advocates. The
14 secretary shall appoint the appropriate department employees
15 representing regulatory agencies, reimbursement agencies and
16 oversight agencies of the behavioral health system.

17 (c) If the secretary of the department of health and human
18 resources determines that specific services are needed but
19 unavailable, he or she shall provide notice of the department's
20 intent to develop those services. Notice may be provided
21 through publication in the state register, publication in newspa-
22 pers or a modified request for proposal as developed by the
23 secretary.

24 (d) The secretary may initiate a summary review of
25 additional behavioral health care services, but only to the extent
26 necessary to gain federal approval of the medicaid MR/DD
27 waiver program, by recommending exemption from the
28 provisions of article two-d, chapter sixteen of this code to the
29 health care authority. The recommendation is to include the
30 following findings:

31 (1) That the proposed service is consistent with the state
32 health plan and the state mental health plan;

33 (2) That the proposed service is consistent with the depart-
34 ment's programmatic and fiscal plan for behavioral health
35 services;

36 (3) That the proposed service contributes to providing
37 services that prevent admission to restrictive environments or
38 enables an individual to remain in a nonrestrictive environment;

39 (4) That the proposed service contributes to reducing the
40 number of individuals admitted to inpatient or residential
41 treatment programs or services;

42 (5) If applicable, that the proposed service will be
43 community-based, locally accessible, provided in an appropri-
44 ate setting consistent with the unique needs and potential of
45 each client and his or her family and located in an area that is
46 unserved or underserved or does not allow consumers a choice
47 of providers; and

48 (6) That the secretary is determining that sufficient funds
49 are available for the proposed service without decreasing access
50 to or provision of existing services. The secretary may, from
51 time to time, transfer funds pursuant to the general provisions
52 of the budget bill.

53 (e) The secretary's findings required by this section shall be
54 filed with the secretary's recommendation and appropriate
55 documentation. If the secretary's findings are supported by the
56 accompanying documentation, the proposal does not require a
57 certificate of need.

58 (f) Any entity that does not qualify for summary review is
59 subject to a certificate of need review.

60 (g) Any provider of the proposed services denied authoriza-
61 tion to provide those services pursuant to the summary review
62 has the right to appeal that decision to the state agency in
63 accordance with the provisions of section ten, article two-d,
64 chapter sixteen of this code.